

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

204

RSA-2805-1996 (O&M)
Date of decision: 11.02.2021

PSEB

...Appellant

Versus

GURMAIL SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Sehajbir Singh, Advocate for the appellant.
Mr. Gaurav Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J. (Oral)

The defendant/appellant has filed this regular second appeal against the concurrent finding of fact arrived at by the Courts below. The respondent/plaintiff filed a suit for declaration that the office order dated 28.08.1992 passed by Executive Engineer (Administration), Punjab State Electricity Board, ordering recovery of Rs.50,729/- from the salary of the plaintiff is illegal, wrong and without jurisdiction. The order was assailed on two grounds. First, the order has been passed without holding regular inquiry or serving any chargesheet. Second, the order has not been passed by the competent authority (punishing authority). Learned trial Court on appreciation of evidence found that since the plaintiff has been imposed minor penalty, therefore, regular inquiry was not required to be held. However, the Court found that the Executive Engineer (Administration) could not pass the order as he was an authority subordinate to the punishing authority.

Appeal filed by the Board was dismissed by the first appellate Court.

This Court has heard learned counsel for the parties and with their able assistance, perused the paper book as well as record of the Court below.

Learned counsel for the appellant submitted that on reading of

order Ex.P5, it is apparent that the order was passed by the Chief Engineer, however, it was signed by the Executive Engineer for Chief Engineer. The translated copy of the order Ex.P5 has been reproduced in the grounds of appeal which is extracted as under:-

Punjab State Electricity Board,

Office order No.672/L.S-4013 dated 28.08.92

Whereas Sh. Gurmail Singh was given show cause notice through this office Memo No.C-548 dated 07.05.91, for his omission and commission, while he was working as JE-II under Distribution sub-office, Katani Kalan. This was received by the official on 7.6.91, but failed to submit his explanation for the same. After this, Sh. Gurmail Singh JE-II was given last notice vide No.14027 dated 28.08.91, to submit his explanation. This was received by him but he failed to submit his explanation.

Whereas the case has been considered by the Chief Engineer/Distribution (Central) Ludhiana on the basis of the exparte comments of XEN D/S Division Samrala. After exparte proceedings, the Chief Engineer had decided that a sum of Rs.50,729/- be recovered from the official, on account of shortage of materials.

Therefore, under Regulation 5(iii) of PSEB Punishment and Appeal Rules, 1971 equivalent to Punjab Civil Service Rules, 1970 (whichever is applicable), orders of recovery of Rs.50,729/- are issued against Shri Gurmail Singh, JE-II.

This issues with the approval of Chief Engineer/Distribution (Central) Ludhiana.

Sd--

XEN/Admn.

For Chief Engineer/Distribution (Central), Ludhiana.

Learned counsel representing the respondent contends that the order is not signed by the Chief Engineer and therefore, the findings of the Court below are correct.

This Court has considered the submission. It is apparent from para 2 of the order that the case was considered by the Chief Engineer/Distribution (Central) Ludhiana and not by the Executive Engineer. The decision was also taken by the Chief Engineer and not by the Executive Engineer. It is a different matter that the order was signed by the Executive Engineer for Chief Engineer. Thus, it is apparent that the order in question has been passed by the Chief Engineer and not by the Executive Engineer.

On careful reading of the judgment passed by the learned trial Court, it is apparent from the facts that the show cause notice Ex.P1 was issued and signed by the Chief Engineer. Further, the learned counsel appearing for the respondent could not draw the attention of the Court to any evidence to establish that the order was passed by the Executive Engineer and not by the Chief Engineer.

In view of the aforesaid facts, both the Courts have erred in reaching to such finding that the order in question has been passed by the Executive Engineer.

In view thereof, the judgments passed by the Courts below cannot be sustained, hence set aside.

Accordingly, the regular second appeal stands allowed.

11.02.2021

ashok

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No