

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 101

Regular Second Appeal No.897 of 2004 (O & M)

Date of Decision: *August 10, 2017*

Punjab State Electricity Board & others

..... APPELLANTS

VERSUS

Mehnga Singh

..... RESPONDENT

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Ms. Sangita Dhanda, Advocate, for the appellants.

Mr. Sudharshan Goel, Advocate, with Ms. Rupinder Kaur, Ms. Rashmi Dhillon and Mr. Amit Aggarwal, Advocates, for the respondent.

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Jaspal Singh, J

1. The instant regular appeal has been preferred by the appellants – Board against judgment & decree dated November 28, 2003 passed by the Additional District Judge, Amritsar, whereby appeal filed by the appellant against judgment & decree dated February 28, 2001 passed by the Additional Civil Judge (Senior Division), Amritsar has been dismissed and suit filed by the respondent – plaintiff has been decreed.

2. Brief facts of the case are that respondent – plaintiff joined the services of appellant – Board on February 22, 1983. He was served with a chargesheet dated July 23, 1991 under Regulation 8 of Punjab State Electricity Board Employees (Punishment & Appeal) Regulations, 1971 (for short, ‘Regulations’) alleging therein that while serving as Driver in TLSC

Drum from PSEB Store at Verpal on July 16, 1986 in his Truck No.PUJ-1139 at the instant of one Santokh Singh Padam, JE-II, and that, he stole the said material for his personal gain with active connivance and help of Santokh Singh Padam - JE II, Pritpal Singh – SO, Surinder Bhatia – JE II, Gurdip Singh Kochhar – SDO and Er. Gurjan Singh Brar – XEN, TLSC Division, Amritsar. The enquiry culminated into removal of respondent – plaintiff from service, vide order No.581/D-1843-T-1 dated November 06, 1998 whereas Santokh Singh Padam was awarded a penalty of recovery of ₹ 25,000/-. Plaintiff preferred a departmental appeal which was also dismissed by the appellate authority vide order dated April 21, 1999.

3. Aggrieved against his punishment of removal from service and dismissal of departmental appeals, Mehnga Singh preferred a civil suit for declaration that order dated November 06, 1998 passed by defendant No.3 removing him from the service and order of appellate authority dated April 21, 1999 rejecting his appeal are malafide, wrong, cryptic, capricious, illegal and without jurisdiction.

4. The suit was contested by the defendants – appellants by filing written statement, raising preliminary objections on the grounds of maintainability, prematurity of suit, plaintiff's not coming to court with clean hands, cause of action, limitation, improper valuation of suit for the purpose of court fee and jurisdiction. On merits, allegations levelled by the plaintiff were denied and facts contained in the chargesheet were reiterated.

5. Replication was filed by the plaintiff denying the averments of written statement. From the pleadings of parties, issues were framed. Parties led evidence. After hearing learned counsel for the parties and perusing the record, suit filed by the plaintiff was decreed by the trial court

removing the plaintiff from service was set aside and petitioner was ordered to be continued in service with all benefits.

6. Aggrieved defendants went up in appeal, however, the lower appellate court dismissed the same vide judgment & decree dated November 28, 2003 with modification to conduct fresh enquiry within a period of six months from the date of passing the judgment and decree.

7. Still dis-satisfied, defendants have preferred the instant appeal challenging the judgments & decrees passed by the courts below.

8. While assailing the impugned judgments, learned counsel for the appellant has vehemently contended that the same are unsustainable in the eyes law due to misreading of facts & circumstances, as such, resulted in miscarriage of justice. The civil court cannot sit in appeal over the decision of employer and sift the findings and evidence as an appellate court. The impugned judgments amount to evaluating the decision of Board. Plaintiff was neither discriminated nor dealt with differentially. Rather, Santokh Singh Padam was also inflicted major penalty i.e. for recovery of ₹ 25,000/-.

9. Per contra, learned counsel for the respondents has supported the judgments & decrees passed by the courts below submitting that the same are in consonance with the settled proposition of law and cannot be faulted with.

10. This Court has given an anxious thought to the aforesaid submissions of learned counsel for the parties, scanned the record available and does not find any weight in the contentions of learned counsel for the appellants.

11. First of all, the appellant – Board has failed to explain any rational ground for meeting out of different punishments. On the one hand,

plaintiff has been inflicted major penalty removing him from service, whereas on the other hand, other delinquent officials namely Pritpal Singh and Sevinder Pal Singh Bharia, have been let off with penalty of withholding of one increment only. Moreover, two more delinquent officials namely Charan Singh – Chowkidar and Gurjant Singh Brar were served with letter of censure and warning only. Santokh Singh Padam was also let off with penalty of recovery of ₹ 25,000/- by way of cut off 10% from his pension which is infact a minor punishment and not a major punishment as projected by the authorities before the courts below and this Court. There is no explanation whatsoever on behalf of the appellants as to why plaintiff was chosen to be removed from service. As such, it has been rightly held by the courts below that plaintiff – respondent has been discriminated by the appellant – Board while awarding punishment. In **N.C. Arora vs. State of Haryana, 1997(1) SCT 206**, the Hon'ble Apex Court held that one of the delinquents let free by stoppage of two increments and another recovery of part of amount or loss whereas the petitioner awarded punishment of recovery as also of dismissal from service. It was further held that imposition of extreme penalty of removal from service upon the petitioner lends credibility to his plea that respondents have acted arbitrarily. Similar view was adopted by the Hon'ble Apex Court in **State of U.P. v. Raj Pal Singh, 2010(5) SCC 783; B.C. Chaturvedi vs. UOI & others, 1996(1) SCT 617 (SC); Secretary to Govt., Home Deptt. & others vs. Srivaikundathan, 1999(1) SCT 715**.

12. Moreover, in the enquiry proceedings, Board was represented by a Presiding Officer whereas nobody was allowed to represent the plaintiff – respondent. Neither any helper was afforded to plaintiff to

co-employee. In this way, plaintiff was prejudiced in his defence. The Hon'ble Apex Court in **Bhagat Ram vs. State of Himachan Pradesh & others, AIR 1983 SC 454** while following judgment rendered in **Board of Trustees of the Port of Bombay vs. Dilipkumar Raghvendra Nath Nadkarni & others, 1983 AIR (SC) 109** held that justice and fairplay demand that where in a disciplinary proceedings, the department is represented by a Presenting Officer, it would be incumbent upon the disciplinary authority while making appointment of a Presenting Officer to appear on his behalf and simultaneously to inform the delinquent official of fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. In the case in hand, plaintiff was a Driver and was illiterate person, hence, was not in acquaintance with the technicalities of the procedure. He was not made aware of his right to seek helper either by the Board or by the Inquiry Officer. As such, plaintiff – respondent was deprived of the benefit of helper in his defence and discriminated.

13. As far as conducting of fresh enquiry is concerned, the same is neither legally nor factually justified as the petitioner is facing the pains and sufferings of the protracted litigation for the last more than two decades.

13. In the light of what has been discussed, instant appeal is devoid of any merits and the same is accordingly dismissed. Consequently, the impugned judgments & decrees are upheld.

14. No order as to costs.

(Jaspal Singh)
Judge

August 10, 2017
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No