
(1998) 01 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 84 of 1993

Haryana Harijan Kalyan Nigam Ltd. and Another

APPELLANT

Vs

Mrs. Sudesh Juneja

RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 118 PLR 405

Hon'ble Judges : N.C. Khichi, J; Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Hari Om Sharma and Roop Rekha Sharma, for the Appellant; Anand Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The writ petition filed by the respondent-widow for release of the arrears of salary due to her deceased husband having been accepted by the learned Single Judge, the Nigam and its Managing Director have filed this Letters Patent Appeal. A few facts may be noticed.

2. Mr. H.K. Juneja was working as a District Manager with the Haryana Harijan Kalyan Nigam Limited, his services were terminated by an innocuous order passed on March 6, 1987. He filed Civil Writ Petition No. 3960 of 1987. This petition was allowed by the learned Single Judge vide order dated January 4, 1989. It was found that the order had really been passed on the ground that Mr. Juneja "had involved himself in dishonest transactions". It was further found that "the authorities had elected to institute an enquiry....." A charge sheet was issued to the officer. Subsequently, without conducting an enquiry, the Nigam had decided to get rid of the officer "by removing him from service by passing an innocuous order". The learned Single Judge found that the order had in fact been passed by way of punishment", Resultantly, the writ petition was allowed. The order dated March 6, 1987 was quashed.

3. Aggrieved by this judgment, the Nigam filed a Letters Patent Appeal No. 113 of 1989. This appeal was dismissed by the Division Bench vide judgment dated January 28, 1991. Ultimately even the SLP was dismissed by their Lordships of the Supreme Court.

4. After the acceptance of the writ petition, Mr. Juneja had submitted his joining report to the Nigam. Vide order dated April 25, 1991 he was permitted to join. He had actually resumed duty on April 29, 1991. He represented for the release of arrears of salary and the other dues with effect from the date of termination viz. March 6, 1987. Vide letter dated October 10, 1991 he was informed that the period since his termination had been regularised as leave of the kind due and that no arrears were to be paid as there was no direction from the High Court. Before any thing could be done to challenge this order, Mr. Juneja, unfortunately, expired on December 6, 1991. Thereafter the widow, Smt. Sudesh Juneja, filed Civil Writ Petition No. 5564 of 1992 with a prayer that the order dated October 10, 1991 be quashed and the respondents be directed to release the dues. This writ petition having been accepted by the learned Single Judge, the respondents have filed the present Letters Patent Appeal.

5. Mr. Hari Om Sharma, learned counsel for the appellants, has contended that Mr. Juneja had filed a Civil Miscellaneous application No. 7456 of 1991 in Civil Writ Petition No. 3960 of 1987 with a prayer that the respondents be directed to release the arrears of pay and allowances. This application was dismissed by Amarjeet Chaudhary, J. vide an ex-parte order dated October 30, 1991. By this order the applicant was directed to file a civil suit if so advised. That having happened, the counsel submits that the respondent. Smt. Juneja was not entitled to file the present writ petition. Learned Counsel has placed reliance on the decision of their Lordships of the Supreme Court in State of U.P. and another Vs. Labh Chand, . The claim made on behalf of the appellants has been controverted by Mr. Anand Chhibber, learned counsel for the respondent.

6. The short question that arises is - Did the order dated October 30, 1991 passed by the learned Single Judge in Civil Miscellaneous application No. 7454 of 1991 disentitle the respondent from filing the Civil Writ Petition and claiming the arrears of salary ?

7. It is the admitted position that the C.M. No. 7456 of 1991 had been filed in the petition which had already been decided. Vide order dated October 30, 1991 the application had been dismissed with the observation that he "may file civil suit if so advised". It was not held that the relief was not admissible. The applicant was only relegated to his remedy available under the-law. Secondly, it is also not disputed that the present respondent was not a party in that litigation. Her right to choose her remedy was not affected by that order. Thirdly, it is apparent from a perusal of the order of the learned Single Judge, which is the subject matter of the present appeal, that an objection as now sought to be raised was not raised. That being so, the appellants cannot be permitted to raise this objection for the first time in appeal. In any event, even if the above facts

were to be ignored, the right of the respondent to claim arrears of salary cannot be negatived merely on the ground that her husband had been relegated to the remedy of a civil suit. In Labh Chand's case the position was entirely different." The writ petition had been dismissed by a Division Bench of the High Court. Thereafter a second writ petition on the same grounds was filed. It was entertained by the High Court. Their Lordships of the Supreme Court held that the second petition was not maintainable. The view taken by the High Court was reversed. Such is not the position in the present case. It may also be noticed that even though Amarjeet Chaudhary, J. had dismissed Civil Miscellaneous application No. 7454 of 1991, his lordship has been pleased to allow the writ petition out of which this appeal has arisen.

8. Mr. Hari Om Sharma has then contended that the respondent's husband had actually not performed the duties since 1987. Consequently, he was not entitled to claim the arrears of the salary. The contention is misconceived. It was the action of the appellants that had prevented the respondent's husband from performing the duties. Their action was found to be illegal. If the arrears are denied on account for the illegal action of the appellants, it would amount to allowing them to take advantage of their own wrong. Such cannot be the law.

9. No other point has been raised.

10. In view of the above, the appeal is dismissed. The respondent shall be entitled to her costs which are assessed at Rs. 2,000/-. The appellants shall now release the arrears of salary within two months from the date of receipt of a copy of this order. In case they fail to do so, the respondent shall, be entitled to the payment with interest @ 15% per annum from the date of arrears fell due till the date of actual payment.