
(1994) 12 DEL CK 0060
In the Delhi High Court
Case No : Suit No. 1330 of 1984

Vrat Pmil Gupta

APPELLANT

Vs

The Board of Governors (ITT) Delhi

RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 5, Order 6 Rule 17, 151
Road Transport Corporations Act, 1950 — Section 3

Citation : (1995) ILR Delhi 361

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : E.X. Joseph, S.T. Siddiqui and Suresh Singh, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) The plaintiff has filed this Suit for recovery of Rs. 1,10,296.19 with interest and costs of the suit. The plaintiff has filed the Suit with the prayer that a decree turn recovery of the said amount on account of pay and allowances, increments, promotional pay and all other due benefits in the form of pay and allowances for the period from 8-1 1-1968 to 2-9-1982 find interest on the G.P.F. accumulations and interest at the rate of 12 per cent per annum on the entire amount for the period up to the date of the decree.

(2) The plaintiff joined the Indian Institute of Technology. Delhi as Upper Division Clerk on 3-2-1966. He was confirmed on 3rd February, 1967 as a permanent Upper Division Clerk.

(3) On 14-12-1967, a charge memorandum was issued alleging that the plaintiff "had been found to be non-cooperative. quarrelsome, having bad temperament and abnormal behavior. uncongenial to efficiency". The charge also stated that "on more than one occasion, he used vulgar and abusive language to his colleagues and on one occasion he used physical force and was about to criminally assault one of the clerk"s in that unit".

(4) "The penalty of removal from service was imposed on 6-11-1968. The plaintiff filed statutory appeal which was rejected by the appellate authority on 27th September, 1969. Thereafter the plaintiff filed a civil writ petition before this Court, the petition was decided by the judgment of B. N. Kirpal. J. This Court has held as under :

"....the order of the disciplinary authority is vitiated on the ground that the enquiry report was not supplied to the petitioner. In this view of the matter it is not necessary to go into The other questions as to whether the order of the appellate authority should have been a speaking order or not. For the aforesaid reason the writ petition is allowed. The orders dated 8-11-1968 and the order in appeal dated 27-9-1969 are quashed. The respondents are permitted to take further action against the- petitioners in accordance with law and after affording the petitioner a reasonable opportunity of being heard. The petitioner will be entitled to costs. Counsel's fee rupees five hundred."

(5) The Judgment of the learned Single Judge became final because no Letters Patent Appeal or SLP was filed against the said order. On 11-4-1976, the petitioner went abroad and stayed in West Germany, During this period on 15-1-1982, the plaintiff sent a letter from West Germany seeking permission to join duty and also requested that the said permission be communicated to his address at Germany as well as to his Advocate in India. Admittedly, no reply was sent by the defendant Institute to this letter either to the plaintiff at Germany or his Advocate in India. On 14-4-1982 the plaintiff referred to India and on 20-4-1988 the plaintiff reported to the Institute for joining duty. However, he was not permitted to join the duty. In these circumstances, the plaintiff was compelled to file the suit against the defendant institute.

(6) The plaintiff's Suit was registered on 29th August. 1984 and summons were issued to the defendants. The defendants appeared and filed the written statement. In the written statement the defendants have stated that on 8-1-1982. a show cause notice for removal from service had been sent to the plaintiff and another show cause notice was sent on 12-2-1982 and that "because the proceedings had been delayed inordinately, and the petitioner had himself been away for a long period after disposal of writ petition, he was asked first to submit his reply to the show cause notice and was told that the question of his being allowed to resume duty would be decided after- the disposal of the proceedings.

(7) ON. 22-4-1982, an office memorandum was served upon the plaintiff in which it was stated that disciplinary proceedings are in progress against the plaintiff and that penalty of removing from the service had been proposed and that he should first submit his reply to the show cause notice and it is only after disposal of these proceedings that he can be allowed to resume duty, if at all.

(8) It was also stated that "the question of allowing Shri Gupta to resume duty does not arise when proceedings for show cause " against dismissal are

pending." On 29-7-1982 the plaintiff filed contempt petition No. 16511982 in Civil Writ Petition No. 160 1970. On 2-9-1982, the penalty of removal from service was imposed in the second proceedings.

(9) On 10-12-1982, this Court has held :---

"AT the time of arguments. Shri R. N. Sharma. Learned Counsel for the Respondent states that within six weeks from today whatever amount is due to the petitioner by way of arrears of salary etc.. up to the date of his dismissal i.e. September 2. 1982 as calculated by the Respondent according to the rules would be paid to him." It is not disputed that another order dated September 2, 1982 has been passed since the disposal of the writ petition terminating the service. In view of the aforesaid submissions made by the Counsel for the Respondent Shri G. D. Gupta seeks leave to withdraw the petition. The same is disposed as withdrawn.

(10) On 12-1-1983. memorandum from the defendant to the plaintiff enclosing a cheque for Rs. 3,583.05 as "the amount due to you as salary for this period from 20-4-1982 to 2-9-1982 as calculated according to the rules" is issued. It was further mentioned that "as regards payment of his salary for the period prior to this or dues can be determined only when information is available to this Institute as to how you were otherwise employed during the period prior to 20-4-1982. It is understood that you even renounced out of India during this period. You are. therefore. required to furnish full information regarding your employment within and your earnings in that period. You should give details of your visit to West Germany viz. date of departure and return ,purpose of visit, source of money to meet the expenses for the Journey and earnings made by you there. . . . "

"THE question of your dues can be finally settled only on receipt of information as aforesaid."

(11) On 22-2-1983, the plaintiff sent a detailed reply giving the required information stating that he was not harmfully employed after 20-4-1980, vide Ex. P.6.

(12) This Court on 8-5-1985, framed the following issues:-

"1. Whether the Suit has not been properly instituted against the defendants? O.P.D. 2. Whether the plaintiff is entitled to Rs. 1.10.796.19 or, account of pay and allowances including increments. promotional pay and such benefits as claimed? O.P.P. 3. Whether the claim of the plaintiff for a period more than three years prior to the date of judgment 20-7-1981 is barred by limitation? O.P.D. 4. What is the effect of the plaintiff not joining the duty from 20-7-197- (date of judgment) to 19-4-1982 (date of joining)? O.P.P. 5. To what rate of interest if any. is the plaintiff entitled and. if so. from which period and on what amount? O.P.P. 6. Relief."

(13) On 10-10-1985, counsel for the parties stated before the Deputy Registrar

that they had not to produce any witness in this case. As such no list of witnesses had to be filed by them.

(14) By is 1610187 the defendants had moved an application for amendment of written statement. The Court allowed the amendment because in view of the Court, amendment is necessary to decide the real controversy between the parties because by way of the amendment the defendant wanted to raise the legal plea (that the Suit was barred by principles of res judicata. On 24th March. 1987 and additional issue was framed which is as under:

(6) "Whether the Suit is barred under the principle of res judicata?" Vide order dated 25-8-1988, the matter was listed in the category of "Finals" in the regular list 35 On 8-8-1 1990. this Court in is 453 89 permitted the plaintiff to correct the description of the defendant No.1. The plaintiff instead of describing the defendant as I.I.T. had sued this body through Board of Governors. This Court observed that because of this lapse, the plaintiff cannot be non-suited and the plaintiff was allowed to give correct description of the defendant and in view of the order in the said I.A., nothing survives in Issue No. 1 and the same is decided against the defendants and in favor of the plaintiff.

(15) The plaintiff has not pressed Issue No. 3 during the course of submissions and that Issue is decided against the plaintiff and in favor of the defendants. Issues no. 2, 4, 5 and 6

(16) Issues No. 2, 4 and 6 are inter-connected and therefore. I deem it appropriate to decide them together. In the written statement. in reply to para No. 4 of the plaint, it is submitted that the order of removal was quashed only on a technical ground of non-supply of the that a copy of the Enquiry report to the plaintiff and Therefore, while quashing the order of removal, the Court had specifically permitted the respondents to take further action against the plaintiff in accordance with law after affording him a reasonable opportunity of being heard.

(17) In reply to para 7, it is mentioned that at the time when the writ petition was decided, the plaintiff was in West Germany and did not return to duty for a long period obviously because he was working and earning in a foreign country. On 8-1-1992. fresh show cause notice for the removal of the plaintiff was " issued. This notice was sent to the address of the plaintiff available from his writ petition but it was returned undelivered with the remark that no such person was found at the given. address.

(18) It is submitted by the defendants that on being apprised that the plaintiff was in West Germany, another show cause notice dated 12-2-1982 was sent to the given address at West Germany by registered air mail. This notice never returned to the Institute as undelivered and the presumption is that it was delivered to the plaintiff in West Germany. Presumably because the plaintiff had received the show cause notice dated 12-2-1982 at his West Germany address, he turned up asked to be permitted to rejoin the service. Because the proceeds

as had been delved inordinately and the plaintiff had himself been away for a long time after disposal of the writ petition he was asked first to submit his reply to the show cause notice and was told that the question of his being allowed to resume duty would be decided after disposal of the proceedings. Such proceedings were not expected to take long. The plaintiff was never told that he would be allowed to work even after the proceedings terminated in his favor.

(19) In reply to para 8 of the plaint, it has been mentioned by the defendants that though the plaintiff had claimed a large number of reliefs but the only relief granted was the quashing of the original and appellate orders of removal. There was no mention of granting of any other relief in the Court's order and so by implication, the other reliefs were deemed to have been disallowed.

(20) In reply to para 11 of the plaint, it is mentioned that a cheque for Rs. 3583.95 along with letter dated 12-1-1983 is admitted. This payment was in full satisfaction of plaintiff's entitlements after calculation according to rules and nothing more remained due to him. In terms of order of the High Court passed in the contempt petition, the defendants had calculated the dues of the plaintiff according to the rules and paid him the money and nothing more is due. The plaintiff has filed written arguments on 15-1-1988, wherein it is mentioned that the plaintiff had intimated that immediately after the plaintiff came to know about the judgment, he requested defendant No. 2 to communicate to him their decision to let him join his duty. When he personally reported for duty on 20-4-1982 he was not allowed to resume his duty and was directed to contact the authorities on 22-4-1982. But on that day too he was not allowed to join the duty.

(21) It was also pointed out by the plaintiff that the figure of Rs. 3583.95 worked out for the period from 20-4-1982 to 2-9-1982 was not correct in view of the facts and records that even in the old scale of U.D.C., i.e. Rs. 130-300, the plaintiff was drawing a basic pay of Rs. 155 plus usual allowances w.e.f. 3-2-1967 i.e. much before his removal on 8-11-1968, besides one increment raising his basic pay to Rs. 160 w.e.f. 3-2-1968. The plaintiff also pointed out that he was also entitled to the full pay and allowances, increment and promotional benefits which had accrued to him during the period of 13 years from the date of his first removal to the date of his second removal i.e. from 8-11-1968 to 2-9-1982. He also pointed out that the dues for the period from 20-4-1982 to 2-9-1982 had also to be calculated after taking into account the due increments as well as promotional entitlements during the said period of 13 years. In para 2 of the said reply, the plaintiff gave details about his employment, if any during the period from 8-11-1968 to 20-4-1982 and also for the period after 20-4-1982. He stated that he had not been employed during the said period and that he had not made any earnings from any employment during the said period. He requested the defendants to pay him his dues of salary and allowances on the basis of rules and accurate calculations along with the plaintiff's share of contribution towards his Cpf account together with the

interest accrued on Gpf deposits contributed by him as well as the employer.

(22) The main submission of Mr. Joseph, who appeared for the plaintiff is that in view of the fact that order dated 8-11-1968 and order in appeal dated 27-9-1969 were quashed by the High Court. The logical consequence of that ought to be that the plaintiff remained in service and he was entitled to all allowances increments and all consequential benefits.

(23) Mr. Joseph also submitted that the plaintiff did not have any employment in West Germany during his stay there. The defendants have failed to produce any material by which it can be established that the plaintiff had any employment. The plaintiff had filed an affidavit to this effect. On the plaintiff's affidavit, he was cross-examined by Mr. Suresh Singh, Advocate on behalf of the defendant". In the cross-examination the plaintiff submitted that between 1976 and 1982 for a period of about six years, the plaintiff had been to West Germany for the prospectus of getting any employment. He had mentioned that he had no employment but he was helped, by number of his friends there. Occasionally, he had acted as German Interpreter. He was doing some casual work in weekly markets and exhibitions. He had admitted that he had made some earnings out of lotteries and he was able to meet his expenses in West Germany from his casual work. Learned counsel appearing for the plaintiff submitted that mere casual employment for survival cannot be really termed as a regular employment. Learned counsel has drawn my attention to Supreme Court Judgment Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh. 1962 SCJR. 315. In this case, the Court has held "where the order of dismissal of a public servant was declared invalid by the decree of a Civil Court the effect was that the public servant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. It was not open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work."

(24) The learned counsel appearing for the plaintiff has also placed reliance on Division Bench Judgment of this Court Union of India Vs. Kewal Krishan Mittal, The relevant para of the judgment is as under :

"10. This precise question arose before a Full Bench of Punjab and Haryana High Court in Pasha "Ram vs. Municipal Committee. Barnala 1983 Plr page 21. The court held that the emoluments of the post are a logical consequence of setting aside the termination. In such a situation to insist upon the filing of a second suit for a relief which directly flows from the declaratory decree can hardly be warranted. A direction to pay arrears of salary "only makes pointedly explicit what is plainly implicit in the decree". "It seems wholly wasteful to require a fresh spurt of litigation for the recovery of emoluments which necessarily flow from the quashing of the termination order or the grant of the declaratory decree", the Full Bench held. The Full Bench followed the Supreme Court case in Krishan Murari Lal Sehgal Vs. State of Punjab, (CM 10572 of 1978 in C.A. 1298 and 1299 of 1969 decided on 16th October, 1978) wherein similar circumstances

the Supreme Court implemented its judgment by asking the Union of India to pay the arrears of salary to the petitioner as it was a logical consequence of the declaration that the petitioner would be entitled to back salary. A declaration the plaintiff continues in service and the order of termination was void and inoperative. means that the termination order had no effect on his status. It was inoperative. Reinstatement order is in fact superfluous. In the eye of law he is deemed to be in service."

(25) Learned counsel appearing for the plaintiff also placed reliance on S.G. Chemicals and Dyes Trading Employees" Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, and invited attention of the Court to para 24 of the Judgment which reads as under:-

"24.It was lastly submitted that several employees must have taken up alternative employment during the intervening period between the date of the closure of the Churchgate division and the hearing of this appeal and an inquiry, Therefore, should be directed to be made into the amounts received by them from such alternative employment so as to set off the? amounts so received against the back wages and future salary payable to them. It is difficult to see why these eighty-four workmen should be put to further harassment for the wrongful act of the Company. It is possible that rather than starve while awaiting the final decision on their complainant some of these workmen may have taken alternative employment. The period which has elapsed is, however, too short for the moneys, received by such workmen from the alternative employment taken by them to aggregate to any sizable amount, and it would, be fair to let the workmen retain such amount by way of solarium for the shock of having their services terminated, the anxiety and agony caused thereby, and the endeavors, perhaps often fruitless, to find alternative employment.

(26) The sum and substance of the arguments of the learned counsel was that any employment which is purely casual in nature, incidental or accidental earning for basic survival of the employee cannot be termed as employment and on that basis the employee cannot be denied the benefits which he is entitled to.

(27) Learned counsel appearing for the defendants submitted that though the plaintiff has specifically prayed relief No. (vi) (c), the said relief is set out as under :-

"(VI)(C)directing the Respondents to create him so and pay him all his back pay and allowances and all other benefits to which he would have been entitled had he not been illegally removed from service w.e.f. the date of his removal from service."

(28) But the said relief was not granted. The writ petition was allowed merely on technical ground that the enquiry report was not supplied to the plaintiff. The court did not give any specific direction with regard to back wages. Not only that, the defendants were also permitted to proceed in accordance with law against the plaintiff. It is further submitted that when the termination order has been set

aside, the back wages is not the logical consequence. If that is the logical consequence than fundamental rules which are statutory in nature would become totally redundant .

(29) Learned counsel appearing for the defendants also submitted that when specific relief has been claimed and was not granted, it has to be construed that the same has been denied to the plaintiff and he cannot claim the same.

(30) Learned counsel appearing for the defendants also submitted that when a Court gave liberty to have further enquiry, then the intervening period cannot be created as on duty. Learned counsel also submitted that the petitioner also filed a contempt petition on the ground that back wages were not paid and the petitioner was not taken on duty. Counsel for the defendants made statement that back wages would be paid to the plaintiff according to the rules and on that basis the contempt petition was with" drawn.

(31) Learned counsel appearing for the defendants has placed reliance on Mysore State Road Transport Corporation Vs. Babajan Conductor and Another, and invited my attention to para 2 of the said judgment. The relevant para 2 reads as under :-

"2.In his writ petition, questioning the order of his dismissal, the first respondent had also asked for a declaration that he had continued in service since the date of his suspension and commencement of disciplinary proceedings. The High Court of Mysore merely quashed the dismissal order of 25-1-1961 and the order of suspension dated 23-7-1960. It did not grant the declaratory relief asked for. It observed : "It is further ordered that this is without prejudice to the holding of fresh enquiry if they consider the same necessary." This order could not possibly amount to a declaration that the first respondent had continued in the service of either the Mysore Govt. or had become the servant of the appellant Corporation, a separate legal entity which came into existence by means of a Notification u/s 3 of the Road Transport Corporation Act, 1950 (hereinafter referred to as "the Act"). As a separate legal entity, the Corporation could not be said to have stepped automatically into the shoes of the Mysore Road Transport Department No provision of the Act or rules made there under has been shown to us which would have that effect."

(32) Learned counsel for the defendants has distinguished the cases cited by the plaintiff. While distinguishing the Division Bench Judgment of K. K. Mittal (supra),the learned counsel submitted that this case has no application because in that case specific direction has been given by the Court whereas that direction is totally missing in the instant case.

(33) Learned counsel for the defendants submitted that Devendra Pratar) Narain Rai Sharma's case. (supra), has also no application because Rule 54-A of Fundamental Rule was not in existence at that time. Therefore, these judgments are of no avail to the plaintiff.

(34) It was submitted by Mr. Joseph that non-supply of enquiry report is clear violation of principles of natural justice. On this basis, the High Court quashed the termination order and the appellate order and allowed the writ petition. It cannot be said that writ petition was allowed on technical ground. As a matter of fact, the court found substantial issue in favor of the petitioner and allowed the writ petition.

(35) The Single Judge of this court quashed the orders dated 8-11-86, (imposing the penalty of removal from service) and the order in appeal dated 27-9-69). The observation of the Single Judge that the respondents are permitted to take further action against the petitioner in accordance with law and after affording the petitioner a reasonable opportunity of being heard. That order acquired finality because no appeal was preferred against that order. Therefore, the defendants were bound to reinstate the plaintiff and only after such reinstatement, they could take any further action against the petitioner. The defendants were under an obligation to reinstate the plaintiff and pay him full arrears of salary and allowances from the date of removal from service i.e. 8-11-68 up to the date further imposition of penalty of removal second time on 2-9-82. The clear meaning of quashing the order means that the plaintiff continues to be in service as if the removal order as well as order of the appellate authority was not passed at all.

(36) The plaintiff after learning about the judgment had communicated to the defendants on 15-1-82 requesting the defendants to permit him to join duties. Since he did not receive any reply, Therefore, the plaintiff returned to India and reported for duty on 20-4-82. The defendants did not allow the plaintiff to join the service.

(37) When the defendants did not honour or carry out the judgment of this court and the plaintiff was compelled to file a contempt petition in this court. In the contempt petition, the following orders were passed :

"AT the time of arguments, Mr. R. N. Sharma, learned counsel for the respondents states that within six weeks from today whatever amount is due to the petitioner by way of arrears of salary, etc. up to the date of his dismissal, i.e. September 2, 1982, as calculated by the respondents according to the rules would be paid to him. It is not disputed that another order dated September 2, 1982 has been passed since the disposal of the writ petition terminating the service. In view of the aforesaid submissions made by the counsel for the respondent. Mr. G. D. Gupta, counsel for the petitioner seeks leave to withdraw the petition. Same is dismissed as withdrawn"

(38) The plaintiff had withdrawn the contempt proceedings on the basis of undertaking given by the defendants that within six weeks from 10-12-82, whatever amount is due to the plaintiff by way of arrears of salary, etc. up to September 2, 1982 would be paid to him. The plaintiff had been compelled to file present suit because this undertaking had been violated and it is submitted by

the plaintiff that he had been compelled to file the present suit. The undertaking has been violated and he has been denied the amount due to him by way of arrears of salary for the period from 8-11-68 to 2-9-82. The learned counsel invited the attention of the court to the leading judgments to support his contentions. In *Makhan Singh Vs. Narainpura Co-operative Agricultural Service Society Limited and Another*, (5), the Hon"ble Supreme Court of India held after setting aside the order of termination of the appellant that "the workman should be reinstated in service" and that "the appellant shall be created as being in the service of the Society without any break in his service". The Hon"ble Supreme Court also ordered: "He is entitled to all the consequential benefits. We direct that Society to pay full back wages to the appellant from the date of termination of his services till the date of reinstatement."

(39) In another case *Sawai Singh Vs. State of Rajasthan*, , their Lordships of the Supreme Court held that the departmental enquiry was initiated by non-compliance with principles of natural justice and struck down the order of removal from service and ordered that "the appellant would also be entitled to his remuneration and salary for all this period."

(40) It is also submitted that following the ratio of the Supreme Court judgment in the instant case, the plaintiff was denied his salary from 8-11-68 to 2-9-82 and was also denied his due promotion during his service which the defendants brought to an end through their illegal order of removal from service. Therefore, the plaintiff is entitled to be granted his due promotion during the aforesaid period.

(41) Learned counsel also submitted that as per the rules of India Institute of Technology, the plaintiff was entitled to be promoted as Assistant after 8 years of service as Upper Division Clerk. Therefore, the plaintiff was entitled to be promoted as Assistant w.e.f 1-1-1978 as per the enbloc promotions of the Upper Division Clerks of the aforesaid 8 years" service to the post of Assistant and further also he became entitled to the grant of two additional increments in the said scale of Assistant since by the same date also he had already completed his 10 years" service as Upper Division Clerk. Learned counsel appearing for the defendants submitted that order of removal dated 8-11-68 was quashed by this court on purely technical grounds. The period of the aforesaid absence from 8-11-68 to 20-7-81 (the date of decision in the Writ petition) should be created as not on duty in terms of F.R. 54-A 2(ii) read with sub rule (5) of F.R. 54. He could at best be paid an amount equal to one half average pay in terms of F.R. 54-A (2)(i) read with sub-rule (7) of F.R. 54. In addition, he could be paid allowances on the basis of such pay in terms of F.R. 54-A (4).

(42) It may be relevant to mention that the plaintiff has never been placed under suspension. Therefore, this rule can have no application and in the instant case, the order of termination and the appellate order were specifically set aside and the direct consequence of that has to be reinstatement of the plaintiff, submitted the Learned counsel for the plaintiff. He further submitted that in view of the

order of the Single Judge of the High Court, the plaintiff was entitled to reinstatement with full salary and allowances until the period he was removed from service on 2-9-82.

(43) Learned counsel appearing for the defendants faced with this situation submits that in any event, the plaintiff is not entitled for back wages because he was gainfully employed during the period between the date of removal and the date of reinstatement (by the order of the court). Where the emoluments admissible under this rule are equally or less than those earned during employment elsewhere nothing is paid to the employee.

(44) It is submitted on behalf of the counsel for the defendants that the plaintiff was asked to furnish information as to how he was employed during the period up to 20-4-82 when he reported for duty, the plaintiff replied that he was unemployed up to 11-4-76 and then he left for abroad and remained outside up to 14-4-82 He further submitted that he was not gainfully employed and he

""could sustain himself because of the help from his friends and some times on the basis of lottery proceeds and lucky draws abroad. It is submitted on behalf of the defendants that it is preposterous that a person of plaintiff's status could sustain himself in a foreign country for a long period of 6 years from the help of others. The defendants have clearly failed to produce any evidence, to substantiate the plea that the plaintiff had any employment in West Germany. The plaintiff was asked to file an affidavit. In the affidavit he has denied that he had any employment in West Germany. He was cross-examined on the basis of the affidavit and in the cross-examination also, it could not be established that the plaintiff had any employment in foreign country during the period when he was away from India. He of course admitted some stray income from the lottery proceeds and by the work of Interpreter once in a while. That incidental or accidental income cannot be termed as an employment

(45) Learned counsel appearing for the plaintiff invited my attention to the leading judgment of the Supreme Court *S.G. Chemicals* (supra).

(46) Learned counsel appearing for the plaintiff has also drawn my attention to *The State of Punjab vs. Dharam Prakash Kaushal*, 1984 (1) Slr 34. In this case, the Punjab and Haryana High Court held that on setting aside by the court, the order of terminating the services of an employee, it was not obligatory for the employee to join service to be entitled to the arrears of pay for the period of during which his services remained terminated. The court further held that so far as gainful employment of an employee, during the period termination is concerned the employee has only to certify in regard to his not having been gainfully employed.

(47) In the case of the plaintiff, the plaintiff had stated and certified in para 4 of his reply dated 22-2-83 (Ex. P-6) to the memo. dated 12-1-1983 (P-5) issued by the defendants that he was not gainfully employed during the period when he was illegally kept out of his job by the defendants through their removal order

dated 8-11-68.

(48) On the issue of interest, learned counsel for the plaintiff has placed reliance on the State of Kerala and Others Vs. M. Padmanabhan Nair, and R. S. Sehgal vs. Union of India and others, 1985 (2) Slr 285, where the Court had awarded 12 per interest. The question of interest is to be decided after taking into consideration totality of facts and circumstances of this case. I have carefully perused the entire evidence on record and heard learned counsel appearing for the parties. On the strength of the documents on record, the issue nos. 2, 4 and 5 are also decided in favor of the plaintiff and against the defendants.

(49) The additional issue framed later on reads as under :

1. Whether the Suit is barred by the principles of res judicata ?

(50) Learned counsel appearing for the plaintiff submitted that the principle of res judicata is that once a res judicata it shall not be adjudged again. It is settled law that the bar of res judicata operates only when the matter directly and substantially in issue in the later suit has been heard and finally decided in the former suit, Learned counsel also cited The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others, . In this case, their Lordships of the Supreme Court have laid down that the matter may be said to have been heard and finally decided. A decision in the former suit must have been on merits. It is submitted that in view of the settled position of law, this issue is liable to be decided against the defendants. The learned counsel appearing for the defendants submitted that the plaintiff has wholly misunderstood the plea of the defendants on which this issue was framed. The defendants never pleaded that the suit was barred by res judicata on the basis of the decision in the contempt of court decision. They based this plea on the judgment in the writ petition. It will be clear from the defendants' application dated 3-3-87 under order 6 rule 17 and order 14 rule 5 read with Section 151 CPC that bar of res judicata was pleaded on the basis of reliefs being disallowed by the judgment in the writ petition and reference was made to Explanation 5 to Section 11 of the CPC .

(51) I have considered the plea of the defendants and heard learned counsel appearing for the parties. In the facts and circumstances of this case, the suit was not barred by the principles of res judicata because the writ petition was allowed on the ground that copy of the enquiry report was not given to the plaintiff. When the petition was allowed only on this short ground, Therefore, it was not necessary for the court to decide other issues which were involved in the petition. Non decision of involved issues should not necessarily lead to the inference that other pleas raised in the writ petition were deemed to be rejected. This issue is also accordingly decided against the defendants and in favor of the plaintiff.

(52) In view of the decision on all the issues including the additional issue, the plaintiff's suit is liable to be decreed. I accordingly decree the plaintiff's suit with

costs. In the peculiar facts and circumstances of this case. the plaintiff shall also be entitled to interest at the rate of 9 per cent per annum from the date of filing the suit till realisation.

(53) The suit is accordingly disposed of.