

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**RSA No. 789 of 1997 (O&M)
Date of Decision: 06.02.2015**

Punjab State Electricity Board, Nakodar

..... Appellant

Versus

Gurmesh Lal

.... Respondent

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Sh. Roshan Lal Sharma, Advocate for the appellant

Sh. H.S. Gill, Senior Advocate with
Sh. Vivek Goel, Advocate for the respondent.

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B.S. WALIA, J.

The Punjab State Electricity Board (hereinafter to be referred as 'the PSEB') i.e. the defendant is in Regular Second Appeal against the concurrent findings recorded by the Courts below decreeing the suit filed by the plaintiff-respondent for declaration to the effect that office order No. 5344 dated 15.5.1989 passed by the Executive Engineer, PSEB, City Division, Nakodar, whereby the plaintiff was removed from service, was illegal, void, unconstitutional etc., therefore, not binding on him and that he continued to serve the Board as Clerk.

Brief facts of the case as per plaintiff are that he joined the PSEB as Clerk on 10.11.1980 at Rurka Kalan, Sub Division of Goraya Division and was transferred to Ludhiana Circle in August 1983. He was posted in Adda Dakha Division of PSEB and then posted at Hambran Sub Division, where he took charge on 2.8.1983. From Hambran Sub Division, the plaintiff was transferred to Shahkot Sub Division in Nakodar Division. At Shahkot vide office letter No. 1268 dated 15.5.1989, the plaintiff was informed by the Assistant Executive Engineer that he stood removed from service vide office order No. 5344 dated 15.5.1989, passed by the Executive Engineer, City Division, Nakodar, in view of termination of his services vide office order dated 208 dated 26.6.1981 passed by the Superintendent Engineer, PSEB, Kapurthala Circle. It is further the case of the plaintiff that order dated 26.6.1981 was never conveyed to him, nor he was relieved of his duties and order No. 5344 dated 15.5.1989 passed by the Executive Engineer, PSEB, City Division, Nakodar, whereby he was removed from service was illegal, void, unconstitutional etc., therefore, not binding on him.

Written statement was filed by the respondents taking up the stand that the plaintiff had joined the department on 10.11.1980 in Goraya Division but he was dismissed on 26.6.1981 by the Superintendent Engineer due to his absence from duty. It was further alleged by the defendants that after termination of the services of the plaintiff on 26.6.1981, he manufactured a letter and by misrepresentation joined service with the department at Adda Dakha

Division, District Ludhiana, where he served upto termination of his services vide order dated 15.5.1989 on the basis of order dated 26.6.1981. The stand in the written statement was that the plaintiff had rejoined service with the department fraudulently by manufacturing letter No. 3264 dated 1.8.1983.

Replication was filed by the plaintiff denying the stand in the written statement and reiterating the contents of the plaint.

On the basis of the pleadings of the parties, following issues were framed:-

- i) Whether the order dated 15.5.1989 vide which the plaintiff was removed from service is legal and valid? OPP
- ii) Whether the suit is not maintainable? OPD
- iii) Whether the suit is time barred? OPD
- iv) Whether the civil court has no jurisdiction to try the present suit? OPD
- v) Whether the suit is not properly valued? OPD
- vi) Relief.

While deciding issue No.1, the Subordinate Court held that copy of dismissal order dated 26.6.1981 (Exhibit DW-4/1) could not be read into evidence because it was a photostat copy and was neither signed nor attested by anyone and had not been duly proved as per the Evidence Act; that Exhibit DW-4/1 was not primary evidence and that the defendant had failed to prove any of the conditions mentioned in Section 65 of the Evidence Act for leading secondary evidence.

The Subordinate Court discredited the submission that Exhibit DW-4/1 should be read into evidence by relying on the judgment of the Hon'ble Supreme Court in case titled as **Seth Tarajee Khimchand and another vs. Yalamarti Satyam and others, AIR 1971 SC 1865**, wherein it was held that mere marking of exhibit does not dispense with the proof of documents.

The Subordinate Court in paragraph No. 7 of its judgment held that non-proving of drawing of salary for the period from 30.11.1980 to 7.7.1983 did not in any manner extinguish the right of the plaintiff to remain in service, when it was clearly proved from Exhibits P-1 to P-5 that after 7.7.1983 the plaintiff worked at different stations by the orders of transfer passed by the defendant on different occasions till 15.5.1989 and that his services could not be terminated without following the procedure established by law. The Subordinate Court in paragraph No. 8 of its judgment held that denial of DW-2 regarding signatures on Exhibit P-2 did not in any manner prove that Exhibit P-2 was a forged and fabricated document since Exhibit P-2 was in the custody of the defendant, who had produced the document in Court, besides, the defendant had failed to prove that Exhibit P-2 was necessarily required to be signed by DW-2 and the document may have been signed by some other competent authority posted at Shahkot office at the time of relieving the plaintiff from that office. The subordinate court held that the contention that the document was forged was misconceived and was not believable from the conduct of the defendant for had the document Exhibit P-2

been a forged one, the defendant would have got a criminal case registered or initiated departmental inquiry against the plaintiff in order to verify the authenticity of the document Exhibit P-2 but nothing of the sort was done. In the light of the above, the Subordinate Court held that Exhibit P-2 was a genuine document issued by the defendant's office at Shahkot by the competent authority. As far as other documents i.e. Exhibits P-1, P-3, P-4 and P-5 were concerned, the same were recorded by the Subordinate Court to have been admitted by the defendant and were also produced by the defendant in the Court. On the basis of the same the Subordinate Court held that plaintiff had not played any fraud on the defendant to remain in service till 15.5.1989.

The Subordinate Court held that if even for the sake of arguments, it was admitted that any order of termination was passed by the defendant on 26.6.1981, but the fact was that even then it stood proved that the plaintiff remained in service with the defendant who had full knowledge of the plaintiff being in service from 7.7.1983 till 15.5.1989, therefore, the defendant was barred by its own act and conduct to plead at this stage that the services rendered by the plaintiff after 7.7.1983 were illegal. The Subordinate Court held that since the plaintiff's services could not be terminated without adopting procedure established by law, therefore, order dated 15.5.1989 terminating the services of the plaintiff without adopting procedure established by law was in flagrant violation of the rules applicable i.e. the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

Issue Nos. 2 to 5 were not pressed by the defendant-appellant, therefore, they were decided in favour of the plaintiff and against the defendant and in view of the findings on issue No.1, the suit of the plaintiff was decreed with costs.

Appeal was filed by the defendant against the judgment of the Subordinate Court decreeing the suit of the plaintiff. Subsequently, an application under Order 41 Rule 27 read with Section 151 CPC was moved for leading additional evidence in respect of order dated 26.6.1981. However, the same was dismissed on the ground that the application had been moved at a belated stage by citing non-traceability of original order despite exercise of due diligence.

The Lower Appellate Court recorded that in case an order dated 26.6.1991 was passed by the appellants, the same was required to be in the official record and further that the attested to be true copy of the order produced alongwith the application did not tally with the photocopy of the order Exhibit DW-4/1 produced during the course of the trial. In the circumstances, the Lower Appellate Court held that no case whatsoever, was made out for allowing the additional evidence in respect of order dated 26.6.1981. The Lower Appellate Court also took into account that the plaintiff had denied that any order dated 26.6.1981 dispensing with his services was passed or was conveyed to him by the appellant and that during the course of examination of DW-4 i.e. Resham Singh, it had come up that photocopy Exhibit DW-4/1 was not signed by anybody nor was

attested by anybody and even the original of the same was not produced in the court at the time of evidence of Resham Singh DW-4 or at the time of the evidence of any other witness and that Exhibit DW-4/1 i.e. copy of the order dated 26.6.1981 at the most could be said to be the secondary evidence but for producing secondary evidence, no permission had been sought from the court nor the same had been granted, therefore, the same could not be admitted into evidence and once Exhibit DW-4/1 was excluded from the record, no evidence was left with regard to the passing of alleged order dated 26.6.1981 dispensing with the services of the plaintiff-respondent. In the circumstances, the Lower Appellate Court concluded that no order dated 26.6.1981 was passed dispensing with the services of the plaintiff-respondent.

The Lower Appellate Court dealt with the plea pertaining to the orders of transfer and relieving certificate being forged and fabricated in paragraph No. 13 of its judgment but rejected the same and held that the document was genuine and issued by the competent authority while Exhibits P-1, P-3, P-4 and P-5 were held to be admitted by the appellants besides had been produced by the appellants from their official record. Accordingly, the aforesaid documents were also held to be genuine. The plea with regard to non-proving of drawing of salary from 30.11.1980 to 1.8.1983 by plaintiff was also observed to be not establishing termination of services of the plaintiff on 26.6.1981 as it was proved from Exhibits P-1 to P-5 that from 2.8.1983 till 15.5.1989, the plaintiff worked in different Sub

Divisions of the PSEB and for this period drew salary from the PSEB against the post against which he worked and that since upto 15.5.1989 the plaintiff worked in different capacities in different offices of the PSEB, his services could only be terminated in accordance with the provisions of law after following due procedure but the services of plaintiff-respondent having been dispensed with vide order dated 15.5.1989 without adopting the procedure established by law and in flagrant violation of the rules governing the service condition of the plaintiff-respondent, therefore, the same was un-sustainable. Therefore, the findings of the Subordinate Court on issue No. 1 were affirmed.

The plea that the suit was time barred was also rejected by the Lower Appellate Court by referring to the fact that it had been specifically held by it that no order dated 26.6.1981 had been passed. However, while dismissing the appeal, the appellant-defendant was given opportunity to conduct a fresh inquiry against the plaintiff-respondent in relation to the allegations of his willful absence from duty, within a period of two months to be concluded within a period of six months from the date of commencement and after the result of such inquiry, the question regarding payment or otherwise of salary for the period from 3.11.1980 to 1.8.1983 and for the period from 15.5.1989 till date, was to be decided by the competent authority, in accordance with law.

I have heard learned counsel for the parties and with their able assistance have gone over the record.

The alleged initial order of termination dated 26.6.1981 has not been proved on the record since Exhibit DW-4/1 produced before the Subordinate Court was photocopy of unsigned copy of order dated 26.6.1981 and the copy produced before the Lower Appellate Court was also not original but a photocopy. Secondly, no inquiry with regard to circumstances in which the order in official file was lost has been brought on the record, no circumstances had been made out for seeking permission to lead secondary evidence, therefore, it can rightly be held that order dated 26.6.1981 had not been passed. Thirdly, no evidence has been produced on record, of service of alleged order dated 26.6.1981 on the delinquent employee. Fourthly, it is a matter of record that no regular inquiry was conducted prior to the passing of the alleged order dated 26.6.1981. Thus even if it be presumed that alleged order of termination dated 26.6.1981 was passed on account of willful absence from the duty, even then the fact remains that no regular inquiry was held. It is well settled law that it is not open to terminate the service of a delinquent employee without conducting a regular inquiry. Fifthly, the document relied upon by the plaintiff i.e. of his joining service vide Exhibit P-1 at Adda Dakha vide transfer order dated 7.7.1983 and thereafter transfer orders to different places were produced by none else but by the department and no inquiry etc. in respect thereto i.e. with regard to forgery of document was conducted nor was any criminal case registered. Sixthly, no evidence was produced by the department to show that the so called order of termination dated 26.6.1981 had been served on

the plaintiff. Seventhly, the Lower Appellate Court had granted liberty to the appellant to conduct an inquiry with regard to plaintiffs' willful absence from service, which had lead to the passing of alleged order dated 26.6.1981, to be concluded within a period of 6 months but for the reasons best known to the appellant, no such inquiry was conducted. Eighthly, on dismissal of the appeal by the Lower Appellate Court, the plaintiff was taken back in service in 1996 and he retired on 31.12.2012 and is stated to be in receipt of provisional pension. Besides, the regular second appeal was filed after taking back the plaintiff in service.

Learned counsel for the respondent states that despite direction of the Lower Appellate Court to conduct an inquiry with regard to the plaintiff's willful absence from service to be concluded within 6 months, no such inquiry was conducted and that if at this stage, the appellant was permitted to conduct an inquiry the same would be highly inequitable.

It is very intriguing as to why despite liberty by the Lower Appellate Court to conduct an inquiry into the alleged absence leading to passing of alleged order dated 26.6.1981, the appellant did not conduct an inquiry. The factual position, as noted above, goes to show that the truth was sought to be suppressed as either the plaintiff had wrongly been proceeded against or else to shield the plaintiff. Therefore, conduct of enquiry as directed was essential and would have unravelled the truth.

At this stage, learned counsel for the respondent states that if

the plaintiff now has to face an inquiry, the same would be highly inequitable and instead a quietus be given to the matter and for the same the plaintiff was willing to give up the claim for arrears of pay for the period from 1.12.1980 to 1.8.1983 and from 16.5.1989 to the date of being taken back in service i.e. 18.12.1996 in case the judgments of the Courts below were affirmed and appeal dismissed, subject however, to retiral benefits being computed in accordance with the judgments of the Courts below.

I have considered the matter in entirety and am of the view that although conduct of inquiry as per directions of Lower Appellate Court would have established the truth but taking into account the fact that the incident pertains to the year 1981 and the respondent-plaintiff continued in service from the year 1983 onwards till 15.5.1989 and thereafter was taken back in service in 1996 and retired on 31.12.2012, but no enquiry was conducted despite directions of the Lower Appellate Court dated 12.8.1996 and learned senior counsel for the plaintiff has also given up claim of arrears for the period from 1.12.1980 to 1.8.1983 and onwards, i.e. the period plaintiff is alleged to have willfully absented by having proceeded to Saudi Arabia as also for the period from 16.5.1989 to 18.12.1996, it would be in the interest of justice that a quietus be given to the matter.

Accordingly, the judgments and decrees of both the Courts below are affirmed as the learned senior counsel for the plaintiff-respondent has given up claim for arrears of pay for the period 1.12.1980 to 1.8.1983 and from 16.5.1989 to the date of being taken

back in service i.e. 18.12.1996. However, the aforementioned periods would be counted for computing the retiral benefits payable to the plaintiff-respondent in accordance with the judgments of the Courts below.

No question of law, much less substantial question of law arises for consideration in the instant case.

Accordingly, the regular second appeal is dismissed subject to the modification of the judgments and decrees of the courts below to the extent as noticed above.

No order as to costs.

February 06, 2015
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(B.S. WALIA)
JUDGE