124 RSA No.510 of 2020 (O&M)

Sarjeewan Rani Vs. State of Punjab & others

Present: Mr. Prince Goyal, Advocate, for the appellant.

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1. For the reasons recorded hereafter, the Registry is directed not to list any fresh RSA for hearing, the subject matter of which is a service law dispute, with effect from 16.3.2020 without the filing counsel: **(1)** placing on record [at the appropriate place] a brief synopsis of the case with the list of major dates and events; **(2)** the applicable rules of service; **(3)** the specific rule/s involved [with photocopy, if in the opinion of the counsel it is fundamental to the understanding of the issue/s in motion hearing [not regular hearing]; **(4)** attaching a copy of the impugned order/s, with the English translation, if the original is in the vernacular; **(5)** copies of the basic documents they would refer to [copies of the original with translations]; **(6)** the law point/s involved for determination; **(7)** citation of the judgments relied upon, if not the texts, if any, etc. [or at least keep in hand the anticipated documents, adverse orders, precedents handy for production in court at the first hearing in *katcha peshi,* other than (1) to (4) above, [the rest being optional in the opinion of the counsel if it promotes the case in appeal to be kept ready to be handed over in Court, if found necessary or/and is asked for]. It is clarified that appeal must be entertained to save limitation but appeal be not listed for hearing in absence of compliance of these directions by the registry.

[A]. The necessity for such directions in RSA (Service).

2. These directions are aimed for proper and timely assistance of the Court in rapidly coming to grips with the issue/s arising for

determination in a second appeal. This Court should not be taken for granted and be expected to wade through voluminous paper-books and lower court judgments or the testimonies of official witnesses in service law second appeals at the stage of hearing arguments on admission or notice to the respondent/s and to digest them in the brief hearing to produce an order. This Court does not wish to issue notice of motion in utter confusion as the easiest way out. It is the counsel's job to make court understand the case in the fewest words for which he is paid. It is virtually impossible to cull out the issues required to be addressed in a RSA (Service) in the format hitherto adopted in second appeal on a memorandum without a head or tail. Even the prayers in the suit are often not available till the page is pointed out. This wastes a lot of court time. These service law appeals are understood best with the help of counsel throwing up many colours for the court to form an imagery of the case to consider issuing process to the respondents. This is true for both private and State appeals. Concurrent findings and judgments of reversal in service law mean nothing and usually fail to impress as they might do in other litigation on points of fact since a substantial question of law is involved. This is because service law matters are decided on service jurisprudence for which the High Court is best suited to determine. In my personal view the Court can decide a law point in disputes testing administrative decisions on the writ side. The High Court and the Supreme Court alone exercise primary and secondary review of administrative action upholding or impeaching orders, actions and inactions involving infringement of statutory or fundamental rights. The civil court suffers limitations as it cannot sit in appeal or judicial review over administrative orders affecting rights of government servants and is

ill-equipped to unravel such rights by a civil decree. It does not enjoy certiorari or mandamus jurisdiction and contends with permanent and mandatory injunctions. Only the simple infractions can go to civil court for resolution. Moreover, its process is dilatory and real relief can be had only in execution proceedings. Order 21 CPC was not designed for service matters in 1908 as an efficacious remedy. Nor did the 1976 amendment help in this regard. Legal battles fought in the civil courts to establish service rights against the State are a lost cause. If they go to civil courts we must find the shortest cut to a correct decision based on arguments for and against a proposition of law. In service law disputes documentary exhibits in a civil court and Annexures in a writ petition really mean the same thing, except one is protracted dependant on production of formal witnesses to bring in record while the other is in summary affidavit and counter affidavit jurisdiction. They are both meant to achieve the same result which is a fair and impartial decision of a cause.

3. If this system of filing short synopses and list of dates and events etc. is adopted [as it is in writ petitions] it will go a long way in quick disposal of RSAs (Service) which are in effect in the same position as writ petitions (service matters) against the State and its instrumentalities as far as qualitative hearing is concerned.

[B]. <u>The difference between service law and ordinary civil jurisdiction covering law suits</u>.

4. This is also for the reason that service law disputes are altogether different from resolution of civil law disputes, as the former are based on reading of documentary evidence alone which court can take judicial notice of; since their custody lies in government offices and

departments which are brought on record of the trail court through the dealing hand, the author rarely appearing.

5. In adjudicating civil, personal and private law disputes the need arises to lead both oral and documentary evidence [pieced together with depositions of witnesses recorded on sworn testimony] which fall for production and exhibition by adopting mode of proof, relevancy etc. and are then carefully read in the light of issues framed with the evidence for trial return proper findings on disputed questions of fact and law at the final hearing.

6. Whereas service law disputes against administrative action are best and easily understood in the traditional writ petition format under Article 226 followed by this Court. This is because the oral testimonies of witnesses in a service matter cannot be read as proof of contents of the documents, which formal depositions are only to bring them on the judicial file. Statements of producing witnesses are irrelevant in the face of public/documentary evidence and rule based adjudication. All that the trial court is required to ensure is to bring them on record for retention of the authorized copies of the original documents produced by the parties to decide a point of fact or law in issue after a due comparison with the original by court, while returning the original record brought from the defendant offices.

[C]. <u>On the production of official witnesses summoned to produce public documents in a pure service disputes.</u>

7. May it be remembered that the officials summoned to produce a document or record by dealing hands are estopped from deposing in court as to the contents of public documents by the prohibition contained in Section 139 of the Indian Evidence Act, 1872 and

they cannot be cross-examined unless called as a witnesses. Section 139 provides that "*a person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness*". Such person can only tender the relevant record which has been summoned to be exhibited on file to be read in evidence. These exhibits are in the same status and are no more than Annexures in a service law writ petition, which are signed and authenticated by parties or by their advocates presenting the case.

8. For calling an official as a witness in a service dispute, an application would have to be moved by the plaintiff or private defendant, as the case may be, in the trial court explaining the relevance of the document and the purpose of production through an official witness called by the summoning party for the consideration of the court. To repeat, such witness will not be examined or cross-examined by the parties in the sense of witnesses in civil disputes. Such witness cannot be compelled to depose on the contents of official documents of which he may have no personal knowledge, unless the issue requires a particular officer/official to stand witness to explain something, when called as such to prove a point, to explain some special fact or the circumstances in which an order was passed which only he can depose to, if personal to his knowledge. Nor can such witnesses called to produce documents depose on the stand of the State and bind it. This seldom occurs in service litigation in the trial court. For summoning such a witness he must be informed well in advance the purpose for which his attendance is required to prove a disputed fact.

[D]. <u>What may be done through the office of the District Attorney to save time. An area to be explored before the uphill climb to gather evidence before the denouement of the case</u>.

9. The District Attorney and his law officers are always available to get official documents produced by plaintiff/s authenticated from the respective defending departments and when they are acknowledged, they can be taken on record to form part of the judicial file as true and correct. This will obviate production of witnesses to confirm documents from authentic source. This can be adopted in appropriate cases in lieu of procedure of admission and denial of documents to save time. Once the documents are in place the trial court can straightaway afford hearing and pass judgment in a summary proceeding instead of spending years on collection of official evidence and production of witnesses in a service matter. This is unlike civil litigation which has to be run through the elaborate procedure in the Civil Procedure Code. Even the plaintiff as witness cannot change the complexion of a public document or twist it in his favour. Nor can he call a witness to explain them. This holds true of cases in service law which have no disputed question/s of fact. If they are disputed facts, the trial court can identify and separate them from the rest of the issues for separate treatment and call for evidence and proof limited to the scope of such disputed fact and resolve it. The trial court must strictly follow this course of action to save time and energy which may be wasted treating service matters to be dealt with just like other civil disputes.

10. As far as the quality of hearing service law disputes in this court is concerned in both the jurisdictions i.e. writ and second appeal, the distinction between the two is non-existent as the hearing in this Court is

altogether the same only to achieve the same result to declare right based on statutory rule. However, the only difference between the two, it is trite to say, is that in writ jurisdiction disputed questions of fact may not be entertained but in a case where a disputed question of fact is involved and is the issue up for determination in proof of disputed fact and it is not possible to resolve the issue without recording evidence, then the remedy can only lie in the first instance before the civil court. Even there, the inhibitions in Section 139 of the Evidence Act apply. Here the witnesses have to be summoned to depose as witnesses but not as witnesses to prove fact-in-issue. This distinction must be kept in mind by the trial court at all times.

11. Accordingly, apart from insisting upon the party to comply with Order VII Rule 14 CPC, the trial courts are advised in service law disputes based on documents in the custody of the State Governments, its agencies and "other authorities" which are amenable to writ jurisdiction, to ensure that at the commencement of the proceedings and before the issues are framed they should insist upon the parties to first resort to Order XII Rule 2 CPC calling upon them to admit or deny the documents on which the plaintiff sues or relies. When document is admitted, evidently no other evidence is required in proof. This will save much precious time of the civil court spent in blindly summoning official witnesses for an indiscriminate production of record. The trail court can think on its feet and happily wed the provisions of Order XII Rule 2 CPC and/or to achieve the same result refer the documents immediately of presentation of suit in advance after notice to the office of the District Attorney to obtain instructions from the department whether the documents and the pleaded facts in the pliant are true and correct copies

of their originals. No more than a month may be given in this behalf. Any delay would have to be explained on affidavit by the District Attorney and the department. If sufficient cause is not shown to the satisfaction of the court, costs not less than Rs.5000/- should be imposed to be paid by the department first, and then made recoverable from erring officers/officials so that the State exchequer is not burdened for the apathy of its agents. Further delay should saddle double or treble costs on the same terms till result is achieved.

[E]. <u>On field problems faced by the trial court in service matters and collection of evidence and the consequential law's delays</u>.

12. Many of the field problems faced by the trial court is in collection of documentary evidence summoned from Government offices, Boards and Corporations etc. to enable them to mature service law cases for final hearing much of which time and associated problems can be easily solved by strictly activating the provisions of Order XII Rule 2 CPC. They should strictly and sternly deal with the plaintiffs and the defendants in this branch of the law upon exchange of documents and compel them to comply with Order XII Rule 2 CPC at the start of the trial before the issues are framed, failing which their suit shall not be proceeded with. Breach by plaintiff/s should normally result in adjourning the case sine die by a short order to await compliance to restart the trial.

13. The time spent on summoning of officials in attending court proceedings for production of record at Government expense including TA/DA & Diet money, not to speak of repeated adjournment based appearances for one reason or the other, depletes the resources of the trail court. The trial courts may be made conscious of this sheer wastage of time spent on production of documents, relevant and irrelevant, in a

service matter, and for them and to find practical ways on how to ration time which may be misspent perhaps because of initial lack of understanding of the case. The trial court can easily in a service law matter record a gist of its impression of the dispute at the first appearance and crystallize it for future reference at the stage of reply and refine the gist and seek the help of counsel or the plaintiff and the defendant in framing issues by supplying their versions in the proposed issues of the real controversy between the parties. It is the duty of the court to fame issues. However, both the proposed issues and the gist prepared by the trial court should be retained on record for appeals.

[F]. Striking off defence at premature stage in service matter is of little help to plaintiff or the State because it may frustrate a proper judgment.

14. It serves no purpose to strike off the defence of the State/department unless judgment can be pronounced immediately on the basis of documents on record. Even in a case where the defence is struck off, the trial court has yet to deal with the rules of service and the public documents produced by the plaintiff on which he sues or relies and render judgment which will be difficult without the help of the written statement of the State. Trial Court can always call upon the District Attorney to assist him/her on law and on the effect of the facts pleaded in the plaint and the documents on record whether a case is made out, in case it requires any assistance or feels necessary to do so, in its discretion depending on the complexity of the case. There is a vast difference between striking off defence in a service matter and in civil disputes which latter are mostly fact based adjudications upon proof of facts. The

repercussions of both the types of litigation are also vastly different with different results. The two should not be mixed up.

[G]. Complications where service law suits have rippling effect on third party rights in other districts of employees working in the same department in scattered offices in more than one Sessions Division - The Pitfalls.

15. In my view litigants should be discouraged from filing civil suits involving purely service law disputes which can mostly be resolved within a hearing or two on the writ side [when disputed questions of fact are not involved] but cases which take years for their outcome in the civil courts in a litigation which involves first and second appeal. The place for determination of service disputes especially involving seniority, appointments, promotions, reversions, disciplinary action, punishments, dismissals, termination, regularization of service and so on and so forth to avoid inter district conflict of decisions of suits in different sessions divisions, with State wide ramifications, is here in the High Court.

16. This may, however, not be true if the right to sue and cause of action and the entire record is localized to a district and defendant is through the Collector and third party rights are not involved which spill into other districts of the State, the battle can be fought on home turf in a forum convenient to plaintiff exercising territorial jurisdiction over the subject matter. But if it is not so, and the trial court senses any extra territorial impact of the judgment that may be passed by him or her, he/she can discourage such litigation at the outset by calling for a report from the District Attorney in consultation with the head of department. If the report is positive, court may terminate the proceedings on the ground that they have inter district impact on the rights of third party government

servants likely o be effected. This would be a sound exercise of jurisdiction for the lack of it as no court can or should pass an order which has an effect larger than its territory. Party can always be granted liberty in such a case to approach the High Court with the benefit of exemption under section 14 of the Limitation Act, 1963 of time spent in prosecuting the civil remedy although it had the jurisdiction but there was a more constructive and binding authority of the High Court across the State of origin of the cause of action.

17. This would also leave more time to the trial courts to decide ordinary civil disputes involving private and public law disputes under which burden it is reeling and which forms the bulk of the litigation in the district courts, which we all are unable to cope with by the present standards of institutional mechanisms, though considerable work is going on to help in the future. How this is to be achieved is firstly by legislation which is beyond the province of the Court but yet matters set out above may deserve to be examined, even though the questions have no easy cut and dry answers without data collection from the District Courts of service law disputes across the two States and a Union Territory and the time consumed by them to do an impact study, to see if any positive result can be achieved through the aegis of the High Court Rules and Orders. At least the methodology of determination of service law disputes in the district courts should be made summary but compliant of the principles of natural justice, equity and good conscience and yet not to be dealt with like ordinary civil cases hide bound by the procedure in the Code. Administrative and service law disputes have an altogether different dimension as it is based largely on constitutional law principles rooted in

public law, statutory rules of service, executive instructions and State policy.

[H]. <u>The view taken on the subject matter in RSA 4490 of 2010 titled "Sunita Chopra v. State of Haryana" decided on 20.4.2015.</u>

18. In this appeal almost 5 years ago I was confronted with the law's delays in service disputes, which more often than not, create huge complications in fashioning relief to be granted after years of litigation in the civil courts. I then believed, as I do more firmly now, that steps are required to be holistically taken to reform the manner in which such disputes should be handled and put to an end as early as possible by the shortest lawful cut, observing:-

> *"Before parting, I would like to say that service matters when filed in district courts waste too much time and energy of civil courts which could be better spent to discharge their classic role in settling pure civil disputes. Service matters filed against the State involve pubic documents available on Government records which are unnecessarily put through the mill of production of documents by summoning witnesses who are mostly dealing hands mostly ill-equipped to answer questions in uncontrolled cross-examination on issues involving statutory rules, instructions and service law principles which should be best left to the writ jurisdiction to handle which is the more efficacious and speedier remedy. Look at this; it has taken a toll of 12 years in the civil courts on an issue to come finally in second appeal which case could have been easily cracked in a few hearings in the High Court even though the civil court is not without jurisdiction to decide. Though justice cannot be rationed in the words of Judge Learned Hand, but time spent in dispensing justice can be. Civil courts ought not to be compelled*

> *under section 9 of the Code of Civil Procedure, 1908 to decide service law disputes with the time differential consumed being totally disproportionate to the ends served or sought to be achieved by litigation. This path detracts from the pressing main line jurisdiction already overworked, with lakhs of litigants waiting in the queue, in case where the civil court cannot be replaced by any other mode of dispute settlement. We should not see this as an increase in work of the High Court. All this requires rethinking on devising ways and means to reduce the work of the civil court even if it means increase in the workload of the constitutional courts, which in any case never shy from shouldering greater judicial responsibility. Civil courts were never designed to meet the demands of the Constitution of India and its principles in service law matters. Frankly, I would rather have decided this matter in writ jurisdiction than within the shackles of section 100 of the Code and still can set about to do so by overlapping jurisdiction, which all may agree, can be tad embarrassing when the scope of the two jurisdictions is explored, read and understood. The judicial mind is seamless in its stream of consciousness while applying legal principles to a case and it is very hard to divide it in compartments, switching from one to the other and back and forth, just as in this appeal, in search of the just, juster and justest order."*

[I]. <u>Re: the present RSA (Service).</u>

19. To begin with, and to turn to Mr. Goyal for the plaintiff, the unsuccessful appellant in this case, the case is adjourned because I could make nothing of it at the hearing. Therefore, he is required to prepare a cogent well thought out synopsis of the crux of the matter accompanied with a list of relevant dates and events and to do other things indicated

above and present his work in the format that is applicable to writ petitions in service law to help me quickly understand his case to see whether it is fit to put the respondents to notice.

[J]. <u>Final suggestion/s on the possible way forward.</u>

20. To reemphasize, Civil Writ Petitions and RSAs (Service) stand virtually on the same footing as far as quality of hearing arguments of lawyers is concerned. The only difference being that the aggrieved person can avail one of the two remedies as law provides him the liberty to prefer one over the other, maybe because he can opt to elect a forum convenient to him in the district for settling his dispute. No law stops him to take recourse to either of them. Nor can the court, except to discourage such civil suits in certain causes as adumbrated in the preceding paragraphs.

21. Toward achieving that end, these suggestions based on varied experience are only constructive in nature on how the civil court should proceed with a service law case treating it differently from other civil work because the two cannot be compared. The time saved can be better utilized by the civil courts in their main line duties in resolution of civil disputes. It is therefore recommend that service law disputes in civil courts for their rapid resolution deserve to be made affidavit-based [like in writ jurisdiction in which admission and denial of documents is inbuilt] with summary powers invested in the civil courts to deal with such cases otherwise they will drag on for years in routine till they are in first and second appeal with the prospect of the litigation reaching the Supreme Court. Accordingly, necessary and consequential amendments to the High Court Rules and Orders [CPC] ought to be contemplated in this regard by the High Court without delay to salvage the cargo from loss at sea.

22. List again on 13.03.2020.

23. A copy of this order be placed before the learned Registrar General, the Registrar (Rules) and the Registrar (Judicial) for consideration on the administrative side of steps which may be required to be taken for the trial courts in service law disputes presented before them, and if the steps are found worth carrying forward by the High Court for the avowed purpose of speedier disposal of such cases, the learned District & Sessions Judges may be informed by circulation for compliance, if the proposals are found to be suitable, feasible and pragmatic.

24. Let a copy of this order be handed over to the Secretary, Bar Council of Punjab and Haryana for circulation amongst various Bar bodies to apprise them about the steps suggested so that difficulty is not faced by Advocates in filing of such matters before this Court and what service matters may not go to civil courts. The Bar Council being the statutory authority may also undertake a sensitization and awareness drive within the territory of this Court for spreading the import of this order, and if they have any constructive comments to offer. A copy be also sent to the Law Commission of India, New Delhi for its consideration in legal reforms.

06.02.2020 [RAJIV NARAIN RAINA]
Vimal JUDGE