

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 4571 of 2013 (O&M)
Date of decision:- 23.04.2015

Mohinder Partap Singh Dhillon

...Appellant

Versus

P.S.E.B and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Animesh Sharma, Advocate
for the appellant.

Ms. Promila Nain, Advocate
for the respondents

RITU BAHRI J.

The present regular second appeal is directed 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 had filed a suit against office order dated 23.07.2009 issued by Deputy Secretary Technical-I, PSEB Patiala by which the Board has disagreed with the recommendations of Forum of Redressal of Employees Grievances dated 29.04.2009 and office order dated 05.12.2007 whereby the department has awarded punishment of stoppage of two increments without cumulative effect.

The appellant had initially filed a suit No. 196

dated 30.09.2008 challenging the office order dated 05.12.2007 and 17.09.2008 and sought mandatory injunction directing the respondents to award all the benefits to him. In the said suit, respondents appeared and filed their written statement. Issues were framed on 07.01.2009 and the case was fixed for evidence of the appellant for 26.03.2009. However, on 14.01.2009, the appellant moved an application for withdrawal of the suit, to enable him to approach the Forum of Redressal of Employees Grievances (for short 'the Forum'), which was constituted on 03.10.2007. The suit was thus dismissed as withdrawn on 14.01.2009. Thereafter, again on 03.09.2009, the appellant filed the present suit challenging the above mentioned orders. The case of the appellant was considered by the Forum who vide order dated 29.04.2009 proposed the alternative recovery of Rs.17,606/- but the same was rejected by the Board vide order dated 23.07.2009. However, on 24.09.2009, the Board while deciding the review application of Engineer Jasbir Singh, who was also awarded the punishment of stoppage of two increments with cumulative effected, decided to reduce the punishment and recommended to issue advisory letter to him.

Both the Courts below dismissed the suit of the appellant on the ground that it was not maintainable as earlier suit filed by the appellant had been withdrawn

without seeking permission to file a fresh suit, as contemplated under Order 23 Rule 1 (3) of CPC.

Reference was made to the judgment passed by Hon'ble the Supreme Court in a case of ***M/s Upadhyay and Co. v. State of U.P and others AIR 1999 SC 509***

Learned counsel appearing for the appellant has argued that the Forum had been constituted to redress the grievance of the employees whose cases were pending in the Courts. The appellant made an application to the Chairman, PSEB Patiala with request that his case be taken by the Forum, which is being constituted for redressal of the grievances outside the Court. However, the appellant was asked to withdraw his case pending in the Court and thereafter, Forum will decide his case. This fact is evident from noting of the letter sent by the appellant to the Chairman, PSEB.

He further argued that he withdrew his suit from the Court to approach the Forum and the Forum vide order dated 29.04.2009 proposed the alternative recovery of Rs.17,606/- but the same was rejected by the Board vide order dated 23.07.2009. Hence, the dismissal of order gave a fresh cause of action to the appellant to file a fresh suit challenging the earlier orders including order passed by the Board i.e 23.07.2009 and the suit could not be dismissed on

the ground that earlier suit filed by the appellant had been withdrawn without seeking permission to file a fresh suit, as contemplated under Order 23 Rule 1 (3) of CPC.

On the other hand, learned counsel for the respondent had argued that the appellant was very much aware that when he was approaching the Forum, the order could be passed against him as well and after recommendation of the Forum, the decision has been taken by the Chairman, PSEB, Patiala. It was necessary for the appellant to seek permission from the Court to file a fresh suit.

Heard learned counsel for the parties.

Order 23 Rule 1 (sub Rule 4) of CPC provides as under:-

“(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub rule 3.”

In the present case, the appellant withdrew the suit without taking permission from the Court to file a fresh suit.

It is necessary to look the mode of operation of the Forum to decide the case, which reads as under:-

“1. This Forum shall be holding one meeting

in a month regularly.

2. No case shall be considered until that case has gone through all the stages of Inquiry, Appeal, Review etc. in case disciplinary cases and final disposal of representation of the aggrieved employee by the respective competent authority as per normal procedure. After these stages, representation/legal notices of the employees/class of employees shall be brought before this Forum by the Head of the department concerned and after the deliberations on the cases/cases, if the Forum forms an opinion that earlier decision of the competent authority require modifications/alteration to avoid litigation by employee/class of employees, it shall recommend the same to place before the Board accordingly for decision through office represented by Convener. This issue with the approval of WTMs.

Thus, the forum was constituted to avoid the litigation by the employees and an employee can approach the forum while litigating in Court cases.

In the present case, on a letter written by the appellant on 29.12.2008, the Chairman of the Board asked the appellant to first withdraw his suit and then his case will

be sent to the Forum. The Forum was constituted for settling the case of the employees outside the Court, whose case are pending before the Courts. The object of the Forum was to reduce the litigation and not to create a bar for challenging the final orders passed by the Board declining the recommendation made by the Forum. An employee cannot be left remediless. When the Board rejected the recommendation of the Forum who proposed to reduce the punishment of the appellant proposing the alternative recovery of Rs.17,606/-. The order passed by the Board gave fresh cause of action to the appellant to file another suit challenging the orders and the suit could not be dismissed on the ground that earlier suit filed by the appellant had been withdrawn without seeking permission to file a fresh suit, as contemplated under Order 23 Rule 1 (3) of CPC.

In view of the above, the present appeal is allowed and judgment dated 11.04.2013 passed by the lower Appellate Court and judgment dated 27.05.2011 passed by the trial Court are hereby set aside and the matter is remanded back to the trial Court to decide the matter afresh on merits after giving due notice to the parties.

April 23, 2015
G Arora

(RITU BAHRI)
JUDGE