



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

RSA-146-1996
DECIDED ON:08.07.2025

STATE OF PUNJAB

...APPELLANT

VERSUS

BAL KRISHAN ANEJA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Singh, AAG Punjab
for the appellant

Mr. Jaivir Yadav, Senior Advocate with
Mr. Aman Gautam, and Mr. Ashutosh, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. **Prayer**

The present appeal has been preferred against the judgment and decree dated 27.04.1995 passed by learned Additional District Judge, Faridkot whereby, the appeal filed by the respondent was allowed.

2. **Facts**

The respondent was appointed as a *Vaidya* on an ad hoc basis by the Director of Health and Family Planning, Punjab, vide order dated 12.03.1975. His services were terminated by the competent authority vide order dated 28.02.1986 on the ground that his services were no longer required. Aggrieved by the said termination, claiming the same as illegal and arbitrary, as several of his juniors were retained in service while he alone was singled out for

termination on the basis of the only one adverse remark against him as recorded in his Annual Confidential Report (ACR) for the year 1983–84, which he had challenged by filing a departmental appeal.

Moreover, this adverse entry was recorded by an officer who harboured malice against him and who had otherwise recorded satisfactory entries for him in other years. He also submitted that several other similarly situated *ad hoc employees* had been regularised in service, whereas his termination was solely based on the said adverse ACR, without any proper inquiry or justification.

Also, no notice under Section 80 of the Code of Civil Procedure (CPC) had been served upon him prior to the termination of his services. The suit filed by the respondent challenging his termination was initially dismissed by the trial court, which held in favour of the Director of Health and Family Planning, Punjab. However, in appeal, the District Judge reversed the judgment of the trial court and decreed the suit in favour of the respondent. In parallel, the respondent had also approached the High Court by way of a writ petition, which was dismissed in *limine vide* order dated 29.07.1986.

Aggrieved by the judgment and decree passed by the District Judge in appeal, the State of Punjab has preferred the present second appeal before this Court.

3. Submissions
On behalf of appellant

Learned counsel for the appellant-State has raised a preliminary objection with respect to the maintainability of the present proceedings. It is submitted that the regular second appeal itself is not maintainable in light of the fact that the respondent had earlier invoked the writ jurisdiction of this Court by filing CWP No. 1223 of 1986, wherein he had challenged the

termination of his services. The said writ petition was dismissed in *limine* by this Court on 29.07.1986. It is, therefore, contended that the issues raised in the present proceedings are barred by the principle of *res judicata*, as the same cause of action and grievance had already been agitated and adjudicated upon in the earlier writ proceedings.

Further, it is submitted that the civil suit filed by the respondent is hopelessly barred by limitation. According to the appellant-State, the cause of action, if any, arose on 28.02.1986, the date on which the services of the respondent were terminated. However, the respondent instituted the suit only on 07.03.1989, i.e., after a delay of more than three years. It is the settled position in law that a civil suit, wherein the relief claimed is based on termination of service, must be filed within the statutory period of three years from the date of accrual of cause of action, as per the provisions of the Limitation Act, 1963.

The appellant, therefore, contends that in the absence of any application for condonation of delay or any justification for the belated institution of the suit, the same ought to have been dismissed by the courts below as being barred by limitation. Accordingly, it is prayed that the impugned judgment passed by the learned District Judge allowing the respondent's appeal is legally unsustainable and liable to be set aside on the grounds of both *res judicata* and limitation.

On behalf of respondent

Learned counsel for the respondent contends that the termination of the services respondent, vide order dated 28.02.1986, was arbitrary, illegal, and violative of the principles of natural justice. It is submitted that although the respondent was appointed as a *Vaidya* on ad hoc basis by the Director of Health and Family Planning, Punjab, vide order dated 12.03.1975, he was

unfairly singled out for termination while several of his juniors continued in service and were later regularised.

The respondent asserts that the sole basis for his termination was one single adverse entry in his Annual Confidential Report (ACR) for the year 1983–84, which he had already challenged by filing a departmental appeal. It is further alleged that the said adverse remarks were recorded by an officer who acted with malice, as the same officer had previously recorded satisfactory entries in other years.

It is also urged that the termination was effected without any inquiry or valid justification and that no notice, as mandated under Section 80 of the Code of Civil Procedure, 1908, was ever served upon him prior to such action being taken.

It is pointed out that the civil suit instituted by the respondent challenging the termination was initially dismissed by the trial court; however, in appeal, the learned District Judge reversed the said decision and decreed the suit in favour of the respondent. It is further submitted that the dismissal of the writ petition (CWP No. 1223 of 1986), vide order dated 29.07.1986, was in *limine* and without adjudication on merits, and therefore, cannot operate as *res judicata*.

4. Analysis

Having considered the rival submissions of the parties and upon careful perusal of the record, this Court is of the considered view, that at the outset, it is pertinent to note that the respondent was appointed as a *Vaidya* on an ad hoc basis by the Director of Health and Family Planning, Punjab, vide order dated 12.03.1975. His services were terminated vide order dated 28.02.1986 on the ground that they were "no longer required." The respondent challenged the said termination by filing a civil suit, claiming that the action

was arbitrary and discriminatory, inasmuch as his juniors were retained in service and subsequently regularised, while he alone was terminated.

This Court finds considerable merit in the contention advanced by the respondent regarding the adverse entry in his Annual Confidential Report (ACR) for the year 1983–84. It is an undisputed fact on record that during the respondent's entire tenure of service spanning approximately 11 years, there was no other adverse material or disciplinary action initiated against him. The ACR for the year 1983–84 is the only instance where any negative remark appears to have been recorded. Significantly, the respondent had challenged the said entry by filing a departmental representation, which, as admitted by the authorities themselves, was still pending at the time of termination of his services.

It is a well-settled principle of service jurisprudence that an adverse entry, which is under challenge or pending consideration through appropriate representation, cannot be relied upon as the sole basis for punitive action, especially when no final decision has been taken on such representation. Termination founded upon an unconfirmed or unadjudicated adverse remark is not only procedurally unjustified but also legally unsustainable.

The Hon'ble Supreme Court in **Amar Kant Choudhary v. State of Bihar**, (1984) 2 SCC 285, has categorically held that acting upon unadjudicated or uncommunicated adverse entries violates the principles of natural justice. Therefore, termination founded solely on such an entry is procedurally unjustified and legally unsustainable. The relevant extract of the afore-said judgment, reads as under:-

“ The true legal position governing such cases is laid down by this Court in **Gurdial Singh Fijji v. State of Punjab**, (1979) 3 SCR 518, which was a case arising under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 which more

or less correspond to the Regulations applicable to the Indian Police Service. In the above case Chandrachud. C.J. has observed thus :

"The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality its object partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him."

Furthermore, the respondent had, during the entire course of his service, earned all annual increments without interruption and was never issued any warning, memo, or show-cause notice. These facts reinforce the position that his overall service record, apart from the solitary adverse entry, remained unblemished and satisfactory. In such circumstances, the reliance on a single, disputed ACR especially one tainted by allegations of malice and recorded by an officer who had otherwise assessed the respondent's performance as satisfactory in other years appears not only arbitrary but also disproportionate.

This Court is of the considered view that the termination order, resting solely on an adverse entry pending consideration, and passed without affording an opportunity of hearing or conducting any inquiry, falls foul of the principles of natural justice and cannot be sustained in law.

It is also not in dispute that many other similarly situated ad hoc employees were regularised in due course, which lends credence to the respondent's plea of discriminatory treatment. Furthermore, the respondent was not served with any notice under Section 80 of the Code of Civil Procedure prior to the termination of his services, which raises further questions on the procedural propriety of the action taken by the authorities.

The civil suit filed by the respondent was initially dismissed by the trial court, but the District Judge, in first appeal, rightly appreciated the evidence and the legal infirmities in the termination process, and accordingly reversed the judgment of the trial court. The first appellate court, being the final court of fact, has recorded findings based on cogent reasoning and proper application of law, which do not warrant interference by this Court in exercise of its jurisdiction under Section 100 of the Code of Civil Procedure.

As regards the preliminary objection raised by the appellant-State that the present proceedings are barred by *res judicata* in light of the dismissal of CWP No. 1223 of 1986, this Court finds no merit in such contention. The writ petition was dismissed *in limine* without adjudication on merits. It is well settled that dismissal of a writ petition at the threshold without a detailed order on merits does not attract the bar of *res judicata*. Hence, this contention deserves outright rejection.

The further argument that the suit was barred by limitation is also untenable. Though the termination occurred on 28.02.1986, the suit was filed on 07.03.1989 barely a few days beyond the three-year limitation period. In

view of the continuing nature of the cause of action and the administrative remedy pursued by the respondent in the interim, even if there was any minor delay, the same ought to be condoned, particularly where the action complained of is ex facie arbitrary and violative of the respondent's rights.

In view of the foregoing discussion, this Court finds no substantial question of law arising in the present second appeal. The judgment and decree passed by the learned District Judge are based on sound reasoning and do not suffer from any legal infirmity.

5. Conclusion

Accordingly, the present regular second appeal is **dismissed**. The judgment and decree passed by the learned District Judge are hereby upheld.
No order as to costs.

Pending application(s), if any shall disposed off, accordingly.

08.07.2025

Meenu

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*