

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

RSA No. 4935 of 2010 (O&M)

Date of decision : 30.3.2015

* * * * *

S.S Dhanju

.....Appellant

Versus

Haryana Vidyut Prasaran Nigam Ltd. and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Naveen Daryal, Advocate for the Appellant.

Mr. Mohnish Sharma, Advocate for the respondents.

* * * * *

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This regular second appeal is against the judgment of reversal dated 9.3.2010 passed by the Additional District Judge, Panipat. Vide this judgment, the Appellate Court had set aside the judgment and decree dated 18.11.2009 passed by the Civil Judge (Junior Division), Panipat decreeing the suit of the plaintiff.

The plaintiff had filed a suit for declaration to the effect that punishment order dated 22.9.1998 passed by CMD, Haryana Vidyut Prasaran Nigam Ltd. Panchkula (hereinafter referred to as 'the HVPNL'), whereby the four annual increments without cumulative effect and ACR for the period 1995-96 was downgraded

to 'Average' is illegal, null and void.

The plaintiff was initially working in the Haryana State Electricity Board (hereinafter referred to as 'the HSEB') and after the abolition of HSEB, HVPNL was his principal employer. The plaintiff thereafter was transferred on deputation as SSE, BBMB 400/200 KV Sub Station, Sewha Panipat. A show cause notice dated 19.3.1997 by the Secretary of HSEB, Panchkula under Regulation 7 read with Regulation 4 (vi to x) of HSEB Employees (P&A) Regulations-1990 was issued to the plaintiff. He gave his reply and by the impugned order his four increments with cumulative effect was stopped and his ACR was downgraded to 'Average'. The plaintiff had preferred an appeal which was also dismissed vide order dated 6.5.1999 by the Directors. The plaintiff challenged the above said two orders before this Court by filing CWP No. 5611 of 2000. On an application made by him, the writ petition was allowed to be withdrawn with liberty to seek appropriate remedies, if so advised, before the Civil Court vide order dated 27.2.2006. Thereafter, the present suit was filed on 28.4.2006.

Defendants on notice filed a written statement. On merits, it was admitted that the plaintiff was issued a show cause notice dated 19.3.1997 under Rule 7 read with regulation 4 (vi to x) of P&A Regulation, 1990. The reply of the plaintiff dated 5.9.1997 was duly considered. It was found that the plaintiff had manipulated the figures and as such he was held responsible for the charges as contained in the show cause notice. The punishment as stated

above was imposed upon him and the appeal thereafter was dismissed on merits after giving personal hearing to the plaintiff.

Following issues were framed by the trial Court:

- 1. Whether the impugned order dated 22.9.1998 is illegal, null and void as alleged in the plaint if so to what effect? OPP.*
- 2. Whether the suit is not maintainable? OPD*

The trial Court after going through the evidence and by making reference to the judgment in the case of ***Dr. K.G. Tiwari vs. State of Haryana 2002(2) SCT 915(P&H)*** held that in a case where a charge sheet is issued under Rule 7 for the imposition of a major penalty, if the disciplinary authority after receiving the reply to the charge sheet, finds that there is no material against the charge sheeted employee and therefore, after holding of a regular enquiry, it will not be in a position to punish the charge sheeted employee, but still for its own reasons wants to impose some punishment on him then the disciplinary authority will choose to adopt the methodology of dropping the procedure contemplated under Rule-7 and simply state that the explanation of the charge sheeted employee has been considered and impose a minor punishment. This is not the object of having two different sets of procedures in the form of Rule 7 and Rule 8. In the case of ***Randhir Singh vs. Haryana State Electricity Board, 2003(3) RSJ 606***, it was held that when a charge sheet has been issued under Rule 7 to the delinquent officer for holding a departmental enquiry contemplating imposition of major

penalty, then no short cut method is permissible even for imposing of minor penalty. Issue No. 1 was decided in favour of the plaintiff.

However, on issue no.2, the suit was held not barred by the law of Limitation as the punishment had been imposed upon the plaintiff vide order dated 22.9.1998 and he had withdrawn the Civil Writ Petition in this Court vide order dated 27.2.2006 (Annexure P-5) to take appropriate remedies before the Civil Court. Issue no.2 was also decided in favour of the plaintiff. It was held that after withdrawing the writ petition, he had sought liberty to take appropriate remedy and the suit was not barred by limitation.

The suit was decreed and the defendants were directed to restore the increments of the plaintiffs and the ACRs in its original position and thereafter to make payment of arrears of salary to the plaintiff along with interest.

On an appeal filed by the HVPNL, the appellate Court examined the issue with regard to the limitation in paragraph 16 of its judgment. After withdrawing the petition on 27.2.2006, the suit was filed on 28.4.2006. The plaintiff had been litigating before this Court for long 6 years. He had not taken the plea that the period for which the plaintiff had been litigating before the High Court has to be excluded at the time of calculation of limitation. Moreover in the order dated 27.2.2006 passed by this Court, it was not mentioned that the period for which the plaintiff was litigating before this Court be excluded at the time of calculating the limitation. He was merely given an option to approach the Civil Court, if so advised. It did not

mean that the limitation had been ordered to be condoned. The appeal was allowed by making reference to the judgment in 1994(1) LJR 699 titled as 'Jagjit Singh vs. Pritam Singh and others' and 2003(3) LJR 256 titled as 'Amar Kaur vs. Paramjit Kaur'. It had been held that if the suit was barred by limitation, the Court was not required to decide the issue on merits. Hence without going into the merits on the ground of limitation, judgment and decree dated 18.11.2009 passed by the trial Court was set aside.

Counsel for the respondents have placed on record the order dated 27.2.2006 when the writ petition bearing CWP No. 5611 of 2000 was withdrawn which reads as under:

"The prayer made in the present application is to dismiss the main petition with a liberty to the petitioner to avail the appropriate remedies before the Civil Court.

In view of the averments made in the application, the main petition is dismissed as withdrawn with a liberty to the petitioner to seek his appropriate remedies, if so advised, before the Civil Court.

C.M as well as main writ petition stand disposed of accordingly.

A perusal of the above order shows that no prayer had been made by the plaintiff to condone the time taken in pursuing the litigation in this Court for the purpose of limitation. The suit of the

plaintiff was filed against the order dated 22.9.1998 and the suit was instituted on 28.4.2006 which is beyond the period of three years. Appellate Court rightly allowed the appeal and set aside the judgment and decree dated 18.11.2009 passed by the trial Court.

In view of all that has been discussed above, no substantial question of law arises for consideration in this regular second appeal. The same is hereby dismissed.

30.3.2015
ritu

(RITU BAHRI)
JUDGE