



139

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

RSA-2891-1994 (O&M)
Date of decision: 15.05.2025

Punjab State Electricity Board and another

...Appellants

Versus

Nirmal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. M.S. Longia, Advocate for the appellants.

Mr. R.S. Manhas, Advocate for the respondents.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present Regular Second Appeal is to the judgment dated 18.09.1991 vide which the suit filed by respondent No.1 (plaintiff No.1) was allowed. Challenge is also to the judgment and decree dated 05.05.1994 vide which the appeal filed by the present appellants/defendants was dismissed.

2. Brief facts of the case are that respondent Nos.1 and 2 i.e., Nirmal Singh (plaintiff No.1) and Rajinder Singh (plaintiff No.2), had filed a suit for declaration to the effect that the act of removal of the plaintiffs from their employment by defendant No.2 on 01.04.1989 was against the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter to be referred as “the 1947 Act”) and was thus, void and the



plaintiffs were in continuous employment from the date of their original employment and were entitled to the arrears of salary along with interest and costs. It was the case of the plaintiffs in the plaint that the plaintiffs were in the employment of the Punjab State Electricity Board and were under the control and supervision of defendant No.2 i.e., Executive Engineer, Punjab State Electricity Board City Division, Pathankot, and that they had completed more than 240 days in 12 months, preceding the date on which they were relieved from the employment i.e., on 01.04.1989. It was further their case that the plaintiffs were “workmen” as defined under Section 2(s) of the 1947 Act and that the Punjab State Electricity Board, Patiala was an “industry” as defined under Section 2(j) of the 1947 Act and that the plaintiffs were removed from service without complying with the provisions of Section 25-F of the 1947 Act and on the said plea, the suit was filed.

3. In the written statement filed by the defendants, two preliminary objections were raised, including the objection that the Civil Court had got no jurisdiction to try the matter since the plaintiffs had a specific remedy under the 1947 Act and that the suit was not maintainable in the present form. It was specifically stated that the plaintiffs were casual workers and that it was incorrect to say that they had completed 240 days in the preceding one year. The pleas raised in the plaint were opposed and it was thus, prayed that the suit be dismissed. Replication was filed by the plaintiffs to the same.

4. On 01.03.1990, the trial Court had framed the following issues:-

- “1. *Whether the plaintiffs are entitled to the declaration as prayed for, if so its effect? OPP.*
2. *Whether the Civil Court has got no jurisdiction to try this suit? OPD.*



3. *Whether the suit is not maintainable in the present form?
OPD.*

4. *Relief.”*

5. The trial Court, after considering the documents on record, more so service books Ex.P-7 and P-6 came to the conclusion that plaintiff No.1-Nirmal Singh had worked for 240 days in 12 months, preceding the date of his being relieved i.e., on 01.04.1989 and the same was done without following the mandatory provision of Section 25-F of the 1947 Act. With respect to plaintiff No.2-Rajinder Singh, it was observed that since he had not completed 240 days thus, he had no case and suit qua him was dismissed.

6. On the issue with respect to maintainability of the civil suit i.e., issue No.2, the trial Court, by relying upon the judgment of the Coordinate Bench of this Court in the case of **Municipality Jagadhri Vs. Ved Parkash Aggarwal and another** reported as **1988 (7) SLR 347**, had observed that since the plaintiffs had two remedies, it was their choice to either approach the Civil Court or the Industrial Disputes Tribunal and thus, observed that the Civil Court had jurisdiction to try the suit. After considering the said aspect, the suit of the plaintiff No.1 was decreed and it was held that termination of services of plaintiff No.1-Nirmal Singh was without complying with the provisions of Section 25-F of the 1947 Act and thus, was not binding upon him and thus, he was entitled to all the service benefits to which he would have been entitled had the impugned order not been passed.

7. Plaintiff No.2-Rajinder Singh did not file any appeal against the said judgment and thus, dismissal of the suit qua him attained finality. The present appellants filed an appeal against the said judgment and the said



appeal was dismissed. It is against the said judgments that the present Regular Second Appeal has been filed and vide order dated 10.10.1995, while admitting the appeal, the execution of the decree was ordered to be stayed. The order dated 10.10.1995 passed by the Coordinate Bench of this Court is reproduced hereinbelow:-

“Present:- Mr. Jasbir Singh, Advocate

Mr. Kuldeep Sanwal, Advocate

Admitted.

Execution of the decree shall remain stayed till further orders.

Appeal be listed for final hearing within one year.

10.10.1995”

8. It is not disputed before this Court that the said interim order has continued till date and respondent No.1-Nirmal Singh has got no relief in pursuance of the judgment of the trial Court and the First Appellate Court.

9. Learned counsel for the appellants has raised two submissions to challenge the judgments of the trial Court as well as of the First Appellate Court. First argument raised on behalf of learned counsel for the appellants is to the effect that issue No.2, which was as to whether the Civil Court had got no jurisdiction to try the suit, had been wrongly decided by the trial Court as well as the First Appellate Court. It is argued that as per the law laid down by the Hon’ble Supreme Court in **Civil Appeal No.1346 of 2010 titled as “Milkhi Ram Vs. Himachal Pradesh State Electricity Board”, decided on 08.10.2021**, the Hon’ble Supreme Court had categorically observed that where the employee has made his claim in the suit on the basis of the provisions of the 1947 Act, then, the employer has a right to raise a



jurisdictional objection to the proceedings before the Civil Court and in such a situation, the jurisdiction of the Civil Court would be barred to entertain the suit which is structured on the provisions of the 1947 Act. It is argued that in the said case, the objection was raised in the execution proceedings and the decree was held to be a legal nullity. It is submitted that in view of the law laid down by the Hon'ble Supreme Court, issue No.2 deserves to be decided in favour of the present appellants/defendants and the judgments of the trial Court as well as of the First Appellate Court deserve to be set aside on the said short ground alone.

10. It is next argued by learned counsel for the appellants that even otherwise, the relief granted to plaintiff No.1/respondent No.1 is highly excessive and since plaintiff No.1 was only a daily worker who had not been employed after availing due process, as no advertisement etc. in the present case was issued prior to keeping plaintiff No.1 in service, thus, in the said circumstances, decree to the effect that plaintiff No.1 was entitled to all the benefits of service to which he would have been entitled had he not been relieved/terminated is highly disproportionate. In the said regard, reliance has been placed upon by learned counsel for the appellants on the judgment of the Hon'ble Supreme Court in the case of **Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh**, reported as **(2013) 5 Supreme Court Cases 136** and has submitted that in similar circumstances, the reinstatement of the respondent therein with continuity of service along with 25% of back wages was held to be illegal and was set aside. It is submitted that the present appeal filed by the present appellants is meritorious and judgments of the trial Court as well as the First Appellate



Court deserve to be set aside and the suit filed by respondent No.1-plaintiff No.1 deserves to be dismissed.

11. Learned counsel for the respondents, on the other hand, has submitted that the fact that plaintiff No.1 had worked for 240 days in the calendar year preceding to his termination/relieving has been proved and had been concurrently held in favour of plaintiff No.1. It is submitted that the said finding is in accordance with law and deserves to be upheld. It is further submitted that once the said fact is established and it is also proved on record that the employer/present appellants had not complied with the provisions of Section 25-F of the 1947 Act and that plaintiff No.1 was “workman” and appellant an “industry” within the meaning of the 1947 Act, then, in such a situation, plaintiff No.1 was at least entitled to adequate compensation. It is submitted that even in ***Milkhi Ram’s case*** (Supra), as relied upon by learned counsel for the appellants, although all pleas were held in favour of the employer, but in para 17 of the said judgment, after taking into consideration the hardship to the terminated employee, it was ordered that the arrears paid to him pursuant to the Court decree be not recovered. It is further submitted that even as per ***Assistant Engineer, Rajasthan Development Corporation’s case*** (Supra), an amount of Rs.50,000/- as compensation was given to the employee therein and the said judgment was passed in the year 2013 and thus, even going by the said judgment, at least plaintiff No.1 would be entitled to compensation of Rs.1,50,000/-, as a period of more than 12 years have passed from the passing of the said judgment. It is further submitted that at the relevant time when the suit was filed, the Coordinate Bench of this Court in the case of ***Municipality Jagadhri*** (Supra) had observed that such a



suit was maintainable and thus, plaintiff No.1 cannot be faulted for having filed the suit in the Civil Court.

12. This Court has heard learned counsel for the parties and has perused the paper book.

13. The first substantial question of law which arises for consideration is as to “whether the Civil Court would have jurisdiction to try the suit which is founded and structured on the provisions of the 1947 Act and challenge in the said suit is to the termination, founded on the provisions of the 1947 Act”. The said question of law has been squarely answered by the Hon’ble Supreme Court in ***Milkhi Ram’s case*** (Supra). In the said case, it was observed by the Hon’ble Supreme Court that the authorities specified under the 1947 Act, including the appropriate Government and the Industrial Courts, perform various functions and the said Act provides for a wider definition of “termination of service”. It was further observed that where the challenge to the termination was founded on the provisions of the 1947 Act, then the Civil Court would lack jurisdiction to entertain the suit structured on the provisions of the 1947 Act and that the decree passed in the said case in favour of the plaintiff therein was held to be a legal nullity. Relevant portion of the said judgment is reproduced hereinbelow:-

“xxx xxx

14. In the present matter, the appellant has clearly founded his claim in the suit, on the provisions of the ID Act and the employer therefore is entitled to raise a jurisdictional objection to the proceedings before the civil court. The courts below including the executing court negated the jurisdictional objection. The High Court in Revision, however has overturned the lower court’s order and declared that the



decree in favour of the plaintiff is hit by the principle of coram non judice and therefore, the same is a nullity.

Xxx xxx

16. As can be seen from the material on record, the challenge to the termination was founded on the provisions of the ID Act. Although jurisdictional objection was raised and a specific issue was framed at the instance of the employer, the issue was answered against the defendant. This Court is unable to accept the view propounded by the courts below and is of the considered opinion that the civil court lacks jurisdiction to entertain a suit structured on the provisions of the ID Act. The decree favouring the plaintiff is a legal nullity and the finding of the High Court to this extent is upheld.

17. Consequently, the appeal is found devoid of merit and the same is dismissed. However, considering the hardship to the terminated employee, the arrear sum paid to him pursuant to the court's decree, should not be recovered. It is ordered accordingly. The parties to bear their own cost."

14. In para 3 of the said judgment, it was noticed by the Hon'ble Supreme Court that the appellant therein was a daily wage employee under the Himachal Pradesh State Electricity Board and his services were dispensed with vide order dated 01.01.1985 and that the said order was challenged in the civil suit where the appellant therein claimed that he had rendered uninterrupted service for 2778 days and had asserted that he had a right to be regularized after completion of 240 days of continuous service and that the Civil Court had observed that the appellant therein had completed 240 days of uninterrupted service and his services had been terminated in violation of Section 25-F of the 1947 Act and accordingly, the suit was decreed and the plaintiff was ordered to be reinstated. It was further noticed that even the



appeal against the said decree was dismissed and it was observed in the appeal that the workman was entitled to choose the remedy either before the Civil Court or before the Industrial Court. It was in the execution proceedings that an objection was raised and it is in the said proceedings that ultimately, the Hon'ble Supreme Court observed that decree in favour of the appellant therein was hit by the principle of *coram non judice* and, therefore, was a legal nullity.

15. In the present case, a perusal of the plaint would show that the entire case is based upon the non-compliance of mandatory provisions of Section 25-F of the 1947 Act. The plaintiffs, including plaintiff No.1, had specifically stated themselves to be “workman” in para 3 of the plaint and had further stated the defendants to be “industry” within the meaning of Section 2(s) and 2(j) of the 1947 Act respectively. It was further the case of plaintiff No.1 that he had worked for more than 240 days prior to the date of his relieving and the said relieving/termination was in violation of Section 25-F of the 1947 Act. Even the trial Court as well as the First Appellate Court had, in view of the fact that the termination of plaintiff No.1 was in violation of the 1947 Act, decreed the suit of plaintiff No.1 and dismissed the appeal filed by the appellants. Thus, the law laid down by the Hon'ble Supreme Court in ***Milkhi Ram's case*** (Supra) would fully apply in the present case. The substantial question of law framed in para 13 of the judgment is answered in favour of the appellants and against the respondents. Accordingly, the finding of both the Courts below on issue No.2 deserves to be set aside and it is held that Civil Court had no jurisdiction to try the suit in question.



16. Having held that the suit was not maintainable, this Court is now faced with a dilemma of either dismissing the suit filed by plaintiff No.1 or to grant compensation with respect to termination of plaintiff No.1, which is apparently in violation of Section 25-F of the 1947 Act. The trial Court as well as the First Appellate Court had concurrently found that plaintiff No.1 had worked for a period of 240 days in the calendar year prior to his being relieved/terminated and there was non-compliance of Section 25-F of the 1947 Act and the said finding could not be shown to be perverse or illegal or against law. On the aspect of civil suit being maintainable, the sole judgment which was cited before the trial Court and the First Appellate Court was ***Municipality Jagadhri's case*** (Supra), as per which such a suit was held to be maintainable. In view of the law laid down in the abovesaid judgment, plaintiff No.1 could not be completely faulted for having filed the civil suit. The said plaintiff has been litigating since 1989 and thus, to not grant him any compensation would be gross injustice to him. It would be relevant to note that even in the case of ***Milkhi Ram*** (Supra), although decree was held to be a nullity, but in para 17 of the judgment, the Hon'ble Supreme Court had taken into consideration the hardship of the terminated employee and had observed that the arrears paid to the employee, pursuant to the Court decree should not be recovered from him. Moreover, in the case of ***Assistant Engineer, Rajasthan Development Corporation's case*** (Supra), it was held that even in case of wrongful termination of a daily wager who had worked for a short period, although reinstatement is not the proper remedy, but compensation could be given to meet the ends of justice. In the said case, the Hon'ble Supreme Court had, with respect to the termination in the year 1991,



where the employee had hardly worked for 8 months, granted compensation of Rs.50,000/- in the year 2013. In the said circumstances, it cannot be said that the claim made by the respondents in view of the abovesaid judgment, to the effect that at least compensation of Rs.1,50,000/- should be paid to plaintiff No.1, is excessive. A period of more than 12 years has elapsed from the passing of the judgment of the Hon'ble Supreme Court which was in the year 2013 and thus, this Court is of the view that in order to do complete justice, compensation of Rs.1,50,000/- should be paid by the appellants to the plaintiff No.1 within a period of eight weeks from today, failing which same would carry interest at the rate of 9% per annum from the date of the present judgment.

17. Keeping in view the abovesaid facts and circumstances, the present Regular Second Appeal is partly allowed and the judgments of the trial Court as well as the First Appellate Court are modified and the suit of respondent No.1-plaintiff No.1 is partly decreed to the effect that the present appellants would, within a period of eight weeks from today, pay a lumpsum amount of Rs.1,50,000/- to respondent No.1-plaintiff No.1, failing which interest at the rate of 9% per annum from the date of present judgment would be paid by the appellants to respondent No.1-plaintiff No.1.

18. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

15.05.2025

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No