

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

Regular Second Appeal No.2201 of 2014 (O&M)
Date of decision: 07.09.2015

Birbal Singh

... Appellant

versus

Punjab State Power Corporation Limited, the Mall, Patiala, and
others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

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

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J.(Oral)

1. The plaintiff, who omitted to attend a departmental enquiry, came by a punishment of withdrawal of two increments with cumulative effect. The charge was that he, during his service as a Meter Reader, failed to perform his duty properly which was said to have been initiated after an inspection. The plaintiff claims to have sought for inspection of the 'inspection report' and when it was not given, chose to remain absent and allowed for the Enquiry Officer to return a finding that the charges were proved against him.

The incident happened during the time when he was serving in Goraya division at Jalandhar but departmental proceedings were conducted after he was transferred to Ludhiana. The plaintiff filed a suit in court within the jurisdiction of Ludhiana and there were two objections taken: one, the Court at Ludhiana did not have the competence to try the suit, for, the cause of action regarding imputation of charge took place only in the place at Goraya (Jalandhar). The other objection was that the proceedings before the authorities had been conducted in all fairness after serving notice of enquiry and the plaintiff did not avail to himself the opportunity to participate in the enquiry and made a bogey of breach of natural justice on a plea that some documents were not supplied to him. When specific charges with reference to the delinquency were made instead of participating in the trial, the plaintiff was attempting to challenge it before a civil court which had no jurisdiction to decide on the validity of the findings in the departmental enquiry.

2. Both the trial court and the appellate court upheld the defence and dismissed the plaintiff's suit on both grounds.

3. The learned counsel for the appellant states a part of the cause of action arose in the court at Ludhiana because the proceedings against him were initiated only when he was working at Ludhiana and although the enquiry was conducted at Jalandhar since the order was communicated to him in Ludhiana, the court at

Ludhiana had the jurisdiction. His contention further is that the basis of constituting an enquiry which was the inspection alleged to have been carried by the higher authorities was the linchpin on which the entire case revolved and the non-supply of such document would amount to denying a fair trial before the departmental authorities. He would, therefore, seek for intervention of the decisions made by the courts below.

4. An issue of jurisdiction is invariably taken at the preliminary stage and it cannot be a matter for issue for consideration at the second appeal if there had been otherwise a substantive consideration of all the issues before the trial court. Both the courts below adverted to the case on merits as pleaded by the plaintiff and I do not think the case must be detained only on the issue of jurisdiction. However, I must observe the term “cause of action” cannot be understood as arising by the place of residence of the plaintiff. The act complained of was the plaintiff's negligence in performance of duty when he was at Goraya. The enquiry was constituted at Goraya at Jalandhar and it was immaterial where the order was served. It is the defendant's residence or the place where the order was issued will have the jurisdiction nor the place where the plaintiff is residing, unless there is a specific enactment such as the Trade Mark Act or the Patents Act which allows for the residence of the plaintiff also to constitute the jurisdiction. The

Hindu Marriage Act and the Motor Vehicles Act also allow for the claimant's residence as also a court of jurisdiction. The suit was not correctly laid in the court at Ludhiana in the manner that the courts below have considered. I am stating this only for the sake of record but the same way the courts below have examined the case on merits, I have also examined the claim of the plaintiff only to make myself sure that an employee was not losing out his case by the choice of wrong forum.

5. The plea of violation of natural justice will avail to a person who participates in the enquiry but fended off in the process of unjust procedure. If there are acts attributed to the plaintiff as constituting delinquency on his part, a mere reference to non-supply of the inspection report could not vitiate the whole enquiry unless the Enquiry Officer had recorded the inspection report as the only basis for finding him guilty and the disciplinary authority had also acted on a document which was not put across to the plaintiff. There is no such case before me that the order came to be passed by relying on a document which was not supplied at the time of enquiry. I cannot find any virtue about the plaintiff's case when he chose to remain outside the enquiry process to arrive in court after the impugned order was passed and challenge the same in a civil court. The civil court's jurisdiction itself will be limited to only examine whether there was any violation of a procedure established

by the Regulations or the Rules or statutory provisions or there was a gross violation of rules of natural justice such as passing an order without giving an adequate opportunity to represent himself or a serious flaw in the procedure in conducting the enquiry by a person not competent to do so or by an officer passing an order who had no competency to do so. None of the fallabilities arise in this case to justify the plaintiff's claim that the impugned order was vitiated.

6. The judgments of the courts below are maintained and the second appeal is dismissed as devoid of any merits.

(K.KANNAN)
JUDGE

07.09.2015
sanjeev