

**C.M. NOS.19475-77 C OF 2018 &
R.S.A. NO.15022 OF 2018**

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

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**C.M. NOS.19475-77 C OF 2018 &
R.S.A. NO.15022 OF 2018
DATE OF DECISION: MARCH 07, 2019**

Punjab State Power Corporation Ltd. and another

.....Appellants

VERSUS

Vijay Kumar Bansal

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Y. P. Khullar, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. Nos.19475 C of 2018

Prayer in the present application is for condonation of delay of
149 days in refiling the appeal.

For the reasons mentioned in the application, which are duly
supported by an affidavit of Joint Secretary, Technical I, PSPCL, Patiala,
the same is allowed and delay in refiling the appeal is condoned.

C.M. Nos.19476 C of 2018

Prayer in the present application is for condonation of delay of
59 days in filing the appeal.

For the reasons mentioned in the application, which are duly
supported by an affidavit of Joint Secretary, Technical I, PSPCL, Patiala,
the same is allowed and delay in filing the appeal is condoned.

R.S.A. No.15022 of 2018

Challenge in this appeal is to the judgment and decree dated 31.10.2015 passed by the Civil Judge (Junior Division), Bathinda, whereby suit for declaration preferred by the respondent-plaintiff to the effect that the office order No.287 dated 06.06.2012, vide which two increments of the respondent-plaintiff were withheld, is illegal, null and void and not binding upon him and the plaintiff is entitled to consequential benefits, has been decreed, appeal against which preferred by the appellant-defendant was dismissed by the Additional District Judge, Bathinda, vide judgment dated 20.11.2017.

The only contention, which has been raised by learned counsel for the appellants is that the civil court did not have jurisdiction to entertain the civil suit as the respondent-plaintiff has not availed of the remedy of appeal provided under the Punjab State Electricity Board Employees Punishment and Appeal Regulations, 1971 (hereinafter referred to as “the 1971 Regulations”). In support of this contention, he has placed reliance upon a judgment of Hon'ble Supreme Court in Punjab State Electricity Board Vs. Ashwani Kumar, 1997 (3) R.C.R. (Civil) 147.

I have considered the submissions made by learned counsel for the appellant and have gone through the impugned judgments and decree as also Ashwani Kumar's case (supra), which has been relied upon by counsel for the appellant to contend that the civil court has no jurisdiction but do not find myself in agreement with the said assertion of counsel for the appellant.

The facts, in brief, which are not in dispute, are that the respondent-plaintiff was served with a charge sheet dated 02.08.2011 under Rule 8 of the 1971 Regulations, which prescribes major penalties. Reply to

the charge sheet was filed by the respondent-plaintiff on 07.10.2011. On considering the reply, the appellant-defendants passed an order of punishment of stoppage of two increments without cumulative effect vide order dated 06.06.2012, which order has been challenged by the respondent-plaintiff by filing a civil suit on the ground that the order is a non-speaking one as once a charge sheet has been issued for imposing a major penalty, regular enquiry was mandated to be held against him and without holding an enquiry, punishment order has been imposed upon him, thus, violating the principles of natural justice as no show cause notice has been served upon the respondent-defendant. The Courts below have, on the basis of the pleadings and keeping in view the statutory regulations, come to a conclusion that once a charge sheet has been issued, the competent authority had the option of either dropping the proceedings or for holding a regular departmental enquiry and thereafter following the regulations proceed to pass an appropriate order.

The said aspect has not been disputed and challenged in the present appeal. What has been challenged is limited to the extent of suit being not maintainable because of a remedy of filing an appeal as provided under the 1971 Regulations.

The said contention of counsel for the appellant cannot be accepted as there is no bar under the Code of Civil Procedure as also in the Regulations that the civil court would not have jurisdiction unless the remedy of appeal, as provided under the regulations, has been exhausted. Further there is no dispute with regard to the proposition that the suit is maintainable where the jurisdiction of the civil court is not specifically so barred or excluded under the regulations or the statute.

It is an admitted position on the part of the counsel for the appellant that there is no such bar provided for under the 1971 Regulations. If that be so, the civil court would have the jurisdiction to entertain the suit. The departmental remedy of an appeal is meant primarily for the benefit of the concerned employee. If he chooses not to avail of the same, he, in fact loses an opportunity to project his stand and no prejudice is caused to the department in any manner due to non-availing of the remedy as provided in the statutory provisions/regulations.

The judgment on which reliance has been placed by counsel for the appellant i.e. Ashwani Kumar's case (supra) was a case not relatable to the remedy of appeal as provided for under the statutory provisions relatable to an employee. Rather it was a case of a consumer of electricity and keeping in view the provisions as contained in the said regulations, the Hon'ble Court has proceeded to come to a conclusion to the effect that the civil court would have no jurisdiction. The said judgment, therefore, would not be applicable to the facts and circumstances of the present case.

There are concurrent findings recorded by the Courts below, which have not been challenged or disputed by the appellant through the present appeal, except for the ground which has been pressed by counsel for the appellant and dealt with as above.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

March 07, 2019
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No