

CWP No. 6427 of 2015 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 6427 of 2015 (O/M)
Date of decision : 18.5.2017

Naresh Chand, Advocate, Patiala

..... Petitioner (s)

Versus

Punjab State Power Corporation Limited and another Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashok Kumar Nabhwala, Advocate, for the petitioner.

Mr. Mukul Aggarwal, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

The petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India for quashing the order dated 24.9.2014 (Annexure-P-11), passed by respondent No. 2, whereby the appeal filed by the petitioner against order dated 24.4.1998, terminating his services, was dismissed as time barred. The petitioner also claims mandamus seeking release of all the retiral benefits from the date of entitlement with all consequential benefits.

The petitioner joined as a Lower Division Clerk on 16.8.1962 in respondent-department and was to retire on 31.1.2000. The services of the petitioner were terminated on 8.8.1965. The petitioner challenged the

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said termination by way of civil suit, which was decreed by the learned Sub Judge 1st Class, Patiala (D) on 27.3.1971 (Annexure-P-1). The appeal against the said judgment and decree was dismissed by the learned Additional District Judge, Patiala, on 7.4.1973 and the Regular Second Appeal filed by respondent-Board was dismissed by this Court on 5.1.1976. The petitioner claims that he was issued Office Order No. 324 dated 22.4.1993. Thereafter, on 15.1.1994, he gave three months' notice, seeking premature retirement under Rule 3 (2) of the Punjab State Electricity Board (Premature Retirement) Regulations, 1982 (in short 'Regulations of 1982'), as the petitioner has 20 years qualifying service. The said notice was not replied. Thereafter, the petitioner, by filing civil suit for declaration, challenged the said Office Order No. 324 dated 22.4.1993, vide which the Inquiry Officer was appointed. The said suit was decreed by the learned Senior Sub Judge, Patiala, vide judgment and decree dated 23.8.1994 (Annexure-P-3) and the said order date 22.4.1993 was declared as illegal. The appeal against the said judgment and decree was dismissed by the learned Additional District Judge, Patiala, vide judgment dated 23.2.1995 (Annexure-P-4). Respondent-Board filed Regular Second Appeal No. 557 of 1995 before this Court, which was reported in 1996 (1) SCT 832, titled as Punjab State Electricity Board Versus Naresh Chand, decided on 22.8.1995 (Annexure-P-5). As per the judgment passed by this in Naresh Chand's case (supra), respondent-Board was to pass a speaking order regarding the continuity of service of the petitioner and consequent promotion. Respondent-Board had no objection if the present petitioner reports for duty and if he does so, he will be given fresh posting order. Therefore, the present petitioner was directed to appear before the Chief Engineer, Punjab

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State Electricity Board, South, Patiala, on 1.9.1995 at 10:30 a.m. It is stated that the petitioner was not interested in continuing with the service. The petitioner made another representation dated 23.11.2013 (Annexure-P-6), seeking premature retirement, which was in continuity of notice dated 15.1.1994, on which no action was taken. The services of the petitioner were terminated, vide order dated 24.4.1998, against which the petitioner filed a statutory appeal dated 22.1.2014 (Annexure-P-8). The petitioner had issued another notice of retirement dated 7.10.2014 (Annexure-P-9). The said statutory appeal of the petitioner was dismissed, vide order dated 24.9.2014 (Annexure-P-11) as time barred. The petitioner seeks the quashing of the order dated 24.9.2014 (Annexure-P-11) and seeks the release of all the retiral benefits.

In the written statement, respondents have not denied the previous litigation. It was stated that the petitioner joined respondent-department on 16.8.1962 as Lower Division Clerk and worked only upto 8.8.1965. Thereafter, he never joined the service, despite various orders and reminders, issued by respondent-department and the orders passed by this Court. It was stated that in terms of order passed by this Court in RSA No. 557 of 1995, dated 22.8.1995 (Annexure-P-5), the petitioner submitted the joining report on 4.9.1995 and thereafter slipped away and thereafter did not report for duties. On 5.9.1995, he did not attend the office; on 6.9.1995, after marking attendance he left office; on 7.9.1995, he came office at about 1:05 PM and went without doing any office work; on 8.9.1995, he came office at 9:30 AM and went away by submitting casual leave application for 8.9.1995 with effect from 11:00 AM onward and thereafter without getting any leave sanctioned, he remained absent from duty continuously. He was

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served with a chargesheet dated 11.4.1996, containing the said allegations of absence. He did not file the reply, despite opportunity being given to him and rather made a statement on 8.1.1998 (Annexure-R-1), admitting all the charges. Therefore, vide order dated 203, dated 24.4.1998, the services of the petitioner were terminated on account of absence from duty. Since the services of the petitioner were terminated on with effect from 24.4.1998, therefore, no action was taken on his request for his premature retirement, submitted thereafter. It was submitted that since the petitioner rendered service in respondent-department only for 3 years with effect from 16.8.1962 to 8.8.1965, therefore, he is not otherwise entitled to premature retirement.

I have heard the learned counsels for both the parties and have also carefully gone through the file.

The pleadings of the petitioner itself shows that he worked from 16.8.1962 to 8.8.1965. Thereafter, his services were terminated. His suit was decreed by the lower Court on 27.3.1971. It is not stated that there was any stay from the superior court after his suit was decreed by the lower Court and why he did not join immediately after 27.3.1971. The matter was ultimately decided by this Court in RSA on 5.1.1976. The petitioner has not stated in the present writ petition that even after 5.1.1976, he wanted to join the services and was prevented by respondent from joining the service. However, from the subsequent suit challenging the office order No. 324 dated 22.4.1993, appointing the inquiry officer, it comes out from the facts stated in the judgment dated 23.8.1994 (Annexure-P-3) that according to the petitioner, he had been making representation to allow him to join duty to the post of Lower Division Clerk, which he was not allowed and rather the

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inquiry officer was appointed, meaning thereby that the petitioner did not join the duty till the inquiry officer was appointed and even thereafter, it was not stated that the petitioner did join the duty. The petitioner submitted a request for premature retirement on 15.1.1994 i.e. during the pendency of the Regular Second Appeal No. 557 of 1995 before this Court, which was decided on 22.8.1995. The copy of the judgment dated 22.8.1995 (Annexure-P-5), passed by this Court in RSA No. 557 of 1995 shows that it was never pleaded before this Court that the petitioner is not interested in service and that he is seeking premature retirement. Rather in the appeal, which was limited only to the arrears of salary, it comes out that the posting orders were issued on 17.11.1976, but the petitioner obtained interim injunction against the said order, which was vacated on 24.4.1978 and he did not join at the place of posting. Respondent-Board never prevented the petitioner from joining the duty. The relevant extracts from the RSA No. 557 of 1995 (Annexure-P-5) are reproduced as under :-

“2. Having heard the learned counsel, I am of the view the grievance made by the appellant is justified. Respondent was issued posting orders on 17.11.1976 and he was asked to report in the office of Superintending Engineer, Ferozepur. Against this order the respondent made representation dated 7.12.1976. His representation was rejected on 7.1.1977 and accordingly he was asked to join at the place of posting vide Exhibit D-4 i.e. the place for which order dated 17.11.1976 had already been issued. Respondent did not join and that led to serving of chargesheet on him. He challenged this action by filing a civil suit on 8.8.1977 and obtained an interim injunction whereby the Board was directed not to implement its order dated 17.11.1976. However, ad-interim injunction was vacated on 24.4.1978. Respondent then filed an appeal which was rejected. Thereafter, the Board kept quiet and the respondent

too did not join at the place of posting. Respondent moved yet another representation addressed to the Secretary of the Board thereby requesting for his posting at the Head Office, but the said representation was rejected. It was on 22.4.1993 when an order was passed appointing an Enquiry Officer to hold enquiry against the petitioner. This led to filing of a civil suit by the respondent out of which the present appeal has arisen. In the suit, issuance of chargesheet in the year 1977 and appointment of Enquiry Officer to hold enquiry against the respondent has been challenged on the ground that the action on the part of the Board is belated and the enquiry cannot proceed against him. Besides this, respondent also claimed arrears of salary and other consequential benefits. The trial Court decreed the suit and in appeal the decree of the trial Court has been affirmed by the first appellate Court. As already noticed, the limited prayer of the Board is to the extent that respondent is not entitled to arrears of salary. As the narration of facts in the earlier part of the judgment has shown that at no stage the Board had prevented the respondent from joining at the place of posting rather it was the respondent himself who had been approaching the Board and also the Court with the prayer that he be posted at the Head Office. After the stay was vacated, the respondent did not report for duty in the office of Superintending Engineer, Ferozepur. It would have been different matter if the respondent had gone to the office of Superintending Engineer, Ferozepur, but was not allowed to join the duty as per order dated 17.11.1976. However, this was not done and therefore, respondent cannot be allowed to take advantage of his own wrong.”

Consequently, the following relief was allowed :-

"3. Accordingly, the judgments and decrees of the Courts below are modified to the extent that the injunction whereby the Board has been directed to pay arrears of salary shall stand set aside. As regards the claim of the respondent to give him

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the benefit of continuity of service and consequent promotion, the matter shall be dealt with by the Board by passing a speaking order and the respondent, if so advised, can also file/make representation in this regard. As regards joining on the post, counsel for the Board has no objection if the respondent reports to the office of Chief Engineer, Punjab State Electricity Board, South, Patiala, where he would be given a fresh order of posting. Respondent, if so chooses may appear before Chief Engineer, Punjab State Electricity Board, South, Patiala, on 1.9.1995 at 10.30 a.m. in this regard.”

The relief granted by this Court shows that the petitioner was not to be paid salary. However, regarding continuous service, the present petitioner was advised to make a representation in this regard and the Board was to pass a speaking order. Since the Board had no objection to the petitioner joining the service, the petitioner was directed to join the duty on 1.9.1995 at 10:30 AM.

It is not on file that the petitioner made any representation to the Board for allowing him the continuity of service. Rather than, the facts stated in the written statement show that on 4.9.1995, the petitioner reported for duty and slipped away thereafter. On the next day, he did not turn up and then he just left the office and after 8.9.1995, he continuously remained absent. Consequently, he was chargesheeted on 11.4.1996. It is clear that the petitioner had joined the inquiry. The statement (Annexure-R-2) produced by respondents on file shows that the petitioner had admitted the charges. The relevant extract from the statement (Annexure-R-2) are reproduced as under :-

“ I have received charge sheet memo No. C-562/Chief Engineer/South Dated 11.4.96. I have read all the contents of it and agree with it being correct. It is correct that as per the

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decision of the Punjab and Haryana High Court, I submitted joining report in the Chief Engineer Office/South Patiala and after 4.9.1995, I did not go in the office. It is also correct that my order No. 851 dated 19.9.95 was made for M.E. Faridkot, but I did not join duty there also. It is also correct that I was asked to join duty vide memo number 17793 dated 02.09.1995, No. 17409 dated 06.10.1995 and No. 20775 dated 22.11.1995, but I did not join duty.

By keeping all the circumstances in mind, all the allegations which have been levelled against me in the chargesheet, I admit the same being correct.

In the abovementioned chargesheet which are against me, I admit all these being correct.

Sd/-

Naresh Chand

Sd/-

Eng. Dalip Singh
Eng. Off. Cum--
Executive Division PSPCL, Samana.
Dated : 08.01.98.”

The services of the petitioner were accordingly terminated, vide order dated 24.4.1998, which he has not challenged in the present case. The petitioner has merely challenged the order dated 24.9.2014 (Annexure-P-11), passed by the appellate authority in the statutory appeal. The statutory appeal before the appellate authority shows that he had preferred the appeal only on 22.1.2014 (Annexure-P-8), while referring to memo dated 3.1.2014, vide which he was informed that his representation regarding retirement has been rejected as his services have already been terminated, vide order dated 24.4.1998. Since the petitioner had admitted the chargesheet and was aware about the proceedings, therefore, the petitioner again played a mischief by mentioning the order dated 3.1.2014 as order terminating his services, whereas his services were already terminated on 24.4.1998 and he did not challenge the same till 22.1.2014 i.e. little less than 16 years. The said

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appeal was dismissed, vide order dated 24.9.2014 (Annexure-P-11) as time barred. It was rightly rejected being time barred since the termination order was challenged in the appeal after 16 years. It comes out from the facts that the petitioner was not interested in service after 8.8.1965 and kept on filing the civil suits and never joined the duty. Infact, it comes out that the petitioner, who was working as a Lower Division Clerk in respondent-department, in the meanwhile did LL.B. and was enrolled as an advocate on 21.7.1972. However, on the complaint of respondents, the petitioner was removed from the roll of Bar Council of Punjab and Haryana, vide order dated 4.11.1997 (Annexure-R-3). The order shows that the petitioner after abandoning the service in the year 1965 did his LL.B. somewhere before the year 1972, which was at that time three years course and then got himself enrolled as an advocate and was practising after the year 1972. Apparently, he even obtained a licence from Bar Council of Punjab and Haryana by concealing the fact of his employment. The petitioner remained gainfully employed till he was removed from the roll of Bar Council of Punjab and Haryana as an advocate.

The learned counsel for the petitioner has vehemently argued that the petitioner was to superannuate on 31.1.2000 and that he has got more than 25 years of service. Therefore, he is entitled to pension.

I am of the view that in view of the order dated 22.8.1995 passed by this Court in RSA No. 557 of 1995, the petitioner never filed representation for treating his continuous service. Even after reporting for duty, he became absent and was dismissed from service, vide order dated 24.4.1998. Therefore, his services after 8.8.1965 or after 27.3.1971 cannot be treated as regular service. The petitioner

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thus otherwise does not have qualifying service for grant of pension and other pensionary benefits. Infact, the petitioner kept the department at tenterhooks by filing one after the other civil suit against them without showing any willingness to join the service. His sole purpose was to get the terminal benefits without performing any duty. Infact, the petitioner left the department in lurch and did not perform any duty after 8.8.1965. In the present writ petition, he has not challenged the termination order dated 24.4.1998 and rather challenged the order passed by the appellate authority dated 24.9.2014 (Annexure-P-11) just to avoid the petition being dismissed as barred by delay and latches.

The learned counsel for the petitioner has relied upon the authority of the Hon'ble Supreme Court of India in Asger Ibrahim Amin Versus Life Insurance Corporation of India, 2015 (4) SCT 695.

The facts of the said authority and the facts of the present case are entirely different. The request of the petitioner for voluntary retirement was meaningless as the petitioner never joined the service after 8.8.1965, despite having a decree in his favour. Therefore, without joining the service, he could not claim voluntary retirement. Moreover, his request for voluntary retirement was declined, when he submitted second request on 23.11.2013, wherein no reference was made to the earlier request of 15.1.1994. Even the said request for premature retirement on 15.1.1994 was never brought to the notice of this Court when the judgment in RSA No. 557 of 1995 was passed by this Court on 22.8.1995 (Annexure-P-5). Therefore, notice of retirement was nothing, but a lame excuse to get undue advantage over the department.

In view of the matter, I do not find any merit in the present writ

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petition. The petition is found to be vexatious, therefore, the same is accordingly dismissed with costs quantified at Rs. 50,000/-, payable to respondent-Corporation.

(KULDIP SINGH)
JUDGE

18.5.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes