
the conclusion that the punishment awarded by the employer is unjust or shockingly disproportionate or unduly harsh. In what circumstances the Labour Court or Tribunal may interfere with the punishment awarded by the employer depends on the facts of the particular case and no hard and fast rule can be laid down."

(18) If we examine the impugned award in the light of the principles laid down by the Supreme Court and by this Court on the ambit and scope of Section 11-A, it can reasonably be said that the Labour Court has failed to exercise its jurisdiction under Section 11-A. The Learned Presiding Officer has not at all considered whether the punishment of dismissal imposed by the government is just or not and whether any other punishment can meet the ends of justice. The past record of the petitioner, the length of his service and the impact of his alleged mis-conduct on the service have not at all been taken into consideration while upholding the dismissal of the petitioner from service.

(19) On the basis of the above discussion, we hold that the impugned award is vitiated due to the failure of the Labour Court to exercise the jurisdiction vested in it under Section 11-A and also on the ground that it suffers from an error of law apparent on the face of it.

(20) Consequently, the writ petition is allowed. The award dated 13th February, 1996 is quashed and the case is remanded to the Labour Court for fresh decision in accordance with law. The Labour Court, Bhatinda is directed to complete the proceedings within 6 months of the receipt of certified copy of this order.

(21) The Registry is directed to forward a copy of the order to the Labour Court, Bhatinda.

J.S.T.

Before Sat Pal, J

SATISH BHARDWAJ,—*Petitioner.*

versus

DHANI RAM & OTHERS.—*Respondents.*

C.R. No. 2084 OF 1997

9th February, 1998

*Code of Civil Procedure, 1908—Order 23 Rl. 7—Suit decreed—
Appeal filed—Plaintiff filed application seeking permission to*

withdraw the suit-Application rejected-Held that appeal is a continuation of the suit-Permission to withdraw from the suit has to be granted.

Held that the impugned orders, dated 5th February, 1997 cannot be sustained. As held by the Supreme Court in the case *Karan Singh and others v. Bhagwan Singh (dead)* by LRs 1996 (2) PLR 321, the appeal is a continuation of the original proceedings. Since the appeal is the continuation of the suit, and the plaintiff is not seeking permission of the Court to file a fresh suit, the permission to withdraw from the suit has to be granted to the plaintiff in terms of order 23 Rule 1 CPC.

(Para 5)

Sudershan Goel, Advocate for the Petitioners.

JUDGMENT

Satpal J. (Oral)

(1) By this order, I am disposing of three petitions bearing CR No. 2084 of 1997, CR 2100 of 1997 and CR 2101 of 1997 as the point of law raised in all these petitions is identical.

(2) All these petitions have been preferred against the orders dated 5.2.1997 passed by the learned Addl. District Judge, Patiala. By the impugned orders, the learned Additional District Judge has rejected the application filed on behalf of the plaintiffs/petitioners to withdraw the suit since the suit has already been decreed and the matter is pending before the learned lower appellate court.

(3) Notice of these petitions was issued to the respondents, Respondents No. 1 to 4, 5, 6, 8 to 10 were proceeded against *ex parte*,—*vide* order dated 27.8.1997. Respondent No. 7 is dead and his name was ordered to be deleted from the array of the respondents,— *vide* order of the said date. Respondent No. 3 could not be served for want of complete address but interest of respondent No. 3 was represented by respondents 1 and 2 and they being co-plaintiffs had not put in appearance and were proceeded against *ex parte*. None is present on behalf of the respondents though the case has been called out third time after two pass overs were given. Accordingly, I proceed to dispose of the petitions.

(4) Mr. Sudershan Goel, the learned counsel appearing on behalf of the petitioner submits that order 23 Rule 1 sub-rule (1)

gives an unqualified right to a plaintiff to withdraw from the suit, if no permission to file a fresh suit is sought under sub-rule (2) of that rule. He submits that in the present case the plaintiff is not seeking permission of the Court to file a fresh suit. He, therefore, contends that the learned lower appellate Court was not right in refusing the application of the plaintiffs to withdraw the suit. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in *State of Maharashtra v. Dr. RB Chowdhri* (1), decision of Kerala High Court in *Ammini Kutty v. George Abraham* (2) and a judgment of Orissa High Court in *Dinabandhu Sahoo vs. Budhi Debi* (3) (dead) through LRs. The learned counsel further submits that the appeal is a continuation of the original proceedings and as such the plaintiff/petitioner should be granted permission to withdraw from the suit. In support of this submission he has placed reliance on a judgement of the Supreme Court in *Karan Singh and others vs. Bhagwan Singh* (dead) by LRs.(4).

(5) After hearing the learned counsel for the petitioner and having perused the impugned order as well as the law laid down in the various judgements mentioned herein above, I am of the opinion that the impugned orders dated 5.2.1997 cannot be sustained. As held by the Supreme Court in the case of *Karan Singh* (supra) the appeal is a continuation of the original proceedings. Since the appeal is the continuation of the suit, and the plaintiff is not seeking permission of the Court to file a fresh suit, the permission to withdraw from the suit has to be granted to the plaintiff in terms of order 23 Rule 1 CPC. Accordingly, all the petitions are allowed and the impugned orders, all dated 5.2.1997 passed by the learned Additional District Judge, Patiala are set aside. Consequently all the three suits bearing No. 389-T dated 17.10.1992, Suit No. 1477/1993, dated 8.4.1990 and suit No. 725-T/93, dated 4.4.1990, filed by the petitioner/plaintiff before the learned trial Court stand dismissed as withdrawn. The view I have taken finds support also from the judgment of the Supreme Court in the case *Shaik Hussain and Sons v. M.G. Kanvaiah* (5). Since the respondents have chosen not to appear, the plaintiff is not burdened with any costs.

J.S.T.

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- (1) A.I.R. 1968 S.C. 110
 - (2) A.I.R. 1987 Kerala 246
 - (3) A.I.R. 1991 Orissa 215
 - (4) 1996 (2) P.L.R. 321
 - (5) A.I.R. 1981 S.C. 1725