

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

RSA-3288-1996

Date of decision: 27.08.2019

The Institution of Engineers (India)

...Appellant

V/s.

Surinder Kumar, Junior Engineer-II and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Deep Prabhu, Advocate for the appellant.

Mr. Gaurav Sharma, Advocate for respondent No. 1.

RITU BAHRI, J. (Oral).

The Institution of Engineers India has come up in appeal against the judgment of the lower appellate Court dated 09.11.1995 whereby the suit filed by the plaintiff Surinder Kumar has been allowed. The plaintiff/respondent No. 1 in the present case was working as Junior Engineer and he appeared in the summer examination of the year 1992 which was held on 28.06.1992. The result of the plaintiff was cancelled and he was debarred to appear in the winter examination of the year 1992 vide impugned order/letter dated 16.04.1993. This order was challenged by the plaintiff in the civil suit and the civil suit was dismissed on 18.10.1995. However the lower appellate Court has allowed the appeal by observing that no opportunity of hearing was given to the plaintiff before passing the impugned order/letter dated 16.04.1993 and in para 10 of the judgment, it has been observed as under:-

“10. Another aspect of the matter discussed by the trial Court while repelling the contentions raised by the plaintiff, is that on 21.12.1992 Ex.P4, the earlier letter dated 4.12.1992 Ex.P3, whereby the plaintiff was debarred from appearing in the winter 1992 examination was ignored, meaning thereby that as on 21.12.1992, there was no order against the plaintiff, debarring him from appearing in any examination. The plaintiff had applied for sending his result of summer 1992 and the plaintiff was told to send a fee of Rs.17/- for sending his result. The plaintiff had made a request vide letter dated 1.1.1993. The defendant informed the plaintiff through letter dated 15.1.1993 that the mark-sheet of the plaintiff's result had been sent to him and he was not informed that any enquiry was pending regarding the adoption of unfair means by him. The plaintiff sent the requisite fee by means of a bank draft, the receipt of which has been admitted by DW1. The plaintiff also sent the letter dated 1.2.93 and reminder dated 10.4.1993, but it was not replied. It has been admitted by DW1, that inspite of the receipt of Rs.17/- towards the requisite fee, the plaintiff was not sent either his result nor he was informed about the pendency of any enquiry. The sub-committee is alleged to have taken a decision on 31.1.1993 but even then the plaintiff was not informed about the decision before 16.4.93. In any case, the plaintiff could not be debarred from appearing in winter, 1992 examination which admittedly takes place somewhere in December, as at that time, there was no order debarring him from appearing in the examination. The learned trial court has taken a view that since the case of unfair means was pending against the plaintiff, the defendant was within the rights to debar the plaintiff from appearing in winter, 1992 examination. The findings of the trial court in this respect, cannot be sustained. Atleast, the defendant could permit the plaintiff to appear provisionally in winter, 1992 examination if any action was contemplated against him.”

As per the judgment of the lower appellate Court, the plaintiff was at liberty to appear in any examination after 16.04.1993. Learned counsel for the appellant had sought time on 24.07.2019 to find out whether respondent No. 1 had qualified the examination after 1992.

Learned counsel for the appellant states that they have no record or ID proof to verify this aspect.

Keeping in view that the plaintiff was not debarred from appearing in the examination after 1992 and the order dated 16.04.1993 debarring him in the examination was passed without giving any opportunity of hearing, this appeal is dismissed.

27.08.2019
Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No