

RSA-413-2002 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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RSA-413-2002 (O&M)

Date of Decision : 01.10.2024

HVPN Ltd.

....Appellant

Versus

G.L. Sharma

....Respondent

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Arvind Seth, Advocate
for the appellant.

Mr.Ravinder Jain, Advocate
for the respondent.

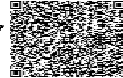
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SUDEEPTI SHARMA, J.

1. The present appeal is filed against the judgment and decree dated 31.07.1998 passed by the learned Civil Judge (Senior Division), Kurukshetra and also against the judgment and decree dated 29.08.2001 passed by the learned Appellate Court whereby the appeal preferred by the appellant/defendant against the judgment and decree dated 31.07.1998 was dismissed.

2. Brief facts of the case as mentioned before the Civil Judge (Senior Division), Kurukshetra in suit for declaration are that suit was instituted by G.L.Sharma, J.E. against Haryana State Electricity Board (hereinafter called as HSEB) through its Secretary and others for decree of declaration to the effect that show-cause notice dated 23.4.1990 and office order dated 27.11 1992 are partly illegal, null and void and not binding on the plaintiff and that the suspension period of plaintiff is duty period for all intents and purposes and plaintiff is entitled for the entire pay and allowances of the suspension period from the defendants with consequential relief of mandatory injunction directing the defendants to release all

the pensionary benefits alongwith interest @ 18% per annum to the plaintiff.



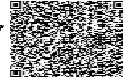
3. Plaintiff's case, in brief, was that he was permanent employee of HSEB and the work and conduct of plaintiff was satisfactory through-out his service. There have never been adverse entries in the ACRs of plaintiff. Plaintiff was issued charge-sheets No. 19 dated 28.11.1983, No. CH50/LS-523 dated 28.2.86, No.55 dated 11.8.86 and No. CH95 dated 9.3.1990 vide which several false and frivolous allegations were levelled against him and plaintiff had submitted his replies to the said charges well in time. It is pleaded that plaintiff was placed under suspension since December, 1984 and subsistence allowance has not been paid to him for suspension period and he has not been re-instated so far. Defendants have relieved the plaintiff from service vide letter No. 20.4.90 and against that order plaintiff has made representation for the liquidation of the dues of the period of undue suspension and pensionary benefits. However, defendants without going through the replies of plaintiff issued show-cause notice dated 23.4.1990 alleging frivolous charges and have tentatively decided to impose 10% cut in the pension of plaintiff, to recover the cost of 20 liters of transformer oil and to treat the suspension period of plaintiff w.e.f. 13.12.1984 till the date of retirement as non-duty period for all intents and purposes.

4. It is further pleaded that defendants have passed illegal order dated 27.11.1992 vide which defendants imposed recovery of costs of 20 liters of transformer oil and the services of plaintiff have been censured and suspension period of plaintiff w.e.f. 13.12.1984 to 23.4.1990 has been regularised as leave of the kind due and remaining charges of show-cause notice have been dropped. It is pleaded that impugned order is partly illegal and liable to be set aside as the suspension period of plaintiff is to be treated as duty period and plaintiff is entitled for pay and allowances of the entire suspension period and further defendants are not entitled to recover the cost of 20 liters of transformer oil from the plaintiff.



Plaintiff was not retired by the competent authority by making proper order of reinstatement and the defendants have shown the plaintiff as retired in the subject of show-cause notice without giving any date of retirement whereas Executive Engineer, City Division, Panipat in his letter dated 25.4.1990 has shown the plaintiff under suspension. It is further pleaded that despite several representations, defendants have failed to consider the case of plaintiff. When the innocence of the plaintiff is very much proved, he is not at all at fault as defendants have not passed any speaking order with reasons. Since defendants have failed to admit the claim of plaintiff, this suit was instituted.

5. Upon notice, the appellant-defendant appeared and submitted that the plaintiff was charge-sheeted on 28.11.1984, 22.2.1986, 11.8.1986 and on 9.3.1990 and the said charge-sheets were based upon concrete and substantial proofs against the plaintiff. It is averred that plaintiff remained under suspension since December, 1984 and the subsistence allowance was being paid to him as per rules. Plaintiff could not be reinstated because he did not file reply to the two charge sheets and enquiry too could not be completed due to lapse on the part of the plaintiff. Plaintiff retired on 20.4.1990, whereas, he should have been relieved on 31.10.1989 on attaining the age of superannuation i.e. 58 years but due to inadvertence, he continued in service till 20.4.1990. It is further submitted that plaintiff was relieved on 23.04.1990 in compliance of letter No.30/EP/4196 dated 20.4.1990. Plaintiff made no representation at all and if any same could not be decided in the absence of reply to the charge-sheet. It was denied that bogus and frivolous charges were levelled in the show-cause notice dated 23.4.1990. Defendants had proposed in the show-cause notice that tentatively 10% cut or reduction should be made in the pension of the plaintiff. Lateron, after having thorough enquiry and taking lenient view, 10% cut has been waived and recovery



of cost of 20 liters transformer oil has been ordered to be effected from the plaintiff. Plaintiff has been given concession by way of treating his suspension period as leave of the kind due to him. Lawful order was passed on 27.11.1992 while taking lenient view on account of retirement of the plaintiff. It is denied that suspension period of plaintiff has to be treated as duty period. It is further averred that plaintiff did not fulfill the requirement of submitting pension forms etc. nor he submitted any forms, documents for sanction of pension etc. Defendants are ready to pay all the benefits to which the plaintiff found to be entitled as per rules subject to submission of documents. Therefore, defendants are not at all responsible for the delay, rather, the plaintiff himself is at fault. In such like facts, defendants have categorically denied the claim of plaintiff and prayed for dismissal of suit with costs.

6. From the pleading of the parties, the following issues were framed:-

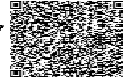
“1. Whether the charge-sheets dated 28.11.83, 28.2.86, 11.8.86 and 9.3.90 are illegal and void on the grounds mentioned in the plaint, if so to what effect?OPP.

1-A. Whether order dated 27.11.1992 whereby suspension period of plaintiff has been treated as leave of kind due and recovery of price of 20 liter oil was ordered and 10% deduction in the pension has been imposed is null and void and not binding on the plaintiff, if so to what effect?OPP

2. Whether the show-cause notice dated 23.4.1990 is illegal and void, if so to what effect?OPP

3. Whether the suit of the plaintiff is not maintainable in the present form?OPD

4. Whether the suit is barred by time?OPD



5. *Whether the Civil Court has got no jurisdiction to entertain and try this suit? OPD*
6. *Whether no notice as required under the Haryana State Electricity Board Act was served upon the defendants? OPD.*
7. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.*
8. *Whether the plaintiff has no cause of action? OPD*
9. *Whether the defendants are entitled to special costs u/s 35A CPC? OPD.*
10. *Relief.”*

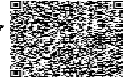
7. After hearing both the parties and perusing the whole record, the learned Civil Judge (Senior Division), Kurukshetra partly allowed the suit by holding that there was a delay on the part of the defendant-appellant in releasing the payment of retiral dues to the plaintiff-respondent and, therefore, the plaintiff-respondent was held entitled to all the retiral dues and arrears of salary along with interest @ 18 % per annum from the date of retiral dues/arrears of salary accrued till the date of actual payment.

8. The appeal filed by the appellant before the First Appellate Court was dismissed. Hence, appellant filed the present appeal.

SUBMISSION OF COUNSEL FOR THE PARTIES

9. Learned counsel for the appellant contends that both the Courts below have passed the impugned judgment and decree without appreciation of facts/evidence on record. He further contends that the interest at the rate of 18% per annum is also on the higher side.

10. Per contra, learned counsel for the respondent contends that there are concurrent finding against the appellant and the suit for declaration filed by the



plaintiff-respondent has rightly been decreed and the appeal filed by the appellant before the First Appellate Court has rightly been dismissed. He further contends that since there are concurrent finding against the appellant, therefore, the present appeal is liable to be dismissed.

11. I have heard learned counsel for the parties and perused the whole record of the case.

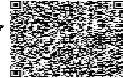
12. Relevant portion of the judgment passed by the First Appellate Court is reproduced as under:-

“9. I have heard Shri A.S.Pabla, Advocate, for the appellants in first appeal no. 145 of 1998 and for the respondents in second appeal no. 126 of 1998/51 of 1999, and Sh. R.P. Kaushik, Advocate for the appellant in second Appeal no. 126 of 1998 (51 of 1999) and for the respondents in first appeal No. 145 of 1998, at sufficient length and have gone through the file carefully.

10. Shri A.S.Pabla, learned counsel for H.V.P.N. Ltd., etc. has challenged the impugned judgment and decree dated 31.7.1998 on the ground that the findings of the learned trial court on issues No.3 to 10 are against the law, facts and evidence proved on the file, and are liable to be set-aside because the learned trial Court had is wrongly decided issue No.4 being not pressed, whereas the appellants HSEB had strongly contested this issue and had pleaded that the suit was barred by time. Further, the plaintiff was not entitled for interest on the delayed payment of retrial dues and as such the findings of the learned trial court on Issue No.3 are totally



erroneous. The plaintiff was estopped by his own act and conduct from tiling the present suit as the plaintiff was charge-sheeted on 28.11.1983, 28.2.1986, 11.8.86 and 9.3.1990 plaintiff filed reply to the charge-sheets 11.8.1986 and 9.3.1990 and as such the case and the dated was considered ex-parte on the basis of the record by the competent authority. Thereafter show-cause notice dated 23.4.1998 was served upon the plaintiff and reply of the plaintiff was also considered. After considering the reply of the plaintiff, the charge-sheets dated 28.11.1983 and 11.8.1986 were dropped and a recovery of 20 Litres of Transformer oil, as per charge-sheet No. 50/LS-523 dated 28.2.1996, as per rules, was ordered to be recovered from the plaintiff from his pending on account of the plaintiff being held responsible shortage of 20 litres of Transformer oil. Similarly with respect to charge-sheet dated 9.3.1990 also the plaintiff did not file satisfactory reply and consequently his services were censured because on the basis of the record it was proved that the plaitniff had demanded illegal gratification from one Hazara Singh for showing undue favour to him, and therefore, the suspension period of the plaintiff from 13.12.1984 to 23.4.1990, till date of retirement, was regularised as leave of kind due. Learned counsel further argued that the plaintiff has no cause of action to file the present suit as the plaintiff has been legally punished after affording due opportunity. The findings of the learned trial court on issues No.1 and 2 have been admitted as correct. Thus, learned counsel for HVPN Ltd.



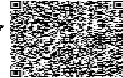
etc. has submitted that in such circumstances the suit of the plaintiff was liable to be dismissed with costs.

11. On the other hand, Shri R.P.Kaushik, Advocate for plaintiff Sh. G.L.Sharma has argued that the learned. trial Court while deciding issues No.1 and 1-A did not allow the suspension period from 13.12.1984 to 23.4.1990 as 'duty period' and also did not allow the salary of the said period to the plaintiff with interest and also did not declare the impugned order dated 27.11.1992 as illegal, null and void and bad in law. Similarly, the learned trial Court had wrongly imposed the recovery of 20 litres of Transformer oil from the pending dues of the plaintiff, which punishment is also illegal and without any basis. Thus, the learned trial Court had committed illegality and material irregularity while deciding the case and not allowing the claim of the plaintiff and thus has given its findings in utter disregard of the settled principle of law and justice. It was thus argued that the impugned judgment and decree dated 31.7.1998 be set aside to the above extent.

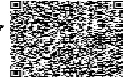
12. I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties and have gone through the relevant record produced by both the parties. Charge-sheet dated 28.2.1986 is Ex.P1, vide which penalty for the recovery of price of 20 litres of Transformer oil was imposed upon the plaintiff, statement of allegations is Ex.P2, reply of charge-sheet dated 28.2.1986 is Ex.P3. Charge- sheet dated 9.3.1990 is Ex.P4, statement of charge is Ex.P5, list of



allegations is Ex. P6, charge-sheet dated 11.8.1986 is Ex.P7, statement of charge summar of allegations is Ex.PB, show-cause notice is Ex.P9, reply of show cause notice is Ex.P10, application is Ex. P11, office order No.146 dated 27.11.1992 is Ex.P12. All these documents have been placed on record by the plaintiff G.L.Sharma, on the other hand, HVPN Ltd. etc. have place reliance upon the documents: letter regularisation of suspension period of Ex.D9, reply of the plaintiff as Ex.D10, letter dated 18.6.1995 as Ex.D11, letter dated 31.8.1995 as Ex.D12, show cause notice as Ex.D13, letter of payment, as Ex.D14, Office order dated 27.11.1992 as Ex.D-15, Order of retirement dated 23.4.1990 as Ex.D18, and letter of 13.10.1998 for N.D.C. from all divisions as Ex.D19. In Ex.D-15, the office order dated 27.11.1992 it is stated that charge against the plaintiff has been proved and he was held responsible for shortage of 20 litres of Transformer oil which is to be recovered from his pending dues. How in what manner the order for recovery of the price of 20 litres of Transformer oil has been passed, has not been explained, as it is stated by DW-1 R.S. Sardana in his examination-in-chief that two damaged Transformers which were in charge of G.L.Sharma were not handed over to anybody when G.L.Sharma was retired and both these transformers bearing no. 2825 DKT-100 KVA and 1833/57-S.C.E.-25-KVA were got deposited by him along with other transformers in Divisional Store, karnal, and both these transformers were found containing less 10 litres oil each,



which is clear from the stock measurement book, Ex.02. A copy stock of the measurement book has been placed on record. But in cross-examination he admitted that he along with the plaintiff remained posted in the year 1984 and thereafter the plaintiff was suspended. He further admitted that he did not know many transformers were in the charge of the plaintiff in the year 1984 but the transformers lying in the complex were deposited by him in the store of H.S.E.B. Karnal, on 27.3.1985, and this fact has been mentioned in Exs.D1 and D2. He further stated that on those transformers it was not written that they were under the control of the plaintiff and he was also not in possession of the record on the basis of which he could state that these damaged transformers were indeed in possession of the plaintiff. He also did not know when transformers, mentioned in Exs. D1 and D2, were installed and when they were removed from the site and sent to H.S.E.B. complex. He admitted that, as per rules, transformer maintenance register is kept which is in possession of the J.E. and after every six month an entry is made in the register and two bottles of oil is taken out from the transformer as sample just to know whether the transformer was working properly or not. If as a result of testing the working of transformer is less than 40 K.V. per minute, then oil of the transformer after heating is put back in the transformer and efficiency in oil of transformer is made good by putting extra oil upto the requisite level and extra oil put in the transformer is entered in the transformer

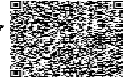


maintenance register. He further admitted that he had not brought the Transformer Maintenance Register in the court and he also did not take into charge the Transformer Maintenance Register while taking charge of the plaintiff. He further admitted that when two bottles of oil are taken from the transformer as sample, some of the oil also falls on the ground and some of the oil is also wasted on that account as well as some oil were consumed on account of burning and about 2% of the oil used to evaporate during one year. He further admitted that he did not know whether any show cause notice was given to the plaintiff for treating his Suspension period as leave of any kind due.

13. Thus from the statement of DWI R.S.Sardan,. it is clear that the department was duty bound to produce the record pertaining to transformers bearing No. 2825-DKT-100 KVA and 1833/57/S.C.E.25 KVA to prove that they were under the charge and control of the plaintiff when the oil was found short and the Department was also duty bound to produce transformer maintenance register to establish that shortage of the oil in the transformers had occurred during the period they remained under the control and supervision of the plaintiff. These facts have neither been mentioned in the office order Ex.D15 nor in the statement of allegations, Ex.P2. Thus, in my opinion, the department had imposed the penalty of recovery of the price of 20 litres of transformer ail from the plaitniff without any basis. Similarly, the allegations mentioned in the



charge-sheet No. 95 dated 9.3.1990 that the plaintiff had demanded Rs. 1000/- as illegal gratification for the release of connection as L.T. from of one Hazara Singh, resident of village Rajpur and threatened in case demanded money was not paid his case would be converted into H.T. had also not been established by the department by leading cogent and convencing evidence as in the charge sheet it is no where mentioned when and where and on which date this demand was made by the plaintiff from Hazara Singh. Moreover, this charge-sheet was issued to the plaintiff on 9.3.1990 i.e. at the time of retirement, although as per date of birth of the plaintiff, the plaintiff was supposed to retire on 30.10.1989 but he continued in Service upto 23.4.1990 on account of sleekness and carelessness on the part of the department as he remained suspended w.e.f. 13.12.1984 to 31.10.1989. Thus, this allegation has also not been established by the department and censuring of the plaintiff believing this allegation to be true without showing the record and necessary documents to the plaintiff clearly shows that this charge-sheet was served upon the plaintiff on 23.4.1990 when he had been retired and admittedly no charge-sheet could be served upon retired employee. On the face of it, it seems to be a cooked up a fabricated story by the department just to cover the period of suspension because other two charge-sheets dated 28.11.1983 and 11.8.1986 were dropped by the department.



14. *Thus, from the above discussion, it is clear that there was no charge-sheet, worth the name, against the plaintiff and he remained suspended for about six years and his dues were withheld by the department and 10% of out of his pension was ordered for recovery of furnace oil, without conducting any proper enquiry.*

19. *The learned trial Court has awarded interest at the rate of 18% per annum on the retrial benefits which has been withheld by the department. I also do not find any illegality in the impugned judgment passed by the learned trial Court”*

CONCLUSION:-

13. A perusal of the above referred to reproduction of the impugned judgment shows that it is a well reasoned and speaking, which does not require any interference by this Court.

14. So far as interest part is concerned, the present appeal is partly allowed to the extent of reducing the interest at the rate of 09% from 18%. The appellants are, therefore, directed to pay the interest at the rate of 9% p.a. from the date of decision of the present appeal. It is made clear that the interest at the rate of 18%, if already paid to the respondent, till the decision of the appeal, shall not be recovered from the respondent.

15. Decree-sheet be drawn accordingly.

16. Pending application(s), if any, also stand disposed of.

October 01, 2024
A.Kaundal

(SUDEEPTI SHARMA)
JUDGE