
(1993) 09 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1928 of 1992

The Haryana Dairy Development Coop, Federation Limited,
Chandigarh

APPELLANT

Vs

Shri Pawan Kumar Singhal

RESPONDENT

Date of Decision : 09-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47(1)

Citation : (1993) 09 P&H CK 0022

Hon'ble Judges : S.K. Jain, J

Bench : Single Bench

Advocate : K.R. Gupta, for the Appellant; Hari Mittal and Mr. Parbodh Mittal, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Jain, J.—Civil Suit No. 108 of 1986 instituted on 21st July 1986 by Pawan Kumar Singhal seeking the relief of mandatory injunction directing the Haryana Dairy Development Cooperative Federation Ltd. and the State of Haryana, in the Department of Dairy Development, to reinstate him in service with all the consequential benefits, was decreed by Sub Judge Ist Class, Chandigarh vide judgment and decree dated 16th March 1991. The operative part of the judgment reads as under: "In view of my findings of the above noted issues, the Plaintiff succeeds in his suit which is hereby decreed with costs and order of suspension (Ex.D1) of the Plaintiff is quashed with all the consequential benefits, including arrears of pay etc. which shall be paid to him within the period of three months from today along with interest at the rate of 12% per annum, failing which the Plaintiff shall be entitled to recover the amount in accordance with law."

2. Feeling aggrieved, the Defendants preferred Civil Appeal No. 151 of 1991, which was heard and dismissed by Additional District Judge, Chandigarh, vide judgment and decree dated March 21, 1992. It is that judgment and decree of the lower appellate Court which has been appealed against by the Defendants

and which requires my examination of its sustainability.

3. I have perused the pleadings in the suit, the evidence adduced by the parties in the suit and judgments of both the Courts below.

4. First argument advanced by the learned Counsel for the Appellants before me is that during the period of suspension, the Plaintiff had entered into a partnership and was thus gainfully employed and, therefore, he was not entitled to any subsistence allowance. Secondly, he has submitted that he had filed application for amendment of the written statement in order to bring this fact on record and prove the same but the learned lower appellate Court dismissed the said application on 21st March 1992, on which date, the appeal was also dismissed. Then he has submitted that here in this R.S.A. also an application for amendment of the written statement has been filed and further that the judgment of the lower appellate Court has also been challenged on the ground of his having dismissed the application for amendment wrongly.

5. On the other hand, Mr. Mittal, learned Counsel for the Respondent has taken me through the provisions of Rules 7.2 and 7.3 of the Punjab Civil Services (Punishment & Appeal), Rules, 1952, Part I Vol. I, Chapter 7, according to which the amount earned by an employee during the suspension period has to be deducted from the suspension allowance at the time of demand of the same. Faced with this situation, Mr. Gupta, learned Counsel for the Appellants has submitted that the employee has filed an execution application for recovery of suspension allowance that objection has been taken on behalf of Defendants but the executing Court is hesitating in disposing of that objection petition under the impression that the civil Courts have directed, that Defendants were duty bound to make the payment of suspension allowance. In support of his submission, he has taken me through paragraph 28 of the judgment of the lower appellate Court which reads as under:

Rather, the order of suspension (Ex. P-10), shows that it was the duty of the competent authority to pay him the subsistence allowance which admittedly was not paid at any stage." In addition thereto, the learned Counsel for the Appellants has stated that since the employee had not furnished a certificate as required under the provisions of Rule 7.2 of the Rules, subsistence allowance could not be paid to him.

6. I have given a thoughtful consideration to the rival arguments. The matter is very simple. The subsistence allowance has to be paid to the employee according to the Rules. Neither the judgment of the trial Court nor that of the lower appellate Court has said nor could say that the subsistence allowance has to be paid to the employee without complying with above referred rules.

7. Admittedly, the employee has filed an execution application and the State has filed objection petition. Section 47(1) CPC provides that all the questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the

decree shall be determined by the Court executing the decree. Therefore, the executing Court is bound to decide the objection petition filed by the JDA Federation according to law and the Rules.

8. No substantial question of law is shown to be involved in this RSA. Concurrent findings of fact recorded by the two courts below do not warrant interference by this Court. This Regular Second Appeal is without any merit and is hereby dismissed. Parties are however left to bear their own costs.