

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

**Regular Second Appeal No. 41 of 2012 (O&M)
Date of Decision: 14.1.2016.**

Jaswant Singh and others

.....Appellants

Vs.

Punjab State Electricity Board now Punjab
State Power Corporation and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Dharampal, Advocate for
Mr. H.K.Brinda, Advocate
for the petitioners.

Mr. R.N.Sharma, Advocate
for the respondents.

.....

SABINA, J.

Plaintiffs had filed suit for declaration challenging the order dated 3.7.1998 whereby increment granted to the plaintiffs vide order dated 10.10.1994, was withdrawn.

Suit filed by the plaintiffs was dismissed by the Trial Court vide judgment/decreed dated 21.4.2008. Aggrieved against the said judgment and decree, plaintiffs preferred an appeal. The First Appellate Court vide judgment/decreed dated 22.10.2009 allowed the appeal and the findings of the Trial Court on issues No. 1 and 2 were reversed. Defendants were directed by the First Appellate Court to afford proper opportunity to the plaintiffs before withdrawing any increment or before effecting any further recovery from the plaintiffs. Plaintiffs filed a

review application on the ground that the First Appellate Court had not specifically held that the suit filed by the plaintiffs was decreed. Due to this reason, the plaintiffs would suffer hardship before the Executing Court. The review application filed by the plaintiffs was dismissed vide order dated 27.9.2011. Hence, the present appeal by plaintiffs No. 1 to 4, 6 and 7.

Learned counsel for the appellants has submitted that the relief claimed in the present appeal was only to the limited extent that the decree passed by the First Appellate Court be clarified to the effect that the suit filed by the plaintiffs was decreed in view of the fact that the appeal filed by the plaintiffs was accepted by the First Appellate Court.

Learned counsel for the respondents has fairly conceded that as the First Appellate Court had allowed the appeal, the clarification sought by the appellants, was justified.

In the present case, following issues were framed by the Trial Court:-

- 1. Whether the pay of the plaintiff was rightly fixed as claimed by the plaintiff? OPP*
- 2. Whether the withdrawal of one increment from the basic pay of the plaintiff on the basis of memo No. 87021 dated 3.7.98 is illegal, null and void? OPP*
- 3. Whether plaintiff is entitled to the injunction as prayed for ? OPP*
- 4. Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
- 5. Whether plaintiff has no cause of action to file the present suit ? OPD*

6. Relief.

Operative part of the judgment passed by the First Appellate Court reads as under:-

“I have gone through the case law. The proposition of law laid down by the Apex Court as well as by Hon'ble High Court of Punjab and Haryana is not disputed, but the PSEB authorities should have given them opportunity before withdrawing any increment from the plaintiffs and before effecting any recovery and in such circumstances the lower court fell into an error by holding that correct pay has been fixed and not allowing the plaintiff the permanent injunction as has been prayed by them. Therefore the findings of the lower court on issues No. 1 and 2 are reversed and the appeal filed by the plaintiffs is accepted with costs. A direction is issued to PSEB authorities to afford proper opportunity to the plaintiffs before withdrawing any increment or before effecting any further recovery from the plaintiffs. Decree sheet be prepared. File be consigned.”

Thus, in the present case, the First Appellate Court while reversing the findings of the Trial Court on issues No. 1 and 2 had allowed the appeal filed by the plaintiffs. In consequence thereto, the learned First Appellate Court should have specifically mentioned that the suit filed by the plaintiffs was decreed. In view of the submissions made by the counsel for the parties, the operative part of the judgment passed by the First Appellate Court and in consequence thereto, the decree framed by the First

Appellate Court are modified and be read as under:-

“Therefore the findings of the lower court on issues No. 1 and 2 are reversed and the appeal filed by the plaintiffs is accepted with costs and the suit of the plaintiffs is decreed. A direction is issued to PSEB authorities to afford proper opportunity to the plaintiffs before withdrawing any increment or before effecting any further recovery from the plaintiffs. Decree sheet be prepared. File be consigned.”

Appeal stands disposed of accordingly.

**(SABINA)
JUDGE**

January 14, 2016
Gurpreet