
(1989) 11 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2600 of 1987

Kishan Singh

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 28-11-1989

Acts Referred:

Citation : (1990) 97 PLR 386

Hon'ble Judges : Naresh Chander Jain, J

Bench : Single Bench

Advocate : R.B.S. Chahal, for the Appellant; S.K. Syal, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Naresh Chander Jain, J.—Since the order of termination of services of the plaintiff appellant has been set aside and a decree to this effect has been granted, the facts of this case can be noticed in a very narrow compass for appreciating the legal question involved

2. The Plaintiff appellant, Kishan Singh instituted a suit on the averments that in the month of November/December, 1974 he had applied for leave which was granted for 75 days. In the month of February 1975 he applied for extension of his leave for one year more as his leg was fractured. When he wanted to resume his duty in the year 1976 he was not permitted to join on the ground that his services had been terminated against which he filed an appeal to the Director, State Transport Department, Punjab, Chandigarh but the same was not heard till the date of the filing of the suit. The order of termination of services was challenged by him on the ground that no show cause notice was issued to him before the final order of termination of services was passed. The suit was instituted on 8-1-1986 for a declaration that the order dated 26 8 1975 passed by the General Manager, Punjab Roadways, Hoshiarpur, was illegal, invalid, without jurisdiction and against the provisions of service rules and the principles of natural justice. The trial Court decreed the suit of the plaintiff appellant by

holding that the order of dismissal was null and void. However, the plaintiff appellant was held entitled to get his pay, emoluments etc from the date of the institution of the suit. Two appeals were filed before the first Appellate Court The Punjab State in its appeal urged that the order of termination of services was legal, whereas, the case of the appellant was that he was entitled to all the remunerations etc not only after the institution of the suit but right from 1975 when his services were terminated. The appellate court dismissed both the appeals. The State of Punjab did not appeal against the decree passed by the appellate court The plaintiff-appellant has, however, come up in appeal against the judgments and decrees of the courts below claiming all the arrears of pay, allowances etc. It is undisputed that the plaintiff appellant has retired.

3. It has been argued by the learned counsel for the appellant that the order of termination having been declared to be null and void by the courts below and the State having not filed any appeal against the Judgments and decrees of the courts below, he is also entitled to all the back wages right from the very beginning till the institution of the suit. In support of his argument, the learned counsel has cited *Radha Ram v. Municipal Committee, Barnala and Anr.* 1983 (1) S. L. R 151. On the other hand, the counsel for the State has argued that the decree of the appellate court granting salary etc from the date of the institution of the suit onwards was correct and that there is nothing wrong in the view of the appellate court that the appellant was not entitled to the back wages as the period of absence from duty could be treated as leave of the kind due. In support of his argument, the learned counsel has placed reliance upon *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another*, .

4. Having gone through the findings recorded and the case law cited at the Bar; this Court is of the considered view that there is no force in the appeal and the same deserves to be dismissed.

5. It has been found as a fact by the courts below and which is not disputed before me during the course of the arguments that the plaintiff-appellant's services were terminated on the ground of his wilful absence from duty from 24-1-1975 onwards in spite of the fact that he was telegraphically directed to resume duty and about which confirmation letter was also sent through registered post. The letter was received back with the report that the appellant has left for Mascot i.e. abroad. A show cause notice was also sent to him vide which he was directed to explain his conduct and to reply as to why his services be not terminated on account of his wilful absence from duty. No reply to the show cause notice was received nor the plaintiff joined duty. It is for this reason that he was not available in India. The appellant when appeared in the witness-box remained silent on so many points and, therefore, the findings of fact recorded by the courts below about the rejection of his application for extension ; about the issuance of show cause notice ; regarding the issuance of telegram and confirmation letter asking the appellant to resume duty and regarding the endorsement on the registered cover that the appellant had gone abroad could

not be successfully challenged by the appellant's counsel. In view thereof, it is apparent that the appellant remained absent and disobeyed the orders to resume duty. It has been found as a fact that the notice and the charge sheet could not be delivered to the appellant as he was not available.

6. On the basis of the above mentioned facts, the question of law which arises for consideration before this court is-whether the appellant is entitled to the grant of all the back wages right from the very beginning, that is, 1974-75 till the institution of the suit on 8-1-1186 or that the period spent by him either abroad or in India but, in any case, not on duty could be treated as the leave of the kind due or that the appellant is entitled to all the service benefits simply because the order of termination of service has been declared to be null and void. The answer to the above legal question has to be in the negative and it can unreservedly be held that the ratio of law laid down by Hon'ble the Supreme Court in *Paluru Ramkrishnaiah and others*" case (supra) namely, "no pay for no work" must be followed. In the said judicial pronouncement on the point of back wages the apex Court upheld the view of the Madhya Pradesh court that a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the post with effect from the date his junior was promoted. Following the principle of law laid down by the Madhya Pradesh High Court and so confirmed by the apex Court in *Paluru Ramkrishnaiah and others* case (supra) an employee can be denied pay and salary of a higher post while upholding his right of promotion. It has not been shown by the counsel for the appellant as to why the ratio of Law laid down by the Apex Court would not apply to the facts of the instant case where the employee, that is, the appellant, has not worked during a span of more than a decade as a driver. In my considered view, the ratio of law laid down by Madhya Pradesh High Court and confirmed by the Supreme Court on the point of back wages would apply with greater force in the case of the appellant because while the employee in the case before the apex Court did work on a lower post whereas the appellant did not work at all as a driver during all this period. Following the ratio of law laid down by the apex Court in *Paluru Ramkrishnaiah and others* case (supra) it is held that the appellant is not entitled to any back wages and there is nothing wrong with the view taken by the courts below in this respect. In my view, the appellant who even did not bother to knock at the door of the court for more than a decade or for a large number of years without an explanation forthcoming on the record for such a delay, invariably has to be declined the relief of back wages, and that the court in such circumstances has hardly got any discretion left to grant back wages. Even if the court has got such discretion it would be better advised not to use such a discretion in favour of a delinquent/defaulting employee who did not bother to join the duty and even did not wait for the intimation of the grant of extension of leave. The case law cited by the counsel for the appellant has got absolutely no application and, in any case, will be deemed to have been overruled in view of

the ratio of law laid down by the apex Court in Paluru Ramkrishnaiah and others case (supra).

7. In the light of the observations made above, the appeal is found to be meritless and the same is consequently ordered to be dismissed with no order as to costs.