

RSA-214-2001 (O&M)

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

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**RSA-214-2001 (O&M)
Date of Decision : 22.10.2024**

Avtar Singh

....Appellant

VERSUS

Punjab State Electricity Board and Others

....Respondent

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. R.S.Bajaj, Advocate and
Mr. Sachin Kalia, Advocate for the appellant.

Mr. Mainderjit Singh Bedi, Advocate
for respondent Nos. 1 to 4.

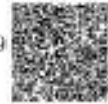
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SUDEEPTI SHARMA, J (Oral).

The present appeal is preferred against the judgment and decree dated 27.07.2000 passed by the learned Additional District Judge, Hoshiarpur, whereby the appeal filed by the respondents against the judgment and decree dated 02.02.1999 passed by the learned Civil Judge (Sr. Divn.), Hoshiarpur, is allowed.

BRIEF FACTS

2. The brief facts of the present case as stated in the civil suit are that the appellant was appointed as Lineman in the Punjab State Electricity Board with effect from 25.08.1986 and the appellant has since then performed his duties to the entire satisfaction of his officers. At the time of his appointment, he was placed in the grade of Rs.1200-2300/- and till the date of his termination, he was being paid

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Rs.1200/- p.m as basic pay plus other allowance admissible to an employee as no annual increment was given to him during his entire service period.

It is alleged that the appellant was served with a charge sheet No.13796/E.P dated 11.05.2003 levelling certain false and fabricated charges against him. The appellant filed his explanation/reply thereto on 15.09.1993. It is alleged that the said charge sheet was not accompanied by a copy of preliminary report or the list of documents or the list of witnesses. Respondent No.2 was appointed as Enquiry Officer in a mechanical manner without applying the mind. The Enquiry Officer imparted his personal knowledge and acting upon the report of Flying Squade of the Board dated 21.10.1986 held the appellant guilty of the charges against him without giving due weightage to the explanation furnished by the plaintiff in reply to the charge sheet. The Enquiry Officer recorded the statements of two PWs in the presence of the plaintiff but the appellant was not allowed to cross-examine them and the names of witnesses were also not disclosed to the appellant. Vide impugned order No.371/T-366 dated 28.06.1996 services of the appellant were terminated which termination of the services of the appellant has been challenged by the appellant in his suit as illegal, wrong ultravires without jurisdiction etc. etc. The grounds for setting aside of the impugned order inter-alia are that the charge-sheet supplied to him was vague and indefinite. The reply thereto by the appellant was not considered. Enquiry was not held in accordance with the rules and the appellant was denied the help of a legal practitioner or atleast by a co-employee to assist him during the course of enquiry.

3. Upon notice, the respondents appeared and filed written statement wherein they contended that the appellant had no locus-standi to file the suit nor the suit filed by him is maintainable. On merits they admitted that the appellant

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was posted as lineman on 25.08.1986. They, however, contended that the appellant got appointment in the Punjab State Electricity Board by playing fraud. Further that his pay-scale was Rs.450-800, which was later revised as Rs.1200-1800. Further contention of the respondents was that the posts of Lineman were advertised and the appellant applied for the same. Alongwith his application, the appellant submitted a certificate of experience for the period 30.08.1980 to 21.4.1982 which purported to have been issued by SDO (RE) Sub Division Sultanpur Lodhi. At that time, a few other persons also applied for the posts. They also produced experience certificate alongwith their application. Later the Appointment Committee came to know that some of the applicants had produced some bogus and forged certificates alongwith their applications to the Punjab State Electricity Board and therefore, the Selection Committee referred the matter to the Vigilance Department of Punjab State Electricity Board. The Vigilance Department held an enquiry in the matter and found that the experience certificate, on the basis of which the appellant got appointment, was forged and fabricated document. A similar report was submitted by the Vigilance Department against some other applicants also. Consequently, the respondent issued charge-sheet to the appellant on 11.05.1993 and the appellant filed its reply on 15.9.1993. An Enquiry Officer was appointed on 03.02.1994, who submitted his report to the competent authority. As per his report the certificate on the basis of which the appellant got appointment was forged and fabricated one and had never been issued by the authority the certificate shows. The competent authority issued show cause notice to the appellant and then issued a reminder also which was duly received by the appellant but the appellant did not give any reply to the same and consequently the services of the appellant were rightly terminated by the



competent authority vide impugned order dated 28.6.1996. Thus contending that the appellant has been terminated from the services after adopting the procedure, the respondents prayed for dismissal of the suit.

4. In the replication, the appellant controverted the pleas taken by the respondents in their written statement and reiterated those contained in the plaint.

5. From the pleadings of the parties, the following issues were framed by the learned Trial Court:-

1. Whether the impugned order dated 28.6.96 passed by respondent No.2 is illegal, null and void and against the principles of natural justice as alleged? OPP

2. Whether the plaintiff is entitled to the declaration prayed for? OPP

3. Whether the plaintiff has got no locus-standi to file the suit ? OPD.

4. Relief.

6. After hearing both the parties and considering the whole record, the learned Civil Judge (Sr. Division), Hoshiarpur, vide its judgment and decree dated 02.02.1999, decreed the suit in favour of the appellant on the ground that justice was not done to the appellant by not supplying him a copy of enquiry report and his services were wrongly terminated by the respondents without adopting the procedure prescribed for imposition of major penalty.

7. The respondents filed appeal against the judgment and decree dated 02.02.1999. The learned First Appellate Court accepted the appeal of the respondents vide its judgment and decree dated 27.07.2000 and set aside the

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judgment and decree dated 02.02.1999 by the Civil Judge (Sr. Division), Hoshiarpur.

8. Hence the present appeal.

SUBMISSION OF THE LEARNED COUNSEL FOR THE PARTIES

9. Learned counsel for the appellant contends that the judgment and decree dated 27.07.2000 passed by the learned Additional District Judge, Hoshiarpur is against law and facts and the same is liable to be set aside. He further contends that the learned Additional District Judge has wrongly reversed the judgment and decree dated 02.02.1999. Therefore, he prays that the present appeal be allowed and the judgment and decree dated 27.07.2000 passed by the learned First Appellate Court be set aside.

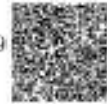
10. *Per contra* learned counsel for the State argued on the lines of the judgment and decree dated 27.07.2000 passed by the learned Additional District Judge, Hoshiarpur and prayed for the dismissal of present appeal.

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

12. Relevant portion of the judgment dated 27.07.2000 passed by the learned Additional District Judge, Hoshiarpur is reproduced as under:-

“11. I have given anxious consideration to the arguments advanced by the learned counsel for appellants and find merit in it. A perusal of the file shows that the learned trial Court decreed the suit of plaintiff/respondent mainly on following three grounds :-

a) Plaintiff/respondent was not made available copy of the enquiry report submitted by the Vigilance Department against him and other employees.



- b) *Appellants/defendants failed to prove if the experience certificate produced at the time of selection was fake and bogus.*
- c) *Plaintiff/respondent was not given reasonable opportunity to defend himself.*

12. *The first point for appreciation before me is if the report of the Vigilance Department was not supplied to the plaintiff/respondent. What is its effect? A perusal of the file shows that the plaintiff/respondent was served with charge-sheet Ex.P-1 and he made a request to the department to inspect the entire record and he was allowed to inspect the record and he also inspected the report of the Vigilance Department alongwith other record and to that effect, he gave receipt to the Enquiry Officer and that receipt is at page No.26 (re-numbered as page 217) in the enquiry file Ex.D-1. From this fact, it is clear that the plaintiff/respondent was made available the report of Vigilance Department and he had gone through that report. It is important to note that Vigilance Commission's function is purely advisory in nature. It is not an Appellate Authority or the disciplinary authority and its views are not mandatory in nature. In that case, even if report of Vigilance Department was not supplied to the employer, it cannot vitiate the enquiry in any manner. In case titled "State Bank of India Vs. HK Dogra 1995(2) PLR Page-698", it was observed that Vigilance Commission's function is purely advisory. It is not an appellate authority over the enquiry officer or the disciplinary authority and its views are not mandatory but are*



merely advisory in nature. One line approval of Vigilance Commission not supplied-effect-Does not amount to violation of principles of natural justice denying the respondent right to fair defence before disciplinary authority. Similarly, in case "1998(3) PLR-669, VK Verma Vs. The Hindustan Machine Tools Limited, Pinjore and another", it was observed that if enquiry was conducted under the standing orders applicable to the petitioner, did not provide for the furnishing of copy of enquiry report... Principles of natural justice not violated.

13. In the instant case, enquiry was conducted under the standing order and if enquiry report of Vigilance Department is not supplied to the employer, the principles of natural justice are not violated. In such circumstances, I do not agree with the findings of the trial court on this point.

14. The second point for appreciation before me is if experience certificate which was produced at the time of selection of the plaintiff/respondent was found to be fake and bogus, is not proved in evidence before the Enquiry Officer or even in the Court. The Punjab State Electricity Board published the post of lineman and it was required from every candidate to submit experience certificate alongwith the application. Plaintiff/respondent applied to the appellant board for the post of lineman and he also produced a certificate of experience for the period from 30.8.1980 to 21.4.1982 issued by the SDO (RE) Sub-Division Sultanpur Lodhi. When the Appointment Committee came to know that some of the candidates



produced bogus certificates, then the matter was referred to the Vigilance Department of Punjab State Electricity Board and the Vigilance Department submitted its report which is at page No.30 (re-numbered as page No.177) in the enquiry file Ex. D-1 and the Vigilance Department found that certificates of some applicants are genuine and that of some of applicants including plaintiff are bogus and they sent report to the competent authority. On receipt of the report of the Vigilance Department, enquiry officer was appointed and charge-sheet was given to the plaintiff/respondent. Notices were issued to the plaintiff to join the enquiry. He even joined the enquiry and inspected the record. Witnesses were also examined in the presence of plaintiff/respondent. A certificate was also taken by the enquiry officer regarding the experience certificate which was attached with the application, from the concerned officer of PSEB, and he certified that the experience certificate attached with the application for appointment of Avtar Singh son of Malook Singh for the period 30.8.1980 to 21.4.1982 is bogus and was never signed by the SDO and the initials and signature on the certificate are bogus at page No.25 (re-numbered as 219). Shri VK Gupta, learned counsel for appellants/defendants has also brought to my notice that in the year 1982 there was no division of SDO/RES/Dn. PSEB at Sultanpur Lodhi, so there is no question of issuing any certificate by that officer from Sultanpur Lodhi. At that time SDO/RES was at Batala. When cornered in this regard, learned counsel for plaintiff/respondent was not able to contradict the same. When there was no division of



SDO/RES at Sultanpur Lodhi at the relevant time, then there is no question of examining the officer who issued it. A perusal of report of enquiry officer shows that he examined six witnesses in this respect and he came to the conclusion that experience certificate attached with the application for appointment by the plaintiff/respondent is bogus. It is well settled law that Civil Court cannot re-open the evidence led before the Enquiry Officer and cannot sit as appellate court about the findings of the enquiry officer. In case 1985(1) PLJ-203 State of Haryana Versus Raghbir Singh", it was held that the Civil Court cannot sit as an appellate court. Thus, the findings of the trial court that enquiry was conducted without any evidence is not tenable.

15. The third point for appreciation before me is whether no reasonable opportunity to defend himself was granted to the plaintiff/respondent. From the enquiry file Ex. D-1, it is clear that the plaintiff/ respondent received notice given by the Enquiry Officer and he appeared before the enquiry officer and also requested to take legal assistance and lateron, he gave in writing on 19.4.1995 that he does not want to engage any counsel to defend his case and he also desired to contest his case as his own at page No.27 (re-numbered as page-215) in the enquiry file Ex. D-1. Even appellants/ defendants examined Kamaljit Chopra, Additional S.E, as DW-2 who stated on oath that he gave full opportunity to the plaintiff/respondent and also gave full opportunity to consult the record during the enquiry. After the transfer of Kamaljit Chopra, Mr. Agya Singh Saini conducted the



enquiry who appeared as DW-3 and stated that he gave notices/letters about his enquiry to the plaintiff/ respondent but he never appeared inspite of notice and then he was proceeded against ex-parte and thereafter enquiry officer proceeded with the enquiry and recorded the evidence. He gave a detailed report Ex. D-5 to the Punishing authority. The Punishing Authority also sent the report of the enquiry officer to Avtar Singh, plaintiff/respondent and also wrote to him that experience certificate is found to be fake and why not his services be terminated and he was also asked to appear before the Punishing Authority. Thereafter, Punishing Authority passed order dated 28.6.1996 which is Ex.P-7, after giving proper opportunity to the plaintiff/respondent. In case "AIR-1974 Supreme Court-1896 Shahoodul Haque Versus The Registrar, Cooperative Societies, Bihar and another", it was observed that opportunity given to explain conduct not availed of, principles of natural justice are not violated. In the instance case, sufficient opportunity was given to the plaintiff/respondent to explain his case by the enquiry officer and punishing authority."

13. The above referred to reasoning given by the Additional District Judge, Hoshiarpur is self-speaking and detailed. The appellant got appointment on the basis of fake and bogus experience certificate which was enquired by the Vigilance Department of Punjab State Electricity Board. On receipt of report of Vigilance Department, enquiry officer was appointed and charge-sheet was served upon the appellant. Further notices were issued to the appellant to join the enquiry and he joined enquiry and inspected the record. Witnesses were also examined in

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the presence of the appellant. A certificate was also taken by the enquiry officer regarding the experience certificate which was attached with the application, from the concerned officer of PSEB, and he certified that the experience certificate attached with the application for appointment of Avtar Singh S/o Malooka Singh for the period 30.08.1980 to 21.04.1982 was bogus and was never signed by the SDO and the initials and signatures of the certificate are bogus. As per enquiry report, enquiry officer examined six witnesses and he came to the conclusion that experience certificate attached with the application for appointment by the appellant was bogus.

14. In view of the above, I do not find any infirmity in the judgment and decree dated 27.7.2000 passed by the learned Additional District Judge, Hoshiarpur. The same is upheld and the present appeal is dismissed being devoid of any merit.

15. Pending applications, if any, also stand disposed of.

October 22, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes