

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Regular Second Appeal No.287 of 2006.

Date of decision: 26.10.2006.

Harpreet Singh

...Appellant.

Versus

State of Himachal Pradesh

...Respondent.

Coram

The Hon'ble Mr.Justice Surjit Singh,J.

Whether approved for reporting ?¹

For the Appellant: Mr.Baldev Singh, Advocate.

**For the Respondent: Mr.Ashok Chaudhary,
 Additional Advocate General.**

Surjit Singh,J. (Oral)

Heard and gone through the record.

Appellant-plaintiff had been assigned the job of transporting water in tankers in drought hit areas of Bilaspur District in the year 1996. He was informed in writing that he would be paid at the rate of Rs.2500/- per day for making two trips to the drought hit areas. There was no condition that if on account of the respondent-defendant's failure to make available the water, no trip was made on any particular day, the plaintiff would be paid any amount of money. The Department concerned, i.e. Irrigation and Public Health Department, however, paid the plaintiff at the rate of Rs.2500/- per day even for

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

those days on which no trip was made. Similarly, full amount was paid for certain days on which only one trip was made, inspite of the fact that the letter of offer written to the plaintiff, which he accepted unconditionally, stated that in case less than two trips were made on any particular day, the amount payable shall be reduced pro rata. Audit was conducted and it was noticed by the Auditors that over-payment had been made to the plaintiff because he was paid full transportation charges even for certain days on which no trip or only one trip had been made. The Auditors required the Department concerned to effect recoveries. The Department concerned then sent a demand notice to the plaintiff.

The plaintiff felt aggrieved and filed a suit not only for an injunction restraining the respondent-defendant from effecting recovery pursuant to that notice but also for recovery of certain amounts of money which he claimed was due to him, on account of over-time charged.

The suit was contested by the respondent-defendant. It was alleged that the plaintiff had been released payment in excess of what was actually due to him in terms of the agreement. The trial Court dismissed the suit by holding that the plaintiff was not entitled to any money on account of over time charges and that in fact he had already been over-paid in the manner and to the extent pointed out by the

Auditors. Appeal filed by the appellant-plaintiff stands dismissed.

I have heard learned counsel for the parties and gone through the record. Ex.DA is the letter, whereby the acceptance of the tender of the plaintiff was conveyed to him. There is no mention in this letter either explicit or implicit suggesting that in case the plaintiff did not make any trip on a particular day, on account of the defendant's failure to make available the water for transportation, he would be paid any amount of money, leave alone the full amount offered to be paid for each day subject to the condition that at-least two trips were made. Not only this, the letter contains a condition that in case the tanker operated for less than agreed time of 12 hours or made less than two trips a day, the charges would be worked out proportionately. The plaintiff accepted these conditions and carried out the work. In terms of the aforesaid letter Ex.DA, the appellant could not have been paid anything for the days on which no trip was made and similarly he could not have been paid full charges for a day on which only one trip was made. In-fact, for those days when only one trip was made, he was entitled to only half the charges, offered vide letter Ex.DA.

In view of the above-said position, I do not think that the two courts below have committed any illegality in dismissing the suit. No other point has

been urged. There being no substantial question of law involved in this appeal, the same is dismissed.

CMP No.473 of 2006.

Infructuous.

October 26, 2006
(aks)

(Surjit Singh)
Judge.