

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

R.S.A No. 3553 of 2012 (O&M)

Date of decision:- 04.05.2015

Kulbir Singh

...Appellant

Versus

Pb. State Power Corpn. Ltd. & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sharwan Sehgal, Advocate
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

The present regular second appeal is against the concurrent finding of facts recorded by both the Courts below, whereby the suit of the plaintiff/appellant (for short 'appellant') was dismissed

The appellant filed a suit for declaration to the effect that the order dated 17.08.1995 passed by defendant No. 4 of forfeiting the past service of the appellant and granting fresh appointment to the appellant instead of reinstatement with all consequential benefits.

The appellant joined the respondent-department w.e.f 09.05.1969 as Junior Draftsman and was promoted as Draftsman in the

year 1972. While working as Draftsman, he was issued a charge-sheet dated 17.05.1985 to which he gave reply and denied the charges being wrong and baseless. Shiv Mahajan Sr. XEN, DS Division PSEB Amritsar was appointed as Enquiry Officer and on the basis of his enquiry against the appellant, Chief Engineer DS North Zone PSEB Jalandhar vide order dated 17.08.1995 forfeited the past service of the appellant and ordered his fresh appointment and appellant was allowed to join duty. The appellant filed appeal dated 30.09.2005 against this order to defendant No. 2, which was not decided and appellant filed CWP No. 839 of 2007 before this Court to decide the appeal of the appellant. During the pendency of the writ petition, defendant No. 3 rejected the appeal of the appellant vide order dated 03.07.2007.

On notice, defendants/respondents appeared and filed written statement and took a plea that suit is barred by principle of estoppels and the appellant is liable to be estopped by his own act and conduct. On merits, the appointment of the appellant was admitted and he was issued a charge sheet dated 17.05.1985 to which the appellant filed reply. A report was submitted S.C. Mahajan Executive Engineer and found the appellant guilty and recommended for reappointment of the appellant afresh without giving him benefit of previous service rendered by the appellant by considering his 4-5

years job experience. Vide letter dated 11.06.1992, the Punishing Authority decided that appellant be reappointed on the service afresh without giving benefit of his 4-5 years previous service and appellant must tender affidavit that he has not taken part in any anti national and anti Government agitation and will not claim any financial benefit or back wages for the period of absence. In compliance of the above said orders, the appellant joined duty afresh. Filing of the appeal by the appellant is admitted against the aforesaid order of his reappointment but it was filed after a period of 10 years and the appeal was further dismissed by the appellate authority vide order dated 03.07.2007.

Before the trial Court, the appellant appeared as P.W.1 and admitted that he had filed affidavit before the Competent Authority before rejoining his service that he will not claim any financial benefit or back wages for the period of absence. In his cross examination, he stated that he had joined the enquiry proceedings conducted by Shiv Mahajan Sr. XEN, DS Division PSEB Amritsar and thereafter, he had filed an appeal and hence, the argument that he was not given proper hearing by the enquiry officer, was rejected by the trial Court. Even in the appeal dated 30.09.2005 filed by the appellant against order dated 17.08.1995 to defendant No. 2, Administrative Member PSEB, the

appellant has mentioned that against the charges framed against him, he has filed a befitted reply. It is no where mentioned in the grounds of the appeal that no opportunity of being heard was given to the appellant in the enquiry proceedings conducted by Ex. Engineer (East Divn.) Amritsar. The appeal was dismissed on 03.07.2007 by the Appellant Authority.

Both the Courts below dismissed the suit of the appellant keeping in view the fact that the appellant had participated in the enquiry proceedings and had given his affidavit before reinstatement that he will not claim any financial benefit or back wages for the period of absence. Another factor which led to the dismissal of the suit of the appellant that he filed an appeal against the order of his reappointment after a period of 10 years and the appeal was further dismissed by the appellate authority vide order dated 03.07.2007.

The judgment and decree passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

May 04, 2015

G Arora

(**RITU BAHRI**)
JUDGE