

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2773 of 2014

Date of Decision: 29.01.2016

Sunil Malhotra

... Petitioner(s)

Versus

Punjab State Power Corporation Limited and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. Naveen S. Bhardwaj, Advocate
for the respondents.

Shekher Dhawan, J.

Present petition is challenge to the concurrent findings recorded by both the Courts below, whereby application filed by petitioner (plaintiff) for ad interim injunction under Order 39 Rules 1 & 2 CPC read with Section 151 CPC was dismissed and appeal against the said order was also dismissed.

Learned counsel for the petitioner submitted that as per service rules, major penalty could not be awarded without holding regular enquiry. On this point, reliance has been placed upon the judgment rendered by Hon'ble the Apex Court in ***Vijay Singh v. State of U.P. and Others 2012(2) Apex Court Judgments 045 (SC).***

Learned counsel for the petitioner also submitted that a person cannot be subjected to penalty greater than which might have been inflicted under the rule in force at the time of commission of delinquency or misconduct. On this point, reliance has been placed upon judgment rendered by the Hon'ble Supreme Court in ***The Government of Andhra Pradesh and Others v. Ch. Ghandhi 2013(2) SCT 208.*** Punishment of compulsory retirement is covered under the major penalty and admittedly no enquiry has been conducted by now and on the basis of impugned order dated (Annexure P3), order of retirement of petitioner is to be passed for which he has sought relief of injunction and his prayer has not been considered by the Courts below and the said order be set aside.

Learned counsel for the respondents submitted that both the Courts below have already considered the facts and entire material available on the file and there is no substantial question of law calling for interference by this Court in such an application for ad interim injunction. Petitioner has no prima facie case nor balance of convenience lies in his favour and if the prayer of petitioner is not accepted he is not going to suffer any irreparable loss. More so, at a latter stage, on the basis of evidence adduced before the Courts below, the Court comes to the conclusion that plaintiff has got a case, he can be duly compensated but in case his prayer is accepted and later on Court comes to the conclusion that he is not entitled to the relief claimed, present respondents cannot be compensated because that amounts to decree of the suit without considering the entire

controversy. So, present petition be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that both the Courts below have already appreciated the facts and recorded the findings and dismissed the application for ad interim injunction. At this state, there is no case for acceptance of the present petition because the matter is pending for consideration before the Court below, who is to decide the case after recording of evidence. At this stage, it would amount to pre-judging the issue and giving the petitioner a needless benefit of continuance of job and salary when the issue is not yet decided. If in the ultimate bargain, the suit was to be dismissed, plaintiff would have come by undeserved merit of continued employment. On the other hand, if the plaintiff is successful and if he had lost his employment, he will always be given all the benefits which are attached to the post. Balance of convenience is, therefore, not in favour of the plaintiff to secure a benefit.

In view of above, this Court declines to make any interference and present petition is dismissed. However, the observations made by this Court with reference to plaintiff's entitlement is only for the purpose of dismissal of petition and the merits of the claim will be considered by the Court concerned at the time of trial of the case.

(Shekher Dhawan)
Judge

January 29, 2016
"DK"