



RSA No.2624 of 1998 (O&M)

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

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Date of Decision: 02.07.2026

BALWANT SINGH (SINCE DECEASED) TH. HIS LRS.....Appellant(s)
Vs
THE PUNJAB STATE ELECTRICITY BOARD, PATIALA AND ORS.
....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anuj Gupta, Advocate
for the appellant(s).

Mr. R.P.S. Bara, Advocate
for the respondents (through video-conferencing).

HARKESH MANUJA, J. (Oral)

The appellant/plaintiff(s) is/are in appeal. First appeal filed by the plaintiff-Balwant Singh (now deceased) was also dismissed by the learned Additional District Judge, Gurdaspur (*hereinafter referred to as the "First Appellate Court"*). For the sake of convenience, the parties are being referred to as per their status in the Civil Suit.

[2]. By way of present appeal, challenge has been laid to the judgments and decrees dated 20.03.1996 and 12.06.1998 passed by the learned Courts below, whereby the dismissal of suit for declaration with consequential relief of mandatory injunction filed at the instance of the plaintiff-Balwant Singh (now deceased) was affirmed.

FACTS

[3]. Briefly stating, the plaintiff was a regular employee of Punjab State Electricity Board; posted as Assistant Lineman at Jalandhar Cantt. Circle. The plaintiff made an application dated 08.03.1991 seeking his transfer from Jalandhar

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Cantt. Circle to Gurdaspur Circle. On consideration of his domestic conditions, the prayer of his transfer was allowed vide order dated 07.08.1991. Thereafter, plaintiff was relieved from Jalandhar Circle on 30.08.1991 and was directed to join at Gurdaspur Circle immediately. On 30.08.1991, One Ram Partap, Assistant Lineman joined at his place at Jalandhar and he approached the respondents/defendants for permitting him to join at Gurdaspur, but all in vain. Even notice dated 10.09.1991 (Ex.P-4) was also served upon the respondents/defendants by the plaintiff seeking his re-joining at Gurdaspur, however, the same was never responded to, hence, the present suit for declaration to the effect that the appellant/plaintiff-Balwant Singh (now deceased) was entitled to full pay including all back wages along with other benefits from the date of his transfer w.e.f. 30.08.1991 till the date he was allowed to re-join at the place of posting as well as seeking mandatory injunction for directing defendants to allow the plaintiff to join duty as Assistant Lineman.

[4]. Upon notice, respondents/defendant(s) appeared and filed written statement admitting the plaintiff to be regular employee of Punjab State Electricity Board and he was working as Assistant Lineman in Jalandhar Cantt. Circle and was transferred to Gurdaspur Circle. It was pleaded that vide office order No.492 dated 30.09.1991, the plaintiff was directed to join, however, he did not join his duty intentionally and deliberately. Further, it was averred that the plaintiff was only interested in joining at Shahla, Tibber, Dina Nagar, Behrampur and since there was no vacancy at those stations, plaintiff was directed to join at Sri Hargobindpur Sahib, however, he failed to join his duty. Replication was filed at the instance of the plaintiff reiterating the stand taken in the plaint.

[5]. On the basis of pleadings of the parties, the learned Trial Court framed the following issues:-



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“1. Whether the plaintiff is entitled to the declaration as prayed for?
OPP

2. Relief.”

[6]. The learned Civil Judge (Junior Division), Gurdaspur, (*hereinafter to be referred to as the “trial Court”*), vide its judgment and decree dated 20.03.1996, dismissed the suit with costs filed at the instance of plaintiff.

[7]. Aggrieved thereof, the plaintiff filed the first appeal, which was also dismissed vide judgment and decree dated 12.06.1998 passed by the learned First Appellate Court. Hence, the present Regular Second Appeal.

CONTENTION(S):

ON BEHALF OF THE APPELLANT(S)-PLAINTIFF(S):

[8]. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant(s) submits that the entire defence by the respondents/defendants in the written statement was to the effect that in terms of office order No.492 dated 30.08.1991, the plaintiff was directed to join at Sri Hargobindpur Sahib, however no such order was ever served upon him and, thus adverse inference was required to be drawn against the defendants.

[8.1]. Learned counsel further submits that the respondents/defendants even failed to respond to any of the legal notices served upon them by the plaintiff, whereby he repeatedly requested the respondents/defendants to make him join as Assistant Lineman at Gurdaspur in terms of the relieving order dated 30.08.1991. Learned counsel thus, submits that the impugned judgments and decrees passed by the learned Courts below were liable to be set aside and the suit preferred at the instance of the plaintiff was to be decreed.



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ON BEHALF OF THE RESPONDENT(S)-DEFENDANT(S):

[9]. On the other hand, learned counsel representing the respondents/defendants submits that the plea taken in the written statement with respect to the office order No.492 dated 30.09.1991 was duly proved on record through the deposition made by DW-1, namely, Om Parkash, Office Superintendent from the office of XEN (Executive Engineer), PSEB, Batala, vide which the plaintiff was asked to join his duty at Sri Hargobindpur Sahib. Learned counsel thus, submits that the impugned judgments and decrees passed by the learned Courts below were based on proper appreciation of the pleadings and evidence available on record, warranting no interference and accordingly prayed for dismissal of the present appeal.

DISCUSSION AND REASONING:

[10]. I have heard learned counsel for the parties and gone through the paper book as well as records of the case. I find substance in the submissions made on behalf of the appellant(s).

[11]. The only defence taken by the respondents/defendants in the written statement was to the effect that the office order No.492 dated 30.09.1991 was passed, whereby the plaintiff was directed to join at Sri Hargobindpur Sahib, however strangely, no such office order dated 30.09.1991 was ever produced on record by the respondents/defendants. In such circumstances, mere oral deposition made by DW-1 Om Parkash, Office Superintendent from the office of XEN (Executive Engineer), PSEB, Batala, about passing of any office order dated 30.09.1991 was not of much relevance. Moreover, upon a perusal of the record, it can nowhere be found that any such office order was ever served upon the plaintiff, thereby directing him to join at Sri Hargobindpur Sahib. In addition, the


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respondents/defendants did not even responded to the legal notice dated 10.09.1994 (Ex.P-4) served upon them by the plaintiff, whereby request was made for permitting him to re-join the respondent-Department at Gurdaspur in terms of his relieving order dated 30.08.1991.

[12]. Further, a perusal of the judgments and decrees passed by the learned Courts below goes on to show that the approach adopted by respondents/defendants, was not in consonance with the fundamental exposition of law laid down by the Hon'ble Apex Court in case of '*Gopal Krishna Ji Ketkar Vs. Mohd. Hazi Latif and others*, reported as *AIR 1968 SC 1413* wherein it was held that the party in possession of best evidence needs to be produce the same before the Court, if it holds fact and adverse inference needs to be drawn against the defaulting party. In such circumstances, the grievance expressed by the plaintiff in his suit to the effect that he was not allowed to join at Gurdaspur carries merit especially in the absence of any substantial proof regarding office order dated 30.09.1991 has been served upon him. The relevant portion of Gopal Krishna's case (supra) are extracted hereunder:-

*".....But the appellant has not produced either his own accounts or the account of the Dargah to show as to how the income from plot No. 134 was dealt with. Mr. Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus we. upon the respondents to prove the case and to show that the Dargah was the owner of plot No. 134. **We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In *Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi*, 44 Ind App 98 at p. 103 Lord Shaw observed as follows :***

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of he onus of proof, and

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failing. accordingly, to furnish to the Courts the best material for its decision With regard to third parties, this may be right enough - they have no responsibility for the conduct of the suit but with regard to the parties thee suit it is, in their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition. "

[13]. As a result of aforesaid discussion, the judgments and decrees dated 20.03.1996 and 12.06.1998 passed by the learned Courts below are hereby set aside and suit for declaration filed at the instance of plaintiff stands decreed to the extent that the plaintiff shall be entitled for all his service dues including pay fixation, arrears, pension, benefits towards seniority w.e.f. 30.08.1991 till he was made to rejoin in terms of the order dated 09.02.1999 passed by this Court in the present appeal. The plaintiff shall also be entitled for interest @ 6% per annum on the dues payable to him. Decree sheet be prepared accordingly.

[14]. Appeal stands allowed in the aforesaid terms. All pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)

July 02, 2026
Atik

JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No