

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

L.P.A.No.2236 of 2001
Date of decision:28.2.2007

P.S.Brar, Security Officer, Ludhiana

... Appellant.

v.

State of Punjab and another

... Respondents.

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN,CHIEF JUSTICE.

HON'BLE MR.JUSTICE RAJIVE BHALLA.

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Present: Mr. M.S.Bedi, Advocate, for the appellant.

Mr. A.G.Masih,Senior Deputy Advocate General, Punjab,
for the State.

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1. Whether the Reporters of Local News paper may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Vijender Jain, Chief Justice (Oral)

This letters patent appeal has been filed by the appellant against the order of the learned Single Judge dated 6.2.2001, vide which the writ petition was dismissed, on the ground that the appellant had failed to state in the petition that he was gainfully employed. It was held that no reason had been put-forth to show as to why it was not so stated.

Learned counsel for the appellant has placed before us the relevant

record. In para 5 of the appeal he has reproduced the statement of claim made before the Labour Court in which it was clearly stated that he was not gainfully employed. The averment made in para 5(4) is as under:

“(4) That the workman is entitled to reinstatement with continuity of service and with full back wages to the date of his actual reinstatement from the date of his services were illegally terminated by the management. The workman has remained unemployed upto this date in spite of best efforts put by him to secure job”

The appellant has also re-produced the extract of his examination-in-chief and cross examination in which a suggestion was put to him that he was gainfully employed. The relevant extract reads as follows:-

“5.4.1983 Present: Sh.B.N.Sehgal and Kasturi Lal.

WW-1: Statement of Shri P.S.Brar on S.4.

I produce my affidavit in evidence which is Ex.W-1 and documents Ex.W-2 to W-14.

Xxs

I am living in a rented house and paying a rent at the rate of Rs.350/- p.m. Besides this the expenditure of my family must be about Rs.400/- p.m. I could not pay rent of the house for the last two and a half year. I am being a helped by my father in law for the maintenance of my family. It is incorrect to suggest that I am gainfully employed and meeting expenditure of my family. I was appointed temporarily for a period of one year on probation. First extension for six months in probation period was granted,

vide order Ex.MW55/2 and second extension vide order dated Ex.MW5/3 was granted. It is incorrect that my work and conduct was not satisfactory during the probation period and that is why my services were terminated in terms of the service bye laws of the Deptt.”

A perusal of the averments in the statement of claim filed before the Labour Court and the appellant's deposition on oath, reveals that the appellant had pleaded and deposed that he was not gainfully employed. We are, therefore, satisfied that the learned Single Judge erred while dismissing the writ petition. The learned Single Judge did not take notice of the pleadings or the appellant's deposition reproduced hereinabove. The appellant specifically pleaded and deposed that he was not gainfully employed.

Taking the entirety of the circumstances into consideration, we allow this appeal and set aside the impugned judgment dated 6.2.2001 and remand the case back to the learned Single Judge to decide the same afresh in accordance with law, within a period of six months.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

February 28, 2007

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