

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3650 of 2014(O&M)

Date of Decision: 11.1.2017

Sukhwinder Singh, Lineman

... Appellant

Versus

Punjab State Power Corporation Ltd. & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Prateek Mahajan, Advocate,
for the appellant.

Mr. Parminder Singh, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.(Oral)

C.M. No.8460-C of 2014

For the reasons in the application, delay of 10 days in filing the appeal is condoned.

Application stands disposed of.

RSA No.3650 of 2014(O&M)

1. This is a second appeal in a service matter involving termination of service on the ground of submitting a fake experience certificate and playing fraud in obtaining employment in the respondent Board. The findings of fact are concurrent against the appellant in the two courts below.

2. Mr. Prateek Mahajan appearing for the appellant has valiantly attempted to draw a distinction between the present case and the case decided in RSA No.2016 of 2015 (Punjab State Electricity Board, now Power Corporation Ltd. & ors. v. Nirvail Singh, Lineman) and a connected case. He submits that in the other two cases the aggrieved parties had filed

representations before approaching court while the present appellant filed a statutory appeal which was decided by the Chief Engineer, who forfeited two years of service with stoppage of two annual increments with cumulative effect and reinstated the appellant into service. He submits that the present appellant had approached the Labour Court and during the pendency of those reference proceedings an offer was made to him, that in case he withdraws the litigation he would be reinstated to service with the penalties imposed as in the two cases. There was no appeal filed against the appellate administrative order and therefore, it attained finality. Therefore, the Board could not have revisited and reviewed the said appellate order by invoking its power under Regulation 32 of the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 and accordingly terminated the services of the appellant. A perusal of the judgment of the learned Single Judge in RSAs No. 2016 & 2017 of 2015 discloses that the argument based on Regulation 32 has been noticed, considered and dealt with in the judgment.

3. Mr. Mahajan tries to distinguish those cases by arguing that in those cases, appeal was not filed by the aggrieved persons and in those cases, the employees were not re-employed but in the case of the appellant he was not only re-employed but his services were continued by the order passed by the Chief Engineer dated 14.9.1999 and therefore, there was continuity of service while in the case of other two, there were breaks.

4. The other argument canvassed is that the order of termination passed by the Assistant Chief Engineer is without jurisdiction since he had no power to review the order passed by the Chief Engineer and only the Board could exercise that power and there is nothing on record that Board

has passed any specific order with respect to the services of the appellant.

5. The third argument raised questions whether power of review can be exercised after an inordinate delay of 10 years when the case of the appellant stood settled in 1999. Again, perusal of the judgment of the learned Single Judge discloses the same fact situation as present in this case. Even in those cases, it was the Deputy Chief Engineer, who passed the order of termination while there was no specific order from the Board because the respondents in the two appeals were appointed as Linemen by the Superintending Engineer who is subordinate to the Deputy Chief Engineer. In the case of the appellant, the order has been passed by the Deputy Chief Engineer while the appellant was appointed in 1985 with the alignment of the then Chief Engineer.

6. Lastly, Mr. Mahajan referred to the decision of the learned Single Judge in CWP No.12663 of 2000 (Jaswant Singh, Lineman & anr. v. Punjab State Electricity Board, Patiala & ors.), decided on 10.8.2010, which was an action arising out of an award of the Labour Court holding the termination of services of Jaswant Singh as illegal while reinstating him to service with continuity and full back wages. Jaswant Singh was also reinstated in service in compliance of the award of the Labour Court and therefore, Court thought it is too late in the day for the employer to persist with the charge-sheet.

7. However, the court while deciding the case in Jaswant Singh did not deal with the aspect of fraud and submission of fake and bogus experience certificate to secure his job as Lineman and therefore, that case is distinguishable on facts. Merely because relief has been granted to Jaswant Singh, it would not follow that the present appellant should also be

granted the same relief of reinstatement after his services were terminated in 2009. Learned Single Judge in RSA No.2016/2017 of 2015 has dealt with the issue exhaustively on the aspect of appellant playing fraud in obtaining appointment by knowingly producing a bogus certificate of one year experience as T-Mate and I have absolutely no reason to depart from the view taken after due consideration of evidence.

8. Though the arguments of Mr. Mahajan appear attractive to save his client from ruin and deprivation of livelihood, but they are at the same time highly technical in nature and do not appeal to reason and would not stand on an all pervading finding of fraud recorded in identical circumstances in the case of the other two parties in RSA Nos.2016 & 2017 of 2015. It is well settled that fraud vitiates everything. I therefore see no justification in departing from the view expressed by learned Single Judge on 29.11.216 in the case of the other two appellants and thereby creating a deep fissure where two linemen are out of service while the third has been restored his services when it is not disputed by Mr. Mahajan that the experience certificate relied upon by the appellant to obtain the job was on a fake experience certificate. It would be too technical an argument in trying to carve out an exception to Regulation 32 in favour of the appellant. Regulation 32 of the PSEB Regulations reads as follows:-

“32. Notwithstanding anything contained in the regulations:-

- (i) The Board, or
- (ii) the appellate authority, within six months of the date of the order proposed to be reviewed, or
- (iii) any other authority specified in this behalf by the Board by a general or special

order; and within such time as may be prescribed in such general or special order, may at any time; either on his or its own motion or other-wise call for the records of any inquiry and review any order made under these regulations or under the regulations repealed by Regulation-35 from which appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed , and may:-

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance, or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed;
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the employee concerned has been given in a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Regulation-5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Regulation-8.”

9. Mr. Mahajan argues that when his appeal was set aside no further appeal was preferred and this fact may be true but a broad reading of Regulation 32 suggests that notwithstanding the prescriptions contained in the regulation, the Board, the appellate authority or any other authority specified by the Board by general or special order may at any time either on his or its own motion or otherwise call for the records of any inquiry and review any order under regulations at any time even *suo motu* in order to confirm, modify or set aside the order. Strange as it may seem, all the contentions sought to be raised are taken for the first time in second appeal because the principal issue struck on the pleadings presented in the trial court on which the parties went to trial were on the central question whether the experience certificate/s on which employment was obtained are fake or not. Once there are proper findings of fact returned by both the Courts *a quo* after appreciating the evidence on record holding that the experience certificate relied upon by the appellant is a bogus document then all other arguments built on its edifice recede into the background. I would, therefore, apply the law in the connected appeals and dismiss the present one as devoid of merit.

10. There being no substantial question of law involved in this appeal within the boundaries of Section 100 CPC or Section 41 of the Punjab Courts Act, 1918, the same hereby stands dismissed without costs.

(RAJIV NARAIN RAINA)
JUDGE

11.01.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>