

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

RSA No. 4537 of 2012 (O&M)

Date of decision: 24.08.2015

Jagdev Singh

... Appellant

versus

Erstwhile Punjab State Electricity Board, presently Punjab State Power Corporation Limited, through its Secretary, The Mall, Patiala and others

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. P.K. Garg, Advocate for the appellant.

K.Kannan, J.

Even before considering the appeal on merits, I informed the counsel that there was simply no justification for moving the application for restoration of appeal which was dismissed in default on 10.08.2015. The observation was sequel to the conduct of the appellant of not being ready ever since he filed the appeal in October 2012. There had been persistent request for adjournments at various times and whenever he was present and there were more occasions when there was no presence of the counsel for the appellant to ague the case.

The counsel pleads with passion that very serious prejudice will be caused if the case were to be disposed of otherwise than on merits. I wanted to assure to myself that there was nothing very seriously wrong about the judgments of the two Courts below and wanted the counsel to inform me about the facts involved in the case.

The suit was a challenge to departmental proceedings initiated against the plaintiff for causing obstruction to the inspection carried out by the superior officer at the place Lehra Mohabat at the time when the incident was said to have taken place in the year 2000. He had been kept under suspension by a notice issued to him in July 2000 and his head office was marked as Tarn Taran. The objection taken by him was that the chief Engineer-2nd defendant had not the competency to issue the charge since he was directed to remain at Tarn Taran and only the office at Tarn Taran could have issue the chargesheet. He also took a plea on the relevant time that he was not present at the time to be involved in any mis-conduct attributed to him. The Inquiry Officer rejected both his objections. He found that the direction to remain at Tarn Taran Head officer cannot take away the jurisdiction of the superior officer at the place where the incident was reported to have happened and by the officer who was superior to him. It also found that there were two witnesses PW-2 and PW-3 who had spoken about the misconduct on the part of the plaintiff. The substantial defence which was sought to be made, which was again pressed before this court, was that photographs and videos have been taken at the time of inspection and if there was any such incident about the obstruction or misconduct on the part of the plaintiff the same would have also been captured in the photographs and videos. This objection was not accepted by the trial Court and the Appellate Court where they have observed that the authority was competent to examine the witnesses' version and the mere fact that the so-called obstruction was not photographed or videographed cannot be a point

in favour of the plaintiff. The suit was dismissed and the appeal was also dismissed. On the competency of the defendant Nos. 2 and 3 viz, the Chief Engineer and the Deputy Chief Engineer to levy a charge sheet or carrying on an investigation, I asked the counsel to show to me any particular rule which designates a particular officer as alone competent and that the Inquiry constituted and carried out through defendant Nos. 2 and 3 did not conform to such rules. The counsel states that his argument is on the general principle of law that notice could be issued imposing charges only by an officer in the place where he was asked to remain, pending charges and normally Civil Court's approach to jurisdiction on a territorial basis cannot be applied to departmental proceedings. I reject this argument as hollow and devoid of any substance. Unless there is a specific rule which is violated, it is perfectly possible that the superior officer at the place where the incident was said to have taken place was competent to take action for misconduct of the subordinate employee.

As regards the argument that the incident did not take place it must be remembered that what has brought for challenge before the Civil Court was the correctness of order passed by a departmental authority whose decision was confirmed by the authority prescribed by the Statute under regulations. The incident of interference by a Civil Court shall stay limited to examining violation of statutory rules or breach of principles of natural justice by passing an order without according an opportunity to the affected employee to state his case or at its worst for a total non-application of mind. The complete lack of evidence which may make an inference of existence of facts could be a point for argument for

reconsideration but adequacy of evidence can never be a subject of reappraisal before the Civil Court. It cannot, therefore, be examined whether the authority could have acted on the evidence of PW1 and PW2, if they have given evidence before the disciplinary authority or the Enquiry Officer about the actual involvement of the plaintiff who had allegedly involved in misconduct or obstruction. The fact that the plaintiff was not seen in any photographs and videos at the time of inspection, was a point which was placed before the trial Court and Appellate Court and both of them have rejected the same. I am not impressed that the argument that the misconduct will be proved only by what is digitally recorded or in any other form that could bring out the actual incident by photographs. It all depends on particular facts and circumstances and the authority has decided that PW1 and PW2 evoked a confidence in their versions. I would let the matter rest there and not reopen the same.

Even as regards the manner of punishment imposed, the interference will be when the invoked punishment is so capricious and oppressive, that the Court will relieve any disproportionate punishment from being meted out to an employee. In this case, the punishment is a denial of one increment with cumulative effect for what was considered to be a very serious mis-conduct. I do not find anything disproportionate about the punishment accorded to the plaintiff.

Even apart from the fact that the plaintiff has not made any ground for rehearing the appeal which was dismissed for default, I find if such a hearing is to be granted as I have now allowed him such benefit, there is nothing material to admit the appeal for consideration. The appeal

is devoid on merits and it is dismissed as raising no substantial questions of law.

24.08.2015

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(K.KANNAN)
JUDGE