

RSA-2329 of 1998 (O&M)

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

RSA-2329 of 1998 (O&M)
Reserved on: 10.04.2024
Pronounced on: 23.04.2024

State of Haryana and another

.....Appellants

Versus

Azad Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Piyush Gill, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 11.01.1997 passed by the Court of learned Additional Civil Judge (Senior Division), Rohtak, whereby suit for declaration filed by the respondent-plaintiff was decreed as well as against the judgment and decree dated 06.11.1997, passed by the Court of learned District Judge, Rohtak, whereby appeal filed by the appellants-defendants against the judgment and decree dated 11.01.1997, has been dismissed.

2. Parties to the appeal are being referred as per their status before the trial Court. Brief facts of the case are that plaintiff filed the suit for declaration to the effect that termination order dated 7.5.1993 issued by defendant no.2 is illegal, null and void and without jurisdiction and the same is liable to be set aside. It is pleaded that he is

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entitled to be reinstated in service alongwith all back wages. The case of the plaintiff is that he was appointed by defendant no.1 as a driver with effect from 9.7.1992 and he joined his duties on the same day in the office of defendant no.2 and since then his work and conduct is good. Defendant no.2 has illegally terminated his service w.e.f. 7.5.1993 without assigning any reason on the ground that a regular driver has been appointed against the post of driver. It is further alleged that no notice or chargesheet was ever served upon the plaintiff before the termination order was passed against him and, therefore, termination is illegal and arbitrary. It is stated that the plaintiff was appointed through Employment Exchange, therefore, he has every right for regularisation of his services in place of new appointee. It is further alleged that the plaintiff was appointed by defendant no. 1 and, therefore, defendant no.2 has no right to terminate his services, against the rules. The plaintiff requested the defendants not to terminate his services illegally but in vain. Hence, the suit.

3. Upon notice, defendants contested the suit by filing written statement wherein they stated that the plaintiff was engaged by defendant no.1 vide letter dated 7.7.1992 for three months and he joined his duties on 9.7.1992, and, thereafter further extension was given upto 28.2.1993. It is stated that no appointment letter was ever issued to plaintiff because the plaintiff was engaged on daily wages. The plaintiff was again engaged from 4.3.1993 to 30.4.1993 subject to the approval of Deputy Commissioner, Rohtak. He was relieved on 28.2.1993 after the expiry of sanction. It is stated that it was not

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necessary to issue any notice or charge-sheet to the plaintiff and, therefore, the termination is legal. It is denied that the plaintiff has a right for regularisation of his service. It is also stated that no other person has so far been appointed in place of the plaintiff. Rather permanent employee was transferred from the office of Deputy Commissioner, Rohtak, to fill up the post.

4. The plaintiff in his replication has denied the paras of the written statement and has reaffirmed the paras of the plaint.

5. On the pleadings of the parties, following issues were framed :-

1. Whether the order of termination dated 7.5.1993, passed by the defendant no.2 is illegal, null and void? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the Civil Court has no jurisdiction to try and entertain this suit? OPD
4. Whether the suit is not properly valued, its effect? OPD
5. Relief.

6. After hearing learned counsel for the parties and appreciating the evidence on record, trial Court vide judgment and decree dated 11.01.1997 decreed the suit of the plaintiff.

7. Aggrieved against the judgment and decree dated 11.01.1997 appellants preferred an appeal, which has been dismissed by the lower Appellate Court vide judgment and decree dated 06.11.1997.

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8. Learned counsel for the appellants contended that judgment and decrees of both the Courts below suffer from infirmity inasmuch as both the Courts below failed to appreciate that respondent-plaintiff was working on daily-wage basis, therefore, no notice was required to be served upon him before termination of his services. He further contended that judgments of both the Courts below being based on surmises and conjectures are liable to be set aside. In support of his contentions, learned counsel relied upon the judgments of the Hon'ble Supreme Court in ***Civil Appeal No.726 of 2001 – Dhananjay v. Chief Executive Officer, Zila Parishad, Jalna – decided on 30.01.2003; SLP Nos.22475-22476 of 2012 – Yogesh Mahajan v. Professor R.C. Dekha – decided on 31.01.2018*** and judgment of this Court in ***LPA-1454 of 2019 – Haryana Staff Selection Commission v. Preety Poswal – decided on 14.10.2019***.

9. On the other hand, learned counsel for the respondent supported the judgments and decrees of both the Courts below by contending that services of the respondent-plaintiff were terminated illegally without assigning any reason. He further contended that respondent was appointed through employment exchange, therefore, he had every right to continue in services, therefore, the impugned order was rightly set aside by the Courts below. He further contended that this Court vide order dated 09.09.1999 while staying the operation of the judgments/decrees of the Courts below also stayed the termination of the respondent.

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10. I have heard learned counsel for the parties and perused the record.

11. In compliance of the orders dated 06.03.2024, passed by this Court, affidavit of Dalbir Singh, Sub Divisional Officer (C), Meham, filed in Court is taken on record.

12. Undisputedly, the respondent was appointed as driver on daily-wage basis by the appellants vide letter dated 07.07.1992 for three months and his services were terminated by the Sub Divisional Magistrate, Meham, vide letter dated 07.05.1993, which has been held illegal by the Courts below.

13. Hon'ble Supreme Court in the case of ***Dhananjay's*** case (supra) has held as under: -

“4. It is not in dispute that the appellant was appointed on a temporary basis; his services could be terminated without notice and without assigning any reason within a period of one year. In fact, his services were terminated within a period of one year under Rule 5(1) of the Central Civil Services (Temporary Service) Rules. The only question that is required to be answered is: whether the order of termination of services is simpliciter or is punitive attaching stigma to the appellant. No doubt in the order of suspension passed on July 1, 1987 keeping the appellant under suspension, an enquiry was directed against the appellant in regard to the alleged misconduct. But, no enquiry was held pursuant to the said order, having regard to the Government Order dated November 24, 1987 that service of a temporary servant could be discharged within a period of one year without keeping him under suspension and without holding an enquiry. Although initially the enquiry was ordered, in view of this

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Government Order, the respondent did not proceed to hold any enquiry. In the criminal case filed against the appellant, he was acquitted.

5. *Para 2 of the impugned order of termination of services makes a mention of the fact that the appellant was suspended. The learned counsel for the appellant, pointing out this paragraph, submitted that it would cast stigma on the appellant and it would adversely affect his prospects. The High Court, in dismissing the writ petition, relied on the decision of this Court in the case of Bihari Lal aforementioned. Para 5 of the said judgment reads thus:*

"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Service (Classification, Control & Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if

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otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would, be a charter for him to indulge with impunity in misappropriation of public money."

6. *If we look to the paragraph extracted above, it becomes clear that the facts of that case are almost similar to the facts of the present case. Although a distinction was sought to be made to contend that judgment has no application to the facts of the present case, we are unable to agree with the submission. Merely because the appellant was kept under suspension, that, by itself, is not indicative that the respondent had intended from the beginning to get rid of the services of the appellant by holding an enquiry. It is not the case of the appellant that in spite of the fact that his services were needed, the order of termination of services was passed. Even though the appellant was acquitted in the criminal case launched against him on the basis of the complaint made by the respondent, is also not a factor to indicate that the respondent wanted to take action against the appellant on his misconduct to remove him from service.*

7. *In our view, having regard to the facts and circumstances of the case, it is not possible to hold that the order of termination of services was not simpliciter or the misconduct was the foundation for passing such order. Even if an enquiry was ordered to find out or verify the truth or otherwise and the allegation by itself does not establish that the respondent had any such design to some-*

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how remove the appellant from services, in our view, the High Court was right in dismissing the writ petition in the light of the facts of the present case and the judgment of this Court, referred to above.”

14. Further, the Hon’ble Supreme Court in **Yogesh Mahajan’s** case (supra) has held as under: -

“6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner.

7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in Uma Devi. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularisation of his services. The decision in Uma Devi does not advance the case of the petitioner.

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8. Insofar as the final submission of the petitioner to the effect that some persons were appointed as Technical Assistant (ENT) in May 2016 is concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of Medical Sciences not to extend the contract of the petitioner. The situation appears to have changed over the last six years and the petitioner cannot take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because there was a change in circumstances, does not mean that the petitioner is entitled to any benefit. On the other hand, it might have been more appropriate for the petitioner to have participated in the walk-in interview so that he could also be considered for appointment as Technical Assistant (ENT), but he chose not to do so.”

15. Respondent, who was appointed on daily-wage basis for three months, was not required to be issued any notice as his services were not required further because a regular incumbent had joined on the said post. Engagement of the respondent on daily wages was not in accordance with any regular procedure. Mere extension of service/contract of an employee on contract basis does not bestow upon him a right to continue in service. In fact, respondent was not terminated from service, rather he was not granted extension by the Deputy Commissioner on account of joining of regular driver, therefore, his services were dispensed with as not required. Non-renewal of tenure or extension on daily-wage basis cannot be said to be termination or dismissal from service. The finding of the Courts below

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Magistrate, who was not competent to do so as he was not the appointing authority is wrong inasmuch as respondent was appointed on account of grant of sanction by the Deputy Commissioner and his services were extended with the sanction of the Deputy Commissioner. Services of the respondent were dispensed with by the Sub Divisional Magistrate on account of non-receipt of sanction from the Deputy Commissioner for extension of daily wage period, as his services were no longer required. It is settled law that an employee appointed on contract/daily-wage basis has no legal right to extend his service period.

16. In view of the above, appeal is allowed. Impugned judgments and decrees of the Courts below are set aside. It is made clear that no recovery shall be made from the respondent as he continued in service till 31.07.2022, in the light of interim order dated 09.09.1999.

17. Pending application(s), if any, stand disposed of accordingly.

23.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No