

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1623-1995 (O&M)
Date of Order:08.01.2024

PUNJAB STATE & OTHERS

.Petitioners

Versus

HARNEK SINGH

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Arora, AAG, Punjab

Mr. Satinder Khanna, Advocate
for the respondent

ANIL KSHETARPAL, J

1. In this regular second appeal, the defendants (State of Punjab) assail the correctness of the judgment and decree passed by the first appellate court which in turn has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief are required to be noticed.

3. The respondent-Harneek Singh was serving as a Canal Patwari in the Irrigation Department, Punjab. On 10.02.1978, he was arrested in FIR relating to the offences under Section 302/307 read with Section 34 IPC. He was suspended from service on 17.02.1978. Ultimately, in a criminal case, he was convicted on 27.09.1978. On 06.12.1989, he filed a suit for declaration that he continues to be Patwari in the Irrigation Department and therefore he is entitled to all the benefits of continuing in service and the suspension order passed by the defendants suspending him from service is

illegal, null and void. He also sought a decree for mandatory injunction directing the defendants to allow the plaintiff to work as a Patwari.

4. The trial court dismissed the suit vide judgment dated 04.05.1993. The plaintiff filed an appeal. It may be noted here that during the pendency of the suit, the respondent was dismissed from service vide order dated 11.05.1990. The First Appellate Court on re-appreciation of the evidence, held as under:-

“The dismissal order was passed on 11.05.1990, that is , long after the plaintiff filed the suit. It is apparent that as on the date of filing the suit, no order of dismissal had been passed against the plaintiff. In other words, he was still deemed to be in service of the defendants although under suspension. The dismissal order dated 11.05.1990 was passed during the pendency of the suit. That circumstances cannot non suit the plaintiff because on the date of filing the suit the plaintiff was very much in service of the defendants. The plaintiff is, therefore, entitled to a decree on that short ground.”

“11. for the fore-going reasons the appeal is allowed. The judgment and decree of the trial court are set aside. The suit of the plaintiff is decreed for declaration that he continues to be in service of the defendants. The suit for declaration that the order of suspension is illegal stands dismissed. No decree can be granted in favour of the plaintiff for mandatory injunction directing the defendants to allow the plaintiff to work as patwari. It is made clear that it shall be open to the department to pass any appropriate order in accordance with Rules regarding the period during which the plaintiff faced the trial and served the sentence. This judgment shall not preclude the defendants from initiating or taking any action or passing any fresh order regarding the continuance of the plaintiff in service. The parties are left o bear their own costs throughout.”

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. The learned counsel representing the appellant submits that the respondent has never assailed the correctness of his dismissal order. He

submits that it is not appropriate for the court to grant the decree of declaration that he is continuing in service.

7. On the other hand, the learned counsel representing the respondent submits that the status of the respondent is required to be examined on the date the suit was filed i.e. 06.12.1989. He submits that the order of dismissal of the respondent from the service was passed subsequently, i.e. on 11.05.1990, and it shall take effect from that date.

8. This court has considered the submissions of the learned counsel representing the parties.

9. It is evident that when the suit was filed, the respondent was only placed under suspension. There was no order dismissing him from service. An employee who is suspended continues to be in service though under suspension. This is the observation made by the First Appellate Court in para 9 which has already been extracted.

10. The First Appellate Court also directed the appellant to pass appropriate orders regarding continuation of plaintiff in service. Pursuant thereto, the government shall be entitled to pass the appropriate order.

11. It has been brought to the notice of the court that on 11.05.1990 the respondent was dismissed with effect from 1978, from service. However, subsequently, vide Annexure P-7, a fresh order was passed on 25.06.1990, dismissing the respondent from service from that date.

12. Keeping in view the aforesaid facts, the respondent will be deemed to have been dismissed from service with effect from 25.06.1990. Till that date, he will be entitled to suspension allowance as payable under the rules.

13. With regard to the remaining amount, the government will be

competent to pass the appropriate orders, which shall be passed by the government within a period of 2 months, from today and thereafter, arrears, if any, shall be paid within next two months, after the order is passed, positively.

14. All the pending miscellaneous applications, if any, are also disposed of.

January 08, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO