

2025:PHHC:136237



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

**RSA-6084-2015 (O&M)
DECIDED ON: 03.05.2025**

STATE OF HARYANA AND ORS.

.....APPELLANTS

VERSUS

KAMLESH KUMARI AND ANR.

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Virk, Sr. DAG Haryana
for the appellants

Mr. Shireesh Gupta, Advocate
for the respondent

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The present Regular Second Appeal has been preferred against the judgment of reversal dated 10.07.2015 passed by the Court of Additional District Judge, Gurugram, who allowed the suit of the respondent/plaintiff, which was originally dismissed by the Civil Judge Junior Division, Gurugram vide judgment and decree dated 21.04.2014.

Since there is an application bearing CM-15223-C-2015 seeking condonation of delay of 45 days, the same was allowed and 45 days of delay was condoned and while issuing notice of motion the execution proceedings was ordered to be stayed vide order dated 08.02.2016 and the appeal was admitted for final hearing on 21.08.2019.

2. **Facts**

The facts leading to approach this Court in this appeal can be culled out from the suit which was filed seeking declaration and mandatory injunction by Smt. Kamlesh Kumari, the plaintiff/respondent No.1, who asserted that defendant No.2/appellant invited applications having circulated a notice through publication in August 1997 filling up the post of Hindi Teachers in various Government Senior Secondary/High/Middle Schools in the State of Haryana. The plaintiff/respondent no.1 having registered with the employment exchange, Gurugram claiming to be fully eligible with requisite qualification applied for the said post and was appointed as such at Government High School, Garouli Khurd, Gurugram vide appointment letter dated 03.11.1997. The plaintiff/respondent joined the duties on 04.11.1997 whereas one Saroj Kumari/respondent No.2 w/o Shri Suresh Kumar joined the duties on 05.11.1997 and as such the plaintiff/respondent No.1 seeks seniority against her. The plaintiff/respondent No.1 was transferred to Government High School Bhorakalan, Goregaon vide letter dated 13.11.1997 and thereafter fresh order dated 23.12.1997 was passed by the appellant/Defendant No.2 as issued by defendant No.3, the District Education Officer Gurugram stating that the teachers on contractual basis for 89 days shall not be relieved till further orders. The plaintiff/respondent No.1 alleged her relieving from the services vide letter dated 07.05.1998 in utter disregard to the principle 'LAST COME FIRST GO', who was not allowed to join the services thereafter despite availability of vacant post. The plaintiff/respondent No.1 had served various representation during the period 10.06.1998 to 09.08.2008, who issued a legal notice finally on 19.12.2000.

In the interregnum, the plaintiff/respondent no.1 challenged her contractual appointment on contractual basis for 89 days vide CWP-18835-1997 titled as “***Polu Ram and Another vs. State of Haryana and Ors***” before this High

Court wherein a direction was issued to continue her service of the plaintiff as well as other co-petitioners therein till the availability regularly selected candidates by adhering to the principle 'LAST COME FIRST GO'. Accordingly the appellant/defendants to make regular appointments against the available vacant post and appointed one Meena Kumari as regular candidate against the post of plaintiff/respondent no.1 in particular though there were 20 other posts still lying vacant for Hindi Teachers within the District Gurugram alone. Otherwise also the plaintiff/respondent alleged that the respondent No.4 Saroj Kumari was junior to her, who should have been relieved in any case in the light of above stated legal principle.

The State of Haryana/appellant went on Special leave petition before the Hon'ble Apex Court bearing SLP No.21292 of 1998 wherein the orders passed by the High Court dated 17.04.1998 was stayed. Though the same was subsequently vacated by the Apex Court on 22.11.2000. It is during this period the appellant/defendant has been representing to the appellant/defendant with a final legal notice dated 19.12.2000 but to no avail and accordingly approached before this High Court vide CWP-7949-2001, which was dismissed with the observation that the SLP No.11292-1998 is still pending against the order passed in Polu Ram's case (supra).

Yet the plaintiff/respondent No.1 went on to file SLP No.21055-2001 before the hon'ble Supreme Court against the dismissal of CWP No.7949-2001, which was tagged alongwith SLP No.11292-1998.

Finally SLP No.11292-1998 was disposed off vide order dated 11.07.2006 in the terms of judgment passed by Constitutional Bench in ***“Secretary, State of Haryana vs. Uma Devi”, 2006 (4) SCC 1.***

However, the plaintiff/respondent No.1 served a demand notice dated 16.11.2006 to reinstate her in service alongwith release of arrears of her salary accrued to her as service benefits by setting aside the reliving order, which was illegal and arbitrary. It was further the request of the plaintiff/respondent No.1 that she shall be considered continuous in service without break and be placed at par with defendant No.4/respondent No.4. Since the appellants/defendant No.1 and 2 did not respond the plaintiff/respondent No.1 filed a Civil Writ Petition No.2811 of 2007 before this High court which was disposed off vide order dated 23.02.2007 with a direction to decide the demand notice within a period of six months. It is also the case of plaintiff/respondent No.1 despite several reminders during 19.08.2007 to 07.12.2007, the appellant/defendant ignored the directions deliberately and knowingly passed by this High Court vide order dated 23.02.2007 and the plaintiff/respondent no.1 was forced to approach this Court again by way of Contempt petition. In the said contempt petition though the appellants/defendant admitted the fault of not following the principle 'LAST COME FIRST GO' but did not grant any relief vide speaking order passed in compliance to the order dated 23.02.2007.

The plaintiff/respondent no.1 was compelled to enter into another round to litigation while challenging the speaking order dated 13.03.2008 by way of CWP No.60-2008, which was disposed off with liberty to the plaintiff to challenge the validity of said speaking order and accordingly filed fresh CWP No.11035 of 2008, which was withdrawn by her on 07.09.2009 with liberty to pursue the remedy before the labour Court. Against the said order dated 07.09.2009, the plaintiff/respondent No.1 against preferred SLP No.45438-2010 and CC No.7579 of 2010, wherein the order dated 07.09.2009 passed by the High Court by the Hon'ble Supreme Court in its order dated 12.05.2010 allowing the

plaintiff/respondent No.1 to pursue the remedy before any appropriate Forum as per law.

It is yet again after making several representations during the period 26.05.2010 to 12.07.2011 again filed a CWP No.20126-2011, which was withdrawn with liberty to file a civil suit to seek the relief claimed therein. Accordingly, the Civil Suit for declaration and mandatory injunction was preferred. The Civil Judge Jr. Division Gurugram, dismissed the civil suit on the ground that the demand notice dated 16.11.2006 was decided by declining the claim raised therein by the plaintiff/respondent No.1 vide order dated 13.03.2008 has been passed in view of law laid down by the Hon'ble Supreme Court in ***“Secretary, State of Haryana vs. Uma Devi”, 2006 (4) SCC 1”***

The said judgment and decree dated 21.04.2014 was assailed before the Additional District Judge, Gurugram in appeal, who reversed the same holding that the judgment and decree passed by the trial Court is bad and not sustainable for the reason that the plaintiff/respondent No.1 was entitled to be relieved from service only on following the principle 'LAST COME FIRST GO' and decreed the suit to the effect that speaking order dated 13.03.2008 passed in pursuance of the demand notice dated 16.11.2006, rejecting the claim of the plaintiff/respondent No.1 is wrong and against the law and facts, which was ordered to be set aside. Further the relieving order dated 07.05.1998 was held to be wrong and against the law and was set aside with a direction to the appellant/defendants No.1 to 3 to reinstate the plaintiff/respondent No.1 on her service for the period w.e.f. When she was relieved i.e., 07.05.1998 and to pay her the salary alongwith consequential benefits with interest @ 12 % per annum till its realization.

It is the said judgment and decree dated 10.07.2015 passed by the Additional District Judge, Gurugram, which has been put to challenge by the

instant Regular Second Appeal before this Court by the State of Haryana/defendant No.1.

3. Contentions:

On behalf of State of Haryana/appellant

Mr. B.S. Virk, Sr. DAG Haryana appearing for the appellant/State of Haryana has assailed the judgment and decree dated 10.07.2015 passed by the learned Additional District Judge, Gurugram, on several grounds. It is submitted that the suit filed by the respondent No.1/plaintiff Smt. Kamlesh Kumari was misconceived and barred in law, particularly in light of the law laid down by the Hon'ble Supreme Court in ***Secretary, State of Haryana vs. Uma Devi (2006) 4 SCC 1***. The appellants submit that the respondent was appointed purely on a contractual basis for a fixed term of 89 days and was clearly informed that the appointment was temporary in nature, terminable without assigning any reason.

It is further contended that the respondent No.1/plaintiff was one among several persons who were appointed on similar terms and conditions and that her claim of seniority over Saroj Kumari (respondent no.4) or her assertion of violation of the principle of "Last Come, First Go" does not confer any legal right for reinstatement or continuity in service, especially when she was not appointed through a regular selection process conducted by the competent authority or the Staff Selection Commission.

It is also contended that the service of the respondent no.1 /plaintiff was governed by the express terms of her contractual appointment and that such engagements cannot be converted into permanent or regular appointments through judicial intervention. The reference by the respondent/plaintiff to the directions issued in CWP No.18835-1997 (Polu Ram and others vs. State of Haryana) is

stated to be misplaced, as the said directions were general in nature and subject to the final outcome of the proceedings pending before the Hon'ble Apex Court.

It is the specific contention of the appellant/State that the respondent No.1/plaintiff's demand notice dated 16.11.2006 was duly considered and rejected by way of a speaking order dated 13.03.2008, passed in compliance with the directions issued by this Court in CWP No.2811 of 2007. It is further submitted that the respondent No.1/plaintiff, despite having availed several legal remedies including multiple writ petitions, special leave petitions, and a contempt petition, failed to secure any conclusive relief and ultimately withdrew Writ Petition No.20126 of 2011 with liberty to file a civil suit. Therefore, it is submitted that the present civil suit was a second attempt to reopen issues already settled and adjudicated therefore barred by resjudicata.

On behalf of respondent No.1/plaintiff

In response to the contentions raised by the appellant/State, the learned counsel for the respondent/plaintiff has vehemently opposed the present appeal and supported the well-reasoned judgment dated 10.07.2015 passed by the learned Additional District Judge, Gurugram. It is submitted that the entire case of the appellant is built on a selective and incorrect application of the judgment in ***Secretary, State of Haryana vs. Uma Devi (2006) 4 SCC 1***, which does not apply to the facts of the present case.

The respondent No.1/plaintiff contends that unlike the casual labourers or backdoor appointees addressed in *Uma Devi*, she was appointed pursuant to a public notice issued in August 1997, after being duly registered with the Employment Exchange and meeting all requisite qualifications. Her appointment was not irregular or illegal, nor was it outside the purview of the rules

governing public employment. Moreover, she joined the post on 04.11.1997, a day prior to respondent no.4 Saroj Kumari, and was therefore senior to her in service.

It is further submitted that the termination of respondent No.1/plaintiff from service on 07.05.1998 was arbitrary and violative of the fundamental principles of service jurisprudence, particularly the principle of "Last Come, First Go", which was reiterated by this Court in CWP No.18835 of 1997 (Polu Ram and Others vs. State of Haryana). The said principle was directed to be followed scrupulously, and yet, the respondent No.1/plaintiff was singled out and relieved while retaining her junior, Saroj Kumari, without any justification.

It is further argued that the denial of relief to the respondent No.1/plaintiff, despite multiple directions by this Court (e.g., in CWP No.2811 of 2007) amounts to wilful disregard of judicial orders. Even in contempt proceedings, the appellants admitted not having followed the principle of "Last Come, First Go", yet they failed to correct the injustice. This compelled the respondent to undertake successive legal challenges, ultimately culminating in the present civil suit.

In light of the above, the respondent No.1/plaintiff prays for dismissal of the present Regular Second Appeal, and for the affirmation of the judgment and decree dated 10.07.2015 passed by the learned Additional District Judge, Gurugram.

4. **Analysis**

Having considered the rival contentions of the parties, perused the record, and examined the impugned judgment dated 10.07.2015 passed by the learned Additional District Judge, Gurugram.

It is also relevant to note that the scope of a Regular Second Appeal under Section 100 CPC is limited to substantial questions of law. The findings of the first

appellate Court are well-reasoned and based on correct appreciation of the evidence and law. No substantial question of law has been raised or made out by the appellant/State warranting interference in second appellate jurisdiction.

Moreover, the State as a litigant bears a higher responsibility to act as a model employer and not to perpetuate injustice under the guise of technicalities or misplaced reliance on precedent. The Supreme Court has time and again cautioned that State appeals should not be filed as a matter of routine, particularly in service matters where the relief granted is just and equitable. Reliance can be made in this context on the judgment rendered by the apex court in ***Urban Improvement Trust, Bikaner v. Mohan Lal*, (2010) 1 SCC 512**]. The relevant extract of the said judgment is reproduced as under :

5. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

6. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice.

In *Madras Port Trust v. Hymanshu International by its Proprietor v. Venkatadri (Dead) by L.Rs.* [(1979) 4 SCC 176] held:

"2... It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable...."

In a three Judge Bench judgment of *Bhag Singh & Ors. v. Union Territory of Chandigarh through LAC, Chandigarh* [(1985) 3 SCC 737]:

"3... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen."

Adverting to the merits of the present case, it is not in dispute that the respondent no.1/plaintiff was appointed pursuant to a publicly circulated notice by Appellant no.2/defendant namely director secondary education, Haryana, Chandigarh and the respondent no.1/plaintiff was duly registered with the Employment Exchange. She possessed the requisite qualifications and was selected in accordance with the procedure applicable at the relevant time. Her appointment was not alleged to have been made through any backdoor entry or in violation of recruitment rules.

Although the respondent was engaged on a contractual basis, the record reveals that her termination on 07.05.1998 was effected without following the well-established principle of "Last Come, First Go," which had been directed to be followed by this Court in CWP No.18835 of 1997 (Polu Ram and Others v. State of Haryana). The retention of her junior, Saroj Kumari respondent no.2 in identical circumstances, without any justification, amounted to manifest arbitrariness.

This Court cannot ignore the fact that the State, despite having admitted in contempt proceedings that the principle of "Last Come, First Go" was not followed, failed to rectify the illegality and respondent no.2 continued to be in service despite being junior to the respondent no.1/plaintiff. The repeated litigation by the respondent no.1/plaintiff over a span of more than a decade, demonstrates her perseverance in seeking legitimate redressal to which she is though legally entitled is not being granted to her.

The appellant-State's heavy reliance on the Constitution Bench judgment in *Secretary, State of Karnataka vs. Uma Devi, (2006) 4 SCC 1*, does not hold good in the present context. The Uma Devi (supra) categorically bars regularization of employees appointed without following a regular recruitment process. However, it does not preclude the Courts from exercising their jurisdiction to remedy arbitrary termination or violations of principles of natural justice and fairness. The respondent herein did not seek regularization but challenged the legality of her termination in violation of the applicable principle of seniority and fairness.

In the present case, the State of Haryana/Appellant, despite the clear findings of illegality in the termination of respondent no.1 and its own admission in contempt proceedings of not having followed the principle of "Last Come, First

Go," has persisted in pursuing litigation up to the second appellate stage. This conduct is not only inconsistent with the obligations of a model employer but also burdens the judicial system and the public exchequer with avoidable litigation.

Thus, where the relief granted is equitable, supported by law, and rooted in a legitimate grievance of a public servant, the State must demonstrate restraint and responsibility. It should not invoke the appellate process to defend arbitrary decisions or to deny what is rightfully due, merely on procedural or technical grounds.

The relief granted by the first appellate court, including reinstatement, back wages, and continuity of service, is based on sound legal reasoning and supported by the factual matrix of the case. It does not amount to regularization of a backdoor appointment, as alleged, but rather rectifies an arbitrary termination.

5. **Conclusion**

Accordingly, the Regular Second Appeal is dismissed. The judgment and decree dated 10.07.2015 passed by the learned Additional District Judge, Gurugram, is hereby affirmed.

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

03.05.2025

Meenu

**(SANDEEP MOUDGIL)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>