

RSA-1409 of 1996 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1409 of 1996 (O&M)
Reserved on: 22.04.2024
Pronounced on: 30.04.2024

Shiv Kumar

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: None for the appellant.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 05.03.1992, passed by the Court of learned Senior Sub Judge, Rewari, whereby suit for declaration filed by the plaintiff-appellant was rejected as well as against the judgment and decree dated 05.04.1995, passed by the Court of learned Additional District Judge, Rewari, whereby appeal of the appellant against the judgment and decree dated 05.03.1992, was dismissed.

2. Parties to the *lis* are being referred as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for declaration that order No.1033/ECC dated 11.06.1984 and order dated 01.03.1983 passed by defendant No.3-General Manager, Haryana Roadways, Depot, and the orders dated 27.06.1985 and 30.03.1984 passed by defendant No.2.-State Transport Commissioner,

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Haryana, Chandigarh were illegal, void and ultravires and the plaintiff continued in service and was entitled to all arrears of salary and other benefits. It was pleaded that he was appointed as conductor by defendant No.3 through office order dated 20.03.1982 and defendant No.3 had terminated his services with effect from 01.03.1983 whereas other similarly placed employees and who were junior to the plaintiff were retained in service and quota rule for Scheduled Tribe was also not kept in mind. It was further claimed that order of defendant No.3 was illegal, unjust, arbitrary and discriminatory and the plaintiff had filed an appeal against the impugned order dated 01.03.1983, but the same was rejected by defendant No.2 and through order dated 30.03.1984, the plaintiff was allowed to join the services of the defendants with effect from 30.03.1984 and his services were again terminated vide order dated 11.06.1984 and the appeal filed against the said order was rejected by defendant No.2 vide order dated 27.06.1985. It was claimed that the impugned orders were illegal and void as they were non-speaking orders, no opportunity of hearing was given to the plaintiff and the orders were arbitrary and the plaintiff had completed more than 240 days of continuous service and had, therefore, acquired the status of a regular employee as per instructions of defendant No.2 dated 19.02.1979. It was further claimed that the impugned order dated 11.06.1984 was discriminatory as the defendants had not followed the principle of "last come, first go" and since the impugned orders amount to major punishment, same could not have been passed without giving reasonable opportunity to the plaintiff.

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3. The suit was contested by the defendants on the ground that it was barred by limitation. It was also claimed that the orders were legal and valid. Order dated 24.06.1986 was a speaking order and was passed as per the terms and conditions of the plaintiff's service. The suit was not maintainable as the plaintiff had not served any notice under Section 80 CPC. It was also denied that any other employee junior to the plaintiff had been retained in service.

4. On the pleadings of the parties, following issues had been framed :-

1. Whether the orders dated 1.3.1983 and 11.6.1984 are illegal, null and void and not binding on the rights of the plaintiff as alleged? OPP
- 1A. Whether the orders dated 27.6.1985 and 30.3.84 passed by defendant no.2 are illegal, null and void, if so, to what effect? OPP
2. Whether the suit is time barred? OPD
3. Whether the suit is not maintainable as alleged? OPD
4. Whether the suit is bad for want of notice under Section 80 CPC as alleged? OPD
5. Relief.

5. The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, rejected the plaint vide judgment and decree dated 05.03.1992, on the ground that the plaintiff had a remedy under the Industrial Disputes Act, 1947, and the jurisdiction of the Civil Court was barred.

6. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal, which has been dismissed by the

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lower Appellate Court vide judgment and decree dated 05.04.1995.

Hence, this Regular Second Appeal by the plaintiff-appellant.

7. No one has put in appearance on behalf of the appellant.

8. Learned counsel for the respondents-State submitted that the judgment and decree of the lower Appellate Court is perfectly legal and valid. Plaintiff-appellant was appointed purely on contract basis, therefore, he could not be considered a regular employee.

9. I have heard learned counsel for the respondents and perused the record.

10. Perusal of the record shows that appellant was appointed as Conductor on 20.03.1982. His services were discontinued w.e.f. 23.03.1982. He was again appointed on 31.03.1982 and his services were discontinued on 24.06.1982. Thereafter, appellant was re-appointed on 25.06.1982 and his services were dispensed with on 31.08.1982. Appellant was again appointed on 28.09.1982 and his services were discontinued with effect from 31.01.1983. He was again appointed w.e.f. 31.01.1983 and his services were discontinued w.e.f. 01.03.1983. Both the Courts below have rightly observed that plaintiff-appellant had not completed 240 days of continuous service with the respondents, therefore, he could not be considered a regular employee. The appellant had concealed the fact that his services were discontinued several times. Services of the appellant were terminated as per contract of employment as no longer required. There were charges of embezzlement against the appellant but subsequently he was exonerated by the enquiry officer. Appellant did not produce any

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evidence in support of his plea that employees junior to him had been retained in service. In a situation where the employee is entitled to the right under the common law or the industrial law, it is the choice of the employee either to approach the Civil Court or the Industrial Court. Therefore, the lower appellate Court has rightly reversed the finding of the trial Court that appellant had got remedy under the Industrial Disputes Act, 1947, therefore, jurisdiction of the Civil Court to entertain the suit was barred.

11. There are concurrent findings of both the Courts below that services of the appellant were terminated being no longer required and he had suppressed the fact from the Court that his services were terminated several times.

12. No question of law muchless substantial question of law arises for consideration in this appeal.

13. Dismissed.

14. Pending application(s), if any, stand disposed of in view of the aforesaid judgment.

30.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No