



RSA-3781-2006 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3781-2006 (O&M)

RAJINDER SINGH

..Appellant

Versus

STATE OF HARYANA & ORS.

..Respondents

Reserved on: 13.11.2025

Date of decision: 28.01.2026

Uploaded on: 31.01.2026

Whether only the operative part of the judgment is pronounced?

NO

Whether full judgment is pronounced?

YES

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. Anshul Gupta, Advocate
for the appellant.

Mr. Harish Nain, AAG, Haryana

SUDEEPTI SHARMA, J.

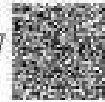
1. The present regular second appeal is preferred against judgment and decree dated 31.03.2004, passed by learned Civil Judge (Senior Division), Hisar, whereby, the civil suit filed by the appellant was dismissed as well as judgment and decree dated 22.05.2006, passed by learned Additional District Judge, Hisar, whereby the appeal filed by the appellant was also dismissed.

BRIEF FACTS OF THE CASE

2. Brief facts of the case as per the pleadings in the civil suit are that the appellant/plaintiff was appointed on the post of Horticulture and Floriculture Instructor by the Director of Industrial Training and Vocational Education, Haryana, Chandigarh on the recommendations of the Services Selection Board Haryana vide No. TE/153/22/13087 dated 6-3-1992 and

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accordingly he joined the duties on 20-3-1992 at Vocational Education Institute, Faridabad. That after joining on the post, the appellant/plaintiff applied for Station leave from 23-5-1992 but due to unavoidable circumstances he could not report on duty upto 28-5-1992 and on 28-5-1992 the appellant/plaintiff requested for earned leave but the same was not granted to him on account of short period of service but later on the Incharge Vocational Institute Faridabad sanctioned the leave of the appellant/plaintiff without pay. That further in the month of June due to his ill health, appellant/plaintiff could not report on duty and requested for leave and also sent medical certificates to the authorities but the authorities did not cooperate with him and ultimately he was compelled to submit his resignation on 5-11-1992 because due to unavoidable circumstances it was beyond his control to report on duty. That instead of taking any action on the resignation submitted by the appellant/plaintiff, respondents/defendants issued charge sheet under rule 8 of Haryana Civil service (Punishment and appeal) Rules 1987 vide letter TE/180/2/33713 dated 1-12-92 to the appellant/plaintiff on the allegations that he remained absent on 28-3-1992, 17-4-1992, 20-4-1992, 27-4-1992 and 25-5-1992 to 27-5-1992 and further alleged that he remained absent from 17-6-1992 to 24-6-1992 and further from 25-6-92 to 19-8-92 and is absent from duty from 20.08.1992 onwards. The appellant/plaintiff filed his reply to the charge sheet accordingly. That since no order was passed on the resignation of the appellant/plaintiff, he vide letter dated 25-5-1993, requested the respondents/defendants for withdrawal of his resignation and also requested them to allow him to join duties. That since the respondents/defendants were not permitting the

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appellant/plaintiff to join the duty despite repeated requests and also did not pass any order whatsoever against him, he filed civil suit No. RBT 51-C of 1993 on 19-8-1993 in the Civil Court at Hisar. That the said civil suit of the appellant/plaintiff was dismissed by Ld. Civil Judge (Senior Division) Hisar on 3-12-1997. The appellant/plaintiff thus preferred an appeal No. 173-CA on 24.12.1997 against the judgment and decree dated 3-12-1997. The same was allowed on 3-11-1999 and the judgment of the Ld. Civil Judge (Sr. Division) was set aside. That it is admitted fact the respondents/ defendants did not prefer any appeal against the judgment and decree dated 3-11-1999 passed by the District Judge Hisar in favour of the appellant/plaintiff and as such judgment & decree dated 3-11-99 attained finality. That the respondents/defendants after the decision dated 3-11-99 allowed the appellant/plaintiff to join his duties w.e.f. 1.1.2000 at Vocational Education Institute Jind. That it is relevant to mention here that during the pendency of the civil suit, the respondents/defendants vide Endst. No.TR/180/2/21547 dated 20-11-1997, withdrew the charges leveled against the appellant/plaintiff vide charge sheet dated 1-12-92. That surprisingly on very next day i.e. 21-11-97 the respondents/defendants again issued a charge sheet under Rule 7 of Haryana Civil service (Punishment and appeal) Rules 1987, on the similar charges which were leveled against the appellant/plaintiff in the previous charge sheet dated 01.12.1992. That the respondents/ defendants after conclusion of the enquiry, issued a show Cause Notice dated 4-1-2000 without supplying the enquiry report to the appellant/plaintiff which is mandatory in nature. However, the appellant/plaintiff was given an opportunity to make representation if so

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chooses and the appellant/plaintiff appeared before the respondents/defendants in pursuance of the show cause notice but the respondents/defendants clearly stated that either he should give an affidavit to the effect that he would not claim the back wages from 1992 to 1999 or he will be removed from service and under those circumstances the appellant/plaintiff had no other alternative remedy except to submit the affidavit under duress and undue influence of the respondents/defendants. That the respondents/defendants without application of judicious mind and without keeping in mind the order dated 3-11-99 passed by the Hon'ble Court of District Judge Hisar awarded punishment vide order dated 19-07-2000/11-8-2000. That the appellant/plaintiff preferred an appeal to the Commissioner and Secretary Govt. of Haryana, Department of Industrial Vocational Education on 18-10-2001 challenging the order dated 19-07-2000/11-8-2000, but the Appellate Authority without applying its judicious mind rejected the appeal of the appellant/plaintiff on 8-5-2002 by passing a non-speaking order which is also not sustainable in the eyes of law and deserve to be declared illegal. That aggrieved by the order dated 19.07.2000/11.08.2000, the appellant/plaintiff filed Civil Suit before the Civil Courts at Hisar. That the said suit was dismissed by judgment and decree dated 31.03.2004 passed by the learned Civil Judge (Sr. Divn), Hisar, and the appeal filed by the appellant/plaintiff against the same was also dismissed vide judgment and decree dated 22.05.2006 passed by the Additional District Judge, Hisar. Hence, the present Regular Second Appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:-



3. Learned counsel for the appellant contends that both the Ld. Courts have committed a patent error of Law and facts and have not appreciated the evidence led by the appellant/plaintiff in right perspective and hence the judgment passed by both the Courts are liable to be set aside and suit filed by the appellant/plaintiff deserves to be decreed.

4. He further contends that the enquiry officer vide letter dated 07.09.1999 submitted his enquiry report. That both the courts have failed to take into consideration the fact that the enquiry officer while submitting the enquiry report dated 07.09.1999 has specifically mentioned that the punishing authority must take into consideration the final decision of the session court before passing the final order. But inspite of that, the punishing authority while passing order dated 11.08.2000 failed to take into consideration the order dated 03.11.1999 of the session court whereby appellant/plaintiff was held to be in continuous service. That both the Courts have failed to take into consideration that the order dated 19.07.2000/11.08.2000, whereby punishment was awarded to the appellant/plaintiff is not only illegal and arbitrary but the same has been passed in violation of order dated 03.11.1999 passed by the Ld. District Judge, Hisar, whereby the appellant/plaintiff has been granted continuity in service by the Judicial order, then how the executive can pass order giving break in service from 1992 to 1999. That the only liberty given by sessions Judge in Judgment dated 03.11.1999 to the department was to decide the consequential benefits for the said period i.e. whether the appellant/plaintiff would be entitled to get salary for the said period or not and as such, said liberty cannot be used to deprive the appellant/ plaintiff for the service from



1992 to 1999. Thus the impugned order dated 11-8-2000 referred above is totally illegal, arbitrary and thus deserves to be set aside. That both the Courts have failed to take into consideration the fact that the appellant/plaintiff was awarded the punishment for no fault of him, as it is the admitted position that the resignation submitted by the appellant/plaintiff was not accepted upto 25.5.1993 and when the appellant/ plaintiff submitted application for withdrawal of resignation on 25.05.1993, neither any order was passed nor the appellant/plaintiff was allowed to resume duty.

5. He further contends that the appellant/plaintiff was legally entitled to withdraw the resignation dated 5-11-92 before its acceptance and the authorities were bound to accept the withdrawal of the resignation before its acceptance. That the order dated 19.07.2000/11.08.2000 has been passed in such a manner as if the appellant/plaintiff was given fresh appointment. It is submitted that since the appellant/plaintiff was held to be in continuous service by the Sessions Court in judgment dated 03.11.1999, he could not have been placed in the initial pay scale of the post on which he was working. Thus the punishment order is illegal and thus deserves to be set aside. That the respondents/defendants obtained an affidavit dated 18.07.2000, that is one day prior to passing of the impugned order dated 19.07.2000/11.08.2000 from the appellant/plaintiff, which was submitted in duress, stating that he forego his wages from 1992 to 1999. It is submitted that once a decree of the Sessions Court dated 03.11.1999 was there in favour of the appellant/plaintiff whereby he was granted continuity in service, no employee would tender such an affidavit in normal circumstances and the same was given under duress which cannot take away



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the rights of the appellant/plaintiff. The Ld. Courts have failed to consider that once the respondents/defendants have withdrawn the 1st charge sheet dated 01.12.1992 vide letter dated 20.11.1997, then the respondents/defendants cannot issue another charge sheet on similar charges. That the appellant/plaintiff cannot be said to have been absent from duty for the entire period beginning from March 1992 to 1999 because the appellant/plaintiff was not allowed to join his duties after his request for withdrawal of resignation dated 25-5-93 and even after filing of Civil suit in August 1993 and as such keeping in view the entire circumstances the Court of learned District Judge Hisar granted the benefit of continuity of service to the appellant/plaintiff as there was no order of suspension/termination against the appellant/plaintiff till the filing of the suit or thereafter. That it is a settled law if a person is reinstated back into service without granting the benefit of back wages then he will be entitled to get all other consequential benefits of increment, promotion revision of pay scales etc. attached with the post. He further contends that that the appellant/plaintiff has retired on 30.09.2024.

6. In support of his contentions, he relies upon ***S.D. Manohara Vs. KonKan Railway Corporation Limited & Ors. 2024 INSC 693***, wherein, Hon'ble Supreme Court has held that resignation can be withdrawn before its acceptance and while reinstating the appellant therein, ordered to pay 50% of the salary for the period the appellant therein did not work. ***Dr. Mrs Suman V Jain Vs Marwadi Sammelan through its Secretary and others. 2024 INSC 127***, wherein, Hon'ble supreme Court has held that resignation can be withdrawn at any time before it becomes effective. ***SriKantha SM Vs***



Bharat Earth Movers Ltd 2005 (8) SCC 314, wherein, it has been held by the Hon'ble Supreme Court that the resignation could have been withdrawn before acceptance and Principle of no work no pay is inapplicable as the employee was not allowed to work. ***Air India Express Limited and others Vs Captain Gurdarshan Kaur Sandhu 2019 (4) SCT 183. The Secretary, Technical education, UP and Others Vs Lalit Mohan Upadhyay & another 2007 (2) SCT 741***, wherein, it was held by the Hon'le Supreme Court that an employee is entitled to withdraw his resignation before its acceptance by the competent authority. ***Banwari Lal Vs. State of Punjab 1999(1) Recent Service Judgments page 33 (DB)***, wherein, the division bench of this Court has held that on reinstatement the employee is deemed to be in service as if termination order was never passed and the period which is treated on leave without pay is to be counted for the purpose of increments and all other benefits as if termination order does not exist at all and on reinstatement his pay had to be notionally fixed as if he remained in service throughout and on reinstatement he should be given the pay as if services were never terminated. ***Gurpreet Singh Vs. State of Punjab. 2003 (2) SCT 226***, wherein, the Hon'ble Supreme Court has held that the continuity in service cannot be denied once reinstatement is ordered. ***Punjab State Electricity Board Workers Union, Gurdaspur Vs. Industrial Tribunal, Chandigarh and others. 2010 (30) SCT 838***, wherein, it was held by this Hon'ble Court that once a reinstatement is ordered, it has to be with continuity of service. Reinstatement in service in itself means continuity in service as the workman. is put back in the same position and on the same post on which he was working, when his services were terminated, which were not in



accordance with law. The case of fresh appointment may have to be viewed differently but the word 'reinstatement' would in itself connote continuity of service. *Avtar Singh Vs. Punjab State Co-operative Supply and Marketing Federation Ltd. 2001 (3) SCT 307*, wherein, Division Bench of this Court has held that once the petitioner was reinstated into service by Labour Court with continuity in service, fictionally, he would be deemed to have actually served the Department during the period between termination and reinstatement. This deeming fiction should be taken to its logical end for all purposes meaning thereby that the aforesaid period will be reckoned towards seniority, fixation of pay and other purposes. He, therefore, prays that the present appeal be allowed.

15. Per contra, learned counsel for respondents contends that both the Courts have rightly dismissed the civil suit as well as the appeal filed by the appellant/plaintiff. He, therefore, prays that the present appeal be dismissed.

16. I have heard learned counsel for the parties and have perused the whole record of the case with their able assistance.

17. Admittedly, the appellant/plaintiff was appointed vide appointment letter (Ex.P-1) in the year 1992, thereafter, after joining service, he remained absent several times and chargesheet was issued against him under Rule 8 of the Haryana Civil Services (Punishment and Appeal) Rules, 1997 (in short '1997 Rules') (Ex.P-4) and admittedly chargesheet under Rule 8 was withdrawn vide letter dated 20.11.1997 (Ex.D-9). The appellant/plaintiff submitted his resignation on 05.11.1992 (Ex.D-1) and



before acceptance of resignation, he had withdrawn the same vide letter dated 25.05.1993 (Ex.D-2). He filed civil suit with the following prayer:-

- (i) *not to accept the resignation Dated 5.11.1992 of the plaintiff from the post of Instructor, Horticulture and floriculture.*
- (ii) *to pay plaintiff his salary due with effect from 20.3.1992 onwards, illegally withheld by defendants:*
- (iii) ***to post and allow plaintiff to join his duties as an instructor, Horticulture and Floriculture at any institute in the State of Haryana and***
- (iv) *for a declaration to the effect that the plaintiff is in the continuous service of the defendants and is entitled to all consequential service benefits and*
- (v) *plaintiff is also entitled to 24% interest on the salary illegally withheld by defendants”*

18. The civil suit filed by the appellant/plaintiff was dismissed by learned Civil Judge (Senior Division), Hisar on 03.12.1997. Thereafter, the appellant/plaintiff filed appeal against judgment and decree dated 03.12.1997, which was allowed on 03.11.1999 by learned District Judge, Hisar.

19. The relevant portion of judgment and decree dated 03.11.1999 is reproduced as under:-

“Since the services of the plaintiff have not been terminated nor he has been dismissed, he certainly continues to be in service. Of course, the State authorities can pass orders in accordance with law regarding consequential benefits and decide the matter. That shall furnish cause of action to the plaintiff to knock the door of the court. In the obtaining circumstances, the judgment



and decree of the trial court whereby the suit was dismissed in toto are set aside. The appeal is accepted and the suit is decreed to the effect that appellant is declared to be continuing in service.”

20. Admittedly, the respondent did not prefer any appeal against judgment and decree dated 03.11.1999, wherein, the suit filed by the appellant/plaintiff was decreed in his favour and he was declared to be continuing in service, therefore, as per judgment and decree dated 03.11.1999, the appellant/plaintiff was declared to be continuing in service from the year 1992. The respondent after the decision dated 03.11.1999, allowed the appellant/plaintiff to join the duty with effect from 01.01.2000 at Vocational Education Institute, Jind. During the pendency of civil suit, the respondent vide endorsement dated 20.11.1997 withdrew the charges levelled against the appellant/plaintiff vide chargesheet dated 01.12.1992. On the very next day i.e. 21.11.1997, the respondent again issued chargesheet under Rule 7 of 1997 Rules on similar charges, which were levelled against the appellant/plaintiff in the previous chargesheet dated 01.12.1992. The appellant/plaintiff filed reply to the same and regular enquiry was conducted and since the appeal filed by the appellant/plaintiff was pending, vide letter dated 07.09.1999, the enquiry officer submitted the enquiry report. The concluding part of the same is reproduced as under:-

“Therefore, after hearing both the parties, as per the above mentioned situation, I have reached to the conclusion that allegations leveled against the employee are almost proved but while taking final decision it would be appropriate to keep in mind the case filed by the employee in sessions court.”



21. Thereafter the appellant/plaintiff was issued show cause notice dated 04.01.2000. He appeared before the respondent and the respondent stated that he would not claim the backwages from 1992-1999 or he would be removed from service and it was under duress that he gave an affidavit. Thereafter, he was awarded punishment vide order dated 19.07.2000/11.08.2000. The relevant portion of the same is reproduced as under:-

“It is ordered that there shall be a break in service of the employee from 1992 to 31st December 1999 i.e. just before he rejoined his duties after unauthorised absence on 1-1-2000. He shall be placed in the lowest pay in the initial pay scale admissible to a Vocational Instructor with effect from 1-1-2000 when he joined duties. He shall remain on probation for a period of two years and only if his work and conduct is found to be satisfactory, will be allowed to continue in service beyond the probation period. The actual period of unauthorized absence from 1992 to 1999 shall be treated as absence from duty and action shall be taken as per rules accordingly.”

22. A perusal of the above reproduced order shows that respondents/defendants totally ignored the judgment and decree dated 03.11.1999, whereby, the civil suit filed by the appellant/plaintiff was decreed in his favour and he was declared to be continuing in service from the year 1992. The appellant/plaintiff preferred an appeal before the Commissioner and Secretary, Government of Haryana, Department of Industrial Vocational Education on 18.10.2001 challenging order dated 19.07.2000/11.08.2000 and the same was rejected vide order dated 08.05.2002. He filed civil suit challenging order dated



19.07.2000/11.08.2000 and the following order was passed by learned Civil Judge (Senior Division), Hisar vide its judgment and decree dated 31.03.2004, which is reproduced as under:-

“It was held that there shall be break in service of the employee upto 31.12.99. It is admitted fact that the plaintiff joined duty on 1.1.2K. Vide order dated 11.8.2K, the period upto 31.12.99 was treated as absent from duty and the plaintiff has, in fact, not worked during that period and as such it is clear that the plaintiff was in service during that period, but he has not worked during that period and he remained absent during that period and the period from 1992 to 1999 was treated as absent from duty. Accordingly, issue No.3 is decided and as such the plaintiff is not entitled to get any consequential benefits regarding that period and there is no illegality in the order dated 11.8.2K.”

23. Vide judgment and decree dated 22.05.2006 passed by learned Additional District Judge, Hisar, the appeal was dismissed and judgment and decree dated 31.03.2004 passed by learned Civil Judge (Senior Division), Hisar was affirmed.

24. A perusal of the record shows that DW1 Ranbir Singh Rawat supported the case of the respondents/defendants in his affidavit Ex.DW1/A- During cross- examination, he stated that the appellant/plaintiff filed reply to the charge sheet and his reply was considered. He also stated that no order was passed on the reply of the appellant/plaintiff. He also admitted that the appellant/plaintiff moved an application for allowing him to join the duty. He admitted that the appellant/plaintiff filed suit in the court and they filed written statement in the said suit. He also stated that the department issued



letter to the appellant/plaintiff regarding joining of duty. He also stated that there is no proof that the said letter was received by the appellant/plaintiff. He admitted that the affidavit was taken from the appellant/plaintiff.

25. The findings given by learned Civil Judge (Senior Division), Hisar and learned Additional District Judge, Hisar is not acceptable to this Court, who totally ignored the judgment and decree dated 03.11.1999, whereby, the appeal filed by the appellant/plaintiff was allowed by learned District Judge, Hisar and the respondents/defendants never preferred any appeal against the same. Vide judgment and decree dated 03.11.1999, the appellant/plaintiff was deemed to be in continuing service and he was allowed to join his duties with effect from 01.01.2000 at Vocational Education Institute, Jind.

DECISION

26. In view of the same, I find merit in the present appeal and the same is hereby **allowed**. Judgment and decree dated 31.03.2004, passed by learned Civil Judge (Senior Division), Hisar and judgment and decree dated 22.05.2006, passed by learned Additional District Judge, Hisar are hereby set aside. Accordingly, the civil suit filed by the appellant/plaintiff is decreed in his favour.

Since, the civil suit was filed in the year 2002 and decided in the year 2026, therefore, the appellant/plaintiff is held entitled to the interest at the rate of 7% per annum from the date of filing of the civil suit i.e. 15.11.2002.

28. The respondents/defendants are directed to disburse the arrears of pay to the appellant/plaintiff from the date of filing of the civil suit i.e.

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15.11.2002 till its disbursal along with interest at the rate of 7% per annum within a period of four months, from today, in the account of the appellant/plaintiff and the appellant/plaintiff is directed to provide bank details to the respondents/defendants.

29. Parties are left to bear their own costs.

30. Decree sheet be drawn.

31. All the pending miscellaneous applications, if any, are also disposed of.

28.01.2026**(SUDEEPTI SHARMA)
JUDGE***Ayub**Whether speaking/reasoned : Yes/No**Whether reportable : Yes/No*