

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

**Regular Second Appeal No.5489 of 2003 (O&M)
Date of decision: 01.09.2015**

Baldev Singh

.....Appellant

Versus

The Secretary/Chairman, Punjab State Electricity Board and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. C.B. Goel, Advocate,
for the appellant.

Ms. Malkiat Mann, Advocate,
for the respondents.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment dated 07.06.2003 passed by the Additional District Judge, Hoshiarpur, partly accepting his appeal against the judgment and decree dated 08.10.2001 passed by the Additional Civil Judge (Senior Division), Dasuya, whereby suit of the plaintiff-appellant for declaration to the effect that the termination order dated 31.08.1991 was illegal, unlawful and against the principles of natural justice with consequential relief of mandatory injunction directing the defendants-respondents to make balance outstanding payment like gratuity, G.P. Fund and other emoluments, had been dismissed.

Baldev Singh-plaintiff (appellant herein) was appointed as

Lineman on 30.03.1958 in Punjab State Electricity Board. During his

service, he was suspended twice, once in the year 1976 and second time in the year 1989. He was reinstated by treating his suspension period as 'leave of the kind due'. Later on, vide order dated 31.08.1991, his services were terminated while being posted as JE-II. The said termination order was issued few hours before his actual retirement. Thereafter, he challenged the aforesaid termination order by filing the present suit.

Upon notice, defendants-respondents filed written statement, wherein it was stated that the order of termination dated 28.08.1991 was passed after holding proper departmental enquiry and on the basis of evidence adduced during the said enquiry as per Regulation 9 (4) of the Employees Punishment and Appeal Regulations, 1971. It was further stated that an amount of Rs.4,84,760/- was lying outstanding against the plaintiff-appellant in his miscellaneous advance account, which was recoverable from him. In this regard, the defendants-respondents had filed Civil Suit No.326/1994, which was decreed in their favour on 04.09.1997 vide judgment and decree dated 04.09.1997 passed by the Additional Civil Judge (Senior Division), Hoshiarpur, for recovery of Rs.2,64,622-13 paise along with up to date interest at the rate of 18% per annum. Appeal filed by the plaintiff-appellant against the said judgment was dismissed. He was guilty of misconduct and misappropriation of funds causing loss to the defendant-Board to the tune of Rs.2,57,604-65 paise. The plaintiff was granted annual increments under the rules and his pay was fixed in the selection grade w.e.f. 01.04.1986.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the order of termination of the service of the plaintiff

is illegal? OPP

2. Whether the plaintiff is entitled for the declaration and injunction as prayed for? OPP
3. Whether the present suit is barred by law of limitation? OPD
4. Whether the instant suit is not maintainable in the present form? OPD
5. Whether the instant suit is barred under Section 11 of the CPC? OPD
6. Whether the plaintiff has no locus standi to file this suit? OPD
7. Whether the plaintiff has not come to the Court with clean hands? OPD
8. Relief.

Both the Courts below have dismissed the suit of the plaintiff-appellant on the ground that the termination order is dated 31.08.1991 and the present suit was filed on 27.02.1999, hence, the suit was barred by limitation. It was not the case of the plaintiff-appellant that he had challenged the dismissal order dated 31.08.1991 in a departmental appeal. He had challenged the said termination order before the High Court by way of a writ petition, which was dismissed. But, he had not placed on record any order or copy of petition in order to prove the same. Cause of action for filing the suit arose on 31.08.1991 when he was dismissed from service, whereas he filed the suit on 27.02.1999 after a gap of 9 years. However, with regard to the claim of amount of G.P. Fund, suit of the plaintiff was held to be maintainable by the lower appellate Court.

A civil suit, titled as 'PSEB Vs. Baldev Singh was decreed for recovery of Rs.2,64,622-13 paise by the Court of Shri Surinder Gupta, PCS,

the then Additional Civil Judge (Senior Division), Hoshiarpur, on 04.09.1997 (Ex.D1). Baldev Singh (plaintiff herein) preferred an appeal against the said judgment and decree, which was dismissed by Shri R.M. Gupta, the then District Judge, Hoshiarpur, on 15.06.1999 (Ex.D2). Hence, the suit filed by the defendant-Board for recovery had attained finality. In the judgment passed by Shri R.M. Gupta, District Judge, Hoshirapur, it was observed that reports of shortages had been proved. Once, the suit filed by defendants (Electricity Board) for recovery had been decreed in their favour, they were duty bound to recover the said amount by withholding the amount, sought to be recovered, pursuant to the said decree. Apart from the present suit being time barred, the lower appellate Court had examined the enquiry report of the department.

Prayer of the plaintiff-appellant to release his G.P. Fund amount being recurring cause was accepted by the lower appellate Court. The defendants-respondents had informed the Court that the plaintiff-appellant had not made any application with the department for release of G.P. Fund amount. Keeping in view that suit of the defendants-respondents for recovery of Rs.2,64,622/- had been decreed vide judgment dated 04.09.1997 (Ex.D1), which was affirmed in appeal vide judgment dated 15.06.1999 (Ex.D2), a liberty was granted to the defendant-department to pass appropriate orders as and the plaintiff-appellant files an application for disbursement of the amount to his credit in the G.P. Fund account by ordering the recovery as permissible under the law as the outstanding against him. With the above modification, the appeal was dismissed by the lower appellate Court.

After going through the impugned judgment passed by the lower

appellate Court, no illegality, much less perversity, has been found in the same warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

01.09.2015
ajp

(RITU BAHRI)
JUDGE