

**HIGH COURT OF PUNJAB AND HARYANA**

Bench: Justice Karamjit Singh

Date of Decision: 29.09.2023

RSA-1533-1992

STATE OF PUNJAB

Appellant

Versus

SH. RISHI RAM

... Respondent(s)

**Sections, Acts, Rules, and Articles:**

Section 80 CPC

**Subject:** Termination of Service and Grant of Back Wages

**Headnotes:**

*Civil Appeal – Termination of service – Grant of back wages – Appellant-State challenges the judgment allowing the respondent's appeal against the termination of his services – Respondent's services were terminated without following proper procedure – Trial Court set aside the termination but declined to grant back wages – First Appellate Court granted back wages – Issue of entitlement to back wages for the period of absence from duty – No illegality or perversity in the First Appellate Court's judgment – No substantial question of law for determination – Appeal dismissed. [Para 1-18]*

**Referred Cases:**

Jayantibhai Raojibhai Patel vs. Municipal Council, Narkhed & Ors. Civil Appeal No.6188 of 2019 decided on 21.8.2019

**Representing Advocates:**

Mr. Vinay Kumar Gupta, AAG, Punjab (for the Appellant-State)

Ms. Navroop Jawanda, Advocate (for the Respondent)

Mr. Puneet Jindal, Advocate (for the Respondent)

\*\*\*\*\*

**KARAMJIT SINGH , J. (Oral)**

1. The appellant-State has filed the present appeal against the judgment dated 12.3.1992 passed by the Court of Additional District Judge, Jalandhar, whereby the appeal filed by respondent against the judgment dated 20.3.1991 passed by the Court of Sub-Judge 3<sup>rd</sup> Class, Jalandhar was

allowed and the respondent was also held entitled to back wages for the period he remained absent from duty.

2. The brief facts of the case are that respondent-Rishi Ram was working in Punjab State Transport Department and he got absented from duty for which he was charge-sheeted on 21.4.1981 and regular departmental inquiry was initiated against the respondent and on completion of the departmental inquiry the services of respondent were terminated by the Director State Transport, Punjab Chandigarh vide order dated 2.8.1984. The respondent filed civil suit to challenge the said order of termination with prayer for grant of all the consequential benefits and back-wages.
3. The suit was contested by the appellant-State and written statement was filed, wherein it was pleaded that due procedure was followed by the Department before passing the order of termination dated 2.8.1984.
4. On the pleadings of the parties, following issues were framed by the learned trial Court :-
  - i. Whether the order dated 2.8.1984 of the defendants State is illegal, void as alleged and is liable to be set aside? OPP
  - ii. Whether the suit is barred by the principles of res-judicata? OPD
  - iii. Whether the suit is bade for non-joinder of necessary parties? OPD
  - iv. Whether the suit is premature? OPD
  - v. Whether a valid notice under Section 80 CPC had been served by the plaintiff before filing of the suit? OPD
  - vi. Relief.
5. The respondent himself appeared in the witness-box as PW-1 in support of his case and proved documents i.e. show cause notice (Ex.P1) and

- termination order dated 2.8.1984 (Ex.P2) and copy of legal notice Ex.P3, postal receipt Ex.P4 and registered AD Ex.P5.
6. On the other hand, counsel for State examined DW-1 M.R.Agnihotri, Account Officer, who was appointed as Inquiry Officer to conduct Departmental Inquiry against the respondent and he proved the order Ex.D1 with regard to his appointment as Inquiry Officer. DW-2 O.P. Lekhi, Deputy Controller (Finance and Accounts), who deposed that in January, 1982 he was appointed as an Inquiry Officer, but later on he was transferred to some other department and some other Government official was appointed as Inquiry Officer in his place. DW-3 Mohan Lal, Senior Clerk in the office of Transport Department proved the notices, which were published in the newspaper to inform the respondent about the pendency of departmental inquiry. DW-4 Satish Kumar, Conductor was also examined on behalf of the State.
  7. After hearing the learned counsel for the parties, the learned trial Court partly decreed the suit and set aside the termination order dated 2.8.1984 being illegal, null-&-void and the period for which the respondent remained absent was directed to be counted for the purpose of fixation of pay, seniority and grant of pension with liberty to the competent authority to initiate fresh departmental proceedings against the employee. However, it was specifically held that the respondent is not entitled to any back-wages for the period, he remained absent from duty.
  8. The State did not file any appeal against the aforesaid judgment passed by the learned trial Court and as such the findings recorded by the trial Court that the order of termination dated 2.8.1984 was illegal, null-&- void, attained finality. However, the respondent being not satisfied by the judgment passed by the learned trial Court filed appeal with prayer that the suit be decreed in toto and he be also granted back-wages for the relevant period.
  9. The appeal was also contested by the State. The Court of Additional District Judge after hearing both the parties allowed the appeal filed by the

respondent and held that respondent is also entitled to get back wages for the period he remained absent from duty.

10. The appellant being aggrieved by the aforesaid judgment dated 12.3.1992 passed by the Court of Additional District Judge, Jalandhar has filed the present appeal.
11. I have heard the counsel for the parties.
12. The State counsel while assailing the impugned judgment has submitted that the learned trial Court rightly declined back-wages to the respondents on the basis of principle of no work no pay, as during the relevant period the respondent had not performed his duties.
13. The State counsel further apprised the Court that Balwant Singh Superintendent, Punjab Roadway, Jalandhar-I is present in the Court along with the service book of the respondent as per which, the respondent retired from Government service on 31.8.2004. Aforesaid Balwant Singh, Superintendent also made statement in the Court that the entire service benefits were paid to the respondent on the basis of the judgment passed by the Courts below and he further informed the Court that respondent has died. The copy of the service book of respondent is taken on record.
14. The counsel for respondent while opposing the present appeal submits that she is having no information regarding death of respondent. However, she has not disputed the fact that respondent retired from the Transport Department on attaining the age of superannuation. The counsel for the respondent while supporting the impugned judgment passed by the Court of Additional District Judge submits that the 1<sup>st</sup> Appellate Court rightly held that the respondent was entitled to get back wages for the relevant period. The

counsel for the respondent further submits that immediately after expiry of sanctioned leave period, the respondent was ready to join his duty but he was not allowed to do so by the senior officials of the department. That it being so, the respondent is legally entitled to get back wages for the aforesaid period. The counsel for the respondent further submits that there is no illegality or infirmity in the impugned judgment passed by the Court of Additional District Judge, Jalandhar dated 12.3.1992.

15. I have considered the submissions made by the counsel for the parties.
16. The only issue involved in the present appeal is as to whether the respondent was entitled to get back-wages for the period he remained absent from duty. Admittedly in the present case, the order of termination of services of the respondent dated 2.8.1984 was set aside by the trial Court vide judgment dated 20.3.1991. However, the learned trial Court declined to grant back wages to the respondent for the period he remained absent from duty. However, the 1<sup>st</sup> Appellate Court after appreciating the entire record granted back wages for the aforesaid period to the respondent.
17. In the instant case, it is evident that the services of the respondent were wrongly terminated by the Department without following the proper procedure and resultantly the said order of termination of services was set aside by the learned trial Court. The Hon'ble Apex Court in **Civil Appeal No.6188 of 2019** titled as **Jyantibhai Raojibhai Patel vs. Municipal Council, Narkhed & Ors.** decided on **21.8.2019** has held that the Courts must also keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is employee and there is no justification to give a premium to the employer of his wrong doing by relieving him of the burden to pay to the employee his dues in the form of back-wages. Furthermore in the present case, there is nothing on the record that during the relevant period

/ period of dismissal, the respondent Rishi Ram was gainfully employed at some other place.

18. In the light of the above discussion, this Court is of the view that there is no illegality or perversity in the impugned judgment passed by the Court of learned Additional District Judge, Jalandhar. No question of law much less any substantial question of law arises for determination in the present appeal warranting interference by this Court.

Consequently the present RSA is dismissed being devoid of merits.

© All Rights Reserved @ LAWYER E NEWS

\*Disclaimer: Always compare with the original copy of judgment from the official website.