

A3

Registration No.1013 of 1986 (Civil Appeal No.104/83)

...

Applicant

• • • •

Respondent

Hon. Ajay Johri, AM
Hon. G. S. Sharma, JM

This transferred application is a civil appeal against the judgement and decree dated 18.10.1982 passed by Munsif Court No.IX Deoria in suit no. 1352 of 1981 and has been received from the Court of III Addl. District Judge Deoria under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The respondent Surendra Prasad Rai (hereinafter referred to as the plaintiff) while working as Extra Departmental Agent in Khaira Banua Post Office was put off duty and was subsequently removed from service, whereupon he had filed suit no.79 of 1975 in the Court of Munsif Deoria which was decreed. The defendant -appellant Union of India, however, did not pay the salary of the plaintiff and he had to file another suit no. 452 of 1978 in the Court of Munsif which too was decreed on 31.1.1981 and the defendant was ordered to pay Rs.3000 as arrears of pay to the plaintiff. The defendant, however, did not pay the salary of the subsequent period to the plaintiff and he accordingly filed the suit giving rise to this appeal on 17.12.1981 for the recovery of Rs.2750 as arrears of pay and notice charges from 2.3.1978 to 27.6.1980.

A3
2

.2.

3. The suit was contested on behalf of the defendant and in the written statement filed on its behalf by the Superintendent of Post Offices Deoria, it was stated that the defendant has preferred an appeal against the judgement and decree obtained by the plaintiff in suit no.452 of 1978 which has been registered as civil appeal no.171 of 1981 and was pending in the Court of District Judge. An ED Agent is not entitled to any pay or allowance for the period he is put off duty. The plaintiff who is a Primary School Teacher was appointed as Extra Departmental Branch Post Master in 1958. His work was not satisfactory and he was not regular and punctual in his duties. He was accordingly removed from service vide order dated 22.12.1972 and one Lallan Rai was appointed as EDBPM in his place vide order dated 13.3.1973. On filing suit no.79 of 1975 by the plaintiff against his removal from service, the suit was decreed on 31.7.1977. In compliance with the decree, memo dated 24.1.1978 was issued directing the plaintiff to take over the charge and to retrench Lallan Rai aforesaid. Lallan Rai, however, challenged his retrenchment by filing suit no.117 of 1978 and obtained a decree in his favour on 14.4.1979. The appeal No. 191 of 1979 filed by the defendant against the said decree was allowed by the appellate court on 7.3.1980 and the decree in favour of Lallan Rai was set aside. Thereafter, the plaintiff was ordered to be put in charge in place of Lallan Rai but Lallan Rai evaded the process of handing over charge in anticipation of stay order to be received from the High Court. The plaintiff in this way did not do any work during

AB
3

.3.

the period for which he has claimed salary. The suit is barred by time and principle of estoppel and he is not entitled to any relief.

4. The parties had adduced oral and documentary evidence before the trial Court and after ^{an} consideration of the same, it was held by the trial Court that after obtaining the decrees in his favour in the earlier suits, the plaintiff was entitled to serve the defendant as EDBPM and as the defendant itself did not take any work from the plaintiff, the plaintiff could not be deprived of his salary. The salary claimed by the plaintiff was found due and the suit was accordingly decreed for the sum of Rs.2750 with costs.

5. In appeal before us, it was contended on behalf of the appellant that the plaintiff did not do any work during the period for which the salary has been claimed by him and under the principle of 'No work no pay', he is not entitled to get any payment and his suit was barred by estoppel. It was also contended that the defendant had paid the salary for the period in question to Lallan Rai, therefore, it cannot be forced to pay the salary of that period to the plaintiff under the law. The appeal has been contested on behalf of the plaintiff- respondent.

6. The pleadings of the parties, as narrated above, go to show that due to slackness on the part of the defendant, two conflicting decrees were passed against it, which could be avoided if the defendant would have insisted for the impleadment of Lallan Rai and the present plaintiff both in some capacity in the two suits filed by them or would have tried to ^{get} ~~obtain~~ the proceedings of subsequent suit stayed u/s.151 CPC ~~the~~ the decision of the earlier suits. It is apparent from the record that the plaintiff was earlier removed

AB
G

.4.

from service vide order dated 22.12.1972 on account of his unsatisfactory work but the said order was set aside on 31.8.1977 by the Munsif Deoria in suit no.79 of 1975. There is no allegation that any appeal was filed against that order by the defendant or is pending anywhere. The plaintiff, thus, became entitled to resume his duties w.e.f. 1.9.1977. As the plaintiff was not being paid any salary, he again filed suit no.452 of 1978 claiming Rs.3000 as arrears of his pay from 26.12.74 to 1.3.78. The suit was decreed on 31.1.1981 vide copy of judgement Exb.4. The defendant is shown to have preferred an appeal being Civil Appeal No.171 of 1981 and was stated to be pending in the Court of IV Addl. District Judge, Deoria at the time the written statement in the suit was filed. There is nothing on record to suggest as to what ~~has~~ happened ~~to~~ that appeal. In any case, the result of that appeal is not material for the purposes of the present litigation as after setting aside of the order of dismissal of the plaintiff under the decree passed in suit no.79 of 1975 in his favour the plaintiff became entitled to all benefits of his reinstatement including pay and defendant cannot deprive the plaintiff of his pay ~~only~~ by saying that the plaintiff himself did not resume his duties.

7. In this way, the material question arising for determination in this appeal is whether the plaintiff is entitled to get his salary from 2.3.1978 to 27.6.1980 when he did not discharge his duties and one Lallan Rai had worked and was paid by the defendant for this period. The suit no.79 of 1975 was decreed in favour of the plaintiff on 31.8.1977. The plaintiff Surendra Prasad Rai in his statement as P.W.1 has stated

.5.

that after the decree in suit no.79 of 1975 he was regularly knocking the doors of the defendant for giving him duty and despite his oral and written requests, he was not allowed to join his duty and from the date he was allowed to join his duty (i.e. ^{from 2} 28.6.1980), he is regularly discharging his duties. He has filed copies of some of his applications dated 27.3.1978 (Exb.5), 24.8.1978 (Exb.6) and 8.4.1980 (Exb.9). He had also moved an undated application, copy Exb.8, addressed to the Superintendent of Post Offices Deoria for allowing him to join his duty. This conduct of the plaintiff shows his readiness to discharge his duty after his reinstatement in service. The Superintendent of Post Offices had replied to plaintiff's application dated 24.8.1978 on 26.8.1978 to the effect that the then EDBPM (Lallan Rai) has challenged the order of his retrenchment and the plaintiff should await the result of the Court case vide copy annexure 7. The plaintiff was thus always available to the defendant to discharge the duties as EDBPM during the period for which he has claimed the salary in the present case.

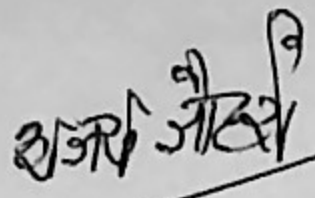
8. The defendant has filed some documents in appeal. Paper no.63-C is the copy of the plaint of suit no.117 of 1978 filed by Lallan Rai against the Union of India challenging the validity of his retrenchment order dated 24.1.1978. The copies of the applications and affidavit given by Lallan Rai for obtaining the ad interim injunction in that suit, paper nos. 61-C and 62-C, have also been filed but there is nothing on record to suggest that any ad interim injunction was issued by the Court in favour of Lallan Rai. His suit was decreed on 14.4.1979 vide copy of judgement paper no.64-C. The appeal preferred by the defendant

A3/6

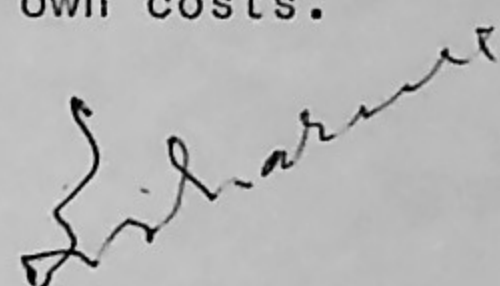
.6.

against that judgement was allowed on 7.3.1980 and the suit of Lallan Rai was dismissed. Only thereafter, the present plaintiff was allowed to resume his duty from 28.6.1980. In this way, there appears to be nothing on record to suggest that under any order of the Court, the defendant was unable to allow the plaintiff to resume the duty earlier. The plaintiff, therefore, cannot be deprived of the fruits of his reinstatement and his suit was rightly decreed by the trial Court and there is not merit in this appeal.

9. The appeal is accordingly dismissed but we direct the parties to bear their own costs.



MEMBER (A)



MEMBER (J)

Dated: May 20th 1988,
kkb