

(1997) 09 P&H CK 0156

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3364 of 1996

Dharam Pal Sharma

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1998) 1 CivCC 201 : (1997) 4 RCR(Civil) 378

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—This is Plaintiffs second appeal directed against the judgment and decree of the Courts below whereby his suit for declaration has been dismissed.

2. Plaintiff had been working as Veterinary Assistant Surgeon in Animal Husbandry Department. He was apprehended in a case of corruption and placed under suspension. Plaintiff was tried and was convicted by the Additional Sessions Judge. Amritsar. Appeal filed by the Plaintiff against the order of conviction was allowed by this Court and he was acquitted of the charge. On 2.3.1984, order of dismissal was passed against the Plaintiff. The dismissal was on the basis of conduct which led to his conviction. Plaintiff instituted suit for declaration that order of dismissal is illegal, arbitrary and unconstitutional and he is entitled to be reinstated in service with all consequential benefits. Suit was dismissed by the trial Court holding that no enquiry was required to be held when order of dismissal had been passed on the basis of conduct which led to his conviction. Plaintiff filed first appeal but the same has been dismissed by the Additional District Judge. Hence, the second appeal by the Plaintiff.

3. At this stage, it may be observed that Plaintiff had filed suit through his attorney, Jatinder Nath. Appeal has been dismissed by the learned Additional District Judge solely on the ground that attorney of the Plaintiff has not been

given power to verify the plaint or to file suit and that being so, suit itself was not maintainable.

4. In this second appeal, it has been contended by the counsel for Plaintiff that in the power of attorney. Ex.P-1, attorney of the Plaintiff was authorised to sign the plaint, complaint, written statement, replication and application or to do all other things necessary for prosecution of the suit Against this, Mr. S.K. Bhanot, DAG Punjab, has contended that power to sign plaint does not include the power to verify the pleadings.

5. After hearing the counsel, I am of the view that judgment and decree of the learned Additional District Judge is not sustainable in law. The relevant portion of the power of attorney, Ex.P-1, reads as under:

To engage any advocate or advocates to defend or offend any matter relating to us or our properties in any court upto highest appellate court and to sign plaint, complaint, written statement, replication, application under any order or rule of Section 151 CPC and in short to do all such other things which he deems fit and necessary for the better prosecution of the purposes mentioned above and act or acts done by our Attorney shall be considered done by us personally and we hereby undertake to ratify the same.

A reading of the above-quoted portion of the power of attorney makes it very clear that the attorney was authorised to sign plaint and to do all such other things which he deemed fit and necessary for the proper prosecution of the case. The power to sign plaint includes the power to institute suit and verify the pleadings on behalf of the Plaintiff. The Courts below are not right in saying that the power of attorney, Ex. P-1, did not authorise the attorney to verify the pleadings or to institute the suit. The order under appeal thus, is to be set aside and it is so ordered. Since the other issues were not decided by the Additional District Judge, the matter is remitted to the said Court for deciding the appeal on merits.

Parties through their counsel are directed to appear before the Additional District Judge, Amritsar, 25.10.1997.