

(2011) 09 P&H CK 0194

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5999 of 2011

The Secretary Department of
Health and Family Welfare and
Others

APPELLANT

Vs

Dr. Hari Narain Singh

RESPONDENT

Date of Decision: Sept. 29, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Mehinder Singh Sullar, J.

The epitome of the facts, which requires to be noticed, for the limited purpose of deciding the core controversy, involved in the instant revision petition and emanating from the record, is that Dr. Hari Narain Singh, Medical Officer, CHC/PHC, Doda, Tehsil Gidderbaha, District Sri Muktsar Sahib Respondent-Plaintiff (for brevity "the Plaintiff"), filed the suit against the Secretary, Director, Civil Surgeon and Senior Medical Officer of Department of Health and Family Welfare, Punjab, Petitioner-Defendants (for short "the Defendants"), for a decree of declaration to the effect that he (Plaintiff) is entitled to the benefit of 4-9-14 years of regular service with effect from 1.1.1996 for the purpose of fixation of his pay, as per the instructions issued by the Finance Department of Govt. of Punjab, with a consequential relief of mandatory injunction, directing them to give him the indicated benefit.

2. In the wake of notice, the Defendants appeared through the Government Pleader. Since the written statement was not filed, despite availing sufficient opportunities, so, the trial Court struck off the defence of the Defendants, by virtue of impugned

order dated 27.4.2011 (Annexure P1).

3. Aggrieved by the decision of the trial Court, the Petitioner Defendants preferred the present revision petition, invoking the provisions of Article 227 of the Constitution of India.

4. At the very outset, in exercise of power under Article 227 of the Constitution of India, I hereby exempt the issuance of notice to the Respondent-Plaintiff, in order to save him from the expenditure of counsel fees, litigation expenses in this Court and the delay in disposal of the matter, particularly when he can be compensated with adequate costs in this regard. Be that as it may, but still, the Plaintiff would be at liberty to file the petition to review this order, without accepting the costs, if he so desires.

5. After hearing the learned Counsel for the Petitioner-Defendants, going through the record with his valuable assistance and after deep consideration over the entire matter, to my mind, the instant petition deserves to be partly accepted in this context.

6. As is clear from the impugned order (Annexure P1) that the main ground, which appears to have been weighed with the trial Court to struck off the defence, was that the Defendants failed to file their written statement within a statutory period as provided under Order 8 Rule 1 Code of Civil Procedure.

7. Ex facie, it may be true, but taking into consideration the nature of the litigation and the fact that the Defendants are the officers of the department of Health & Family Welfare and they have to undergo the procedural wrangles to finalize the written statement, to me, the trial Court ought to have granted one more opportunity to the Defendants to file their written statement and to participate in the proceedings of the suit, subject to the costs. The filing of the written statement is essential, to decide the real controversy between the parties. If the opportunity to file the written statement and to contest the case is not granted, then it will inculcate and perpetuate injustice to the case of the Defendants. Moreover, no prejudice is going to be caused to the Respondent-Plaintiff, particularly when he can be compensated with adequate costs in this relevant behalf.

8. In the light of aforesaid reasons, the instant revision petition is partly accepted. Consequently, the impugned order (Annexure P1) is hereby set aside. The trial Court is directed to provide one more opportunity to the Defendants, to file their written statement. However, this would be subject to the payment of Rs. 5,000/- (Rupees Five Thousand) as costs, to be paid by the Petitioner-Defendants to the Respondent-Plaintiff. Needless to mention that, the trial Court would ensure the payment of costs personally to the Plaintiff. The payment of costs would be a condition precedent to the further defence of the case.