

(2001) 08 P&H CK 0077

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1562 of 2001

Atma Singh

APPELLANT

Vs

Punjab State

RESPONDENT

Date of Decision: Aug. 3, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: R.S. Sharma, for the Appellant;

Judgement

R.L. Anand, J.

Heard. This is a regular second ap-peal filed by plaintiff Atma Singh and has been directed against the judgment and decree dated 15.12.2000 passed by Addl. District Judge, Jalandhar, who se(aside the judgment and decree of the trial court dated 26.3.1996 with the observations that "the punishing authority of the plaintiff shall now take up the case again and the plaintiff shall appear before the punishing authority on 15.1.2000. On that day, he will be given a personal hearing and the punishing authority, after giving him personal hearing, shall pass a well reasoned order in accordance with the provisions of law regarding the punishment imposed on the plaintiff. In case the plaintiff fails to appear before the punishing authority on 15.1.2000, the punishing authority can pass an ex-parte order and it shall be presumed that the plaintiff has been duly heard. Keeping in view the facts and circumstances of the case, the parties are left to bear their own costs."

2. Some facts of the case can be noticed in the following manner :-

Atma Singh, Ex-Conductor was charge-sheeted on 17.12.1980 regarding his wilful absence from duty w.e.f. 5.5,1980. Thereafter, inquiry was conducted and vide order dated 6.1.1989 the services of the plaintiff were terminated. The plaintiff challenged

this order of termination on various pleas as set forth in the plaint itself. The suit contested by the defendants and from the pleadings of the parties, following issues were framed :-

" 1. Whether the order bearing endorsement No. 214-17/TA dated 6.1.89 passed by G.M., Jalandhar is illegal and null and void ? OPP

2. Whether a proper and valid notice has not been served to the defendants u/s 80 CPC ? OPD

3. Whether the plaintiff is entitled to the declaration prayed for ? OPP

4. Relief."

3. Parties led evidence in support of their respective cases. On the conclusion of proceedings, the suit of the plaintiff was dismissed by the trial Court vide judgment and decree dated 26.3.1996.

Not satisfied with the judgment and decree of the Trial Court, the plaintiff filed appeal before the learned Addl. District Judge, Jalandhar, who vide judgment and decree dated 15.12.2000 allowed the appeal of the plaintiff and set aside the judgment and decree of the trial Court with the above noted observations. Again not satisfied with the observations of the first Appellate Court, the present regular second appeal.

4. The grouse of the learned counsel for the appellant is that the judgment dated 15.12.2000 passed by the first Appellate Court is not clear with regard to the fate of the plaintiff w.e.f. the date of the passing of the termination order upto the passing of the judgment because the judgment and decree of the trial Court has been set aside vide which the order of termination dated 6.1.1989 also goes. There is merit in the contention raised by the learned counsel for the appellant. Moment the order of termination dated 6.1.1989 has been set aside by the first Appellate Court, it could mean that the plaintiff will be deemed in service as on 6.1.1989 and he is entitled to all his wages and consequential benefits till a fresh order is passed by the punishing authority. With this clarification, the present appeal stands disposed of.

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5. Appeal disposed of.