

(A) That a Suit Must Fail by Reason of Some Vs. Pseb and anr.

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Court : Punjab and Haryana

Decided On : Sep-09-2013

Appellant : (A) That a Suit Must Fail by Reason of Some

Respondent : Pseb and anr.

Judgement :

Rs.No.4366 o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
Rs.No.4366 of 2011 Date of decision:

09. 09.2013 Shingara SinghAppellant(s) Versus PSEB &
anr.....Respondent(s) CORAM:- HON'BLE MR.JUSTICE RAKESH KUMAR
GARG * * * Present: Mr.Sandeep Bansal, Advocate for the appellant.

Mr.PPS Thethi, Advocate for the respondents.

Rakesh Kumar Garg, J.(Oral) The appellant's suit for declaration to the effect that he was entitled to the pensionary benefits has been declined by the Courts below on the ground that he has not completed the qualifying service of 20 yeRs.It has been submitted before me that the appellant is entitled to counting of workcharge service rendered by him prior to the date of regularisation.

However, from the pleadings, it is found that no such plea has been pleaded though, it could not be disputed before this Court that in view of the Government

notifications, the appellant may be entitled to the aforesaid benefit.

Faced with this situation, counsel for the appellant states that he may be permitted to withdraw the instant suit itself with liberty to seek an appropriate remedy in accordance with law afresh.

The aforesaid submission has been opposed by the learned counsel appearing on behalf of the respondents.

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2. At this stage, it is useful to refer to the provisions of Order 23 CPC which reads thus: [1.

Withdrawal of suit or abandonment of part of claim.-(1) At any time after, the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,- (a) that a suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a Saini Pushpinder 2013.09.17 16:25 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4366 o

3. fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff- (a) abandons any suit or part of claim under sub-rule(1).or (b) withdraws from a suit or part of a claim without the permission referred to in sub- rule (3).he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule(1).or to withdraw, under sub-rule (3).any suit or part of a claim, without the consent of the other plaintiffs.]..

A perusal of Order 23 Rule 1 Sub Rule 3(b) shows that the Court can allow the plaintiff to institute a fresh suit in respect of the subject matter of a suit if there are sufficient grounds.

In the present case, keeping in view the fact that the appellant is seeking benefit on the basis of Government instructions to allow counting of workcharge service for the purpose of pensionary benefits, this Court is satisfied that there are sufficient grounds for allowing the appellant to seek an appropriate remedy for redressal of his grievances afresh.

Thus, this appeal fails.

However, the appellant is allowed to Saini Pushpinder 2013.09.17 16:25 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.4366 o

4. withdraw the suit itself with liberty to seek an appropriate remedy in accordance with law, afresh.

September 09, 2013 (RAKESH KUMAR GARG) ps JUDGE Saini Pushpinder 2013.09.17 16:25 I attest to the accuracy and integrity of this document High Court Chandigarh

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