

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

(206)

RSA-2057-1992

Date of Decision : January 18, 2023

Salwinder Singh

.. Appellant

Versus

**Punjab State Tubewell Corporation Limited, Chandigarh and another
.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek Sethi, Advocate, for the appellant.

Mr. Naresh Prabhakar, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed challenging the judgment of the lower Appellate Court dated 20.08.1992 by which, the judgment of the trial Court which decreed the suit dated 19.08.1991 was set aside.

The prayer of the appellant is that the judgment of the lower Appellate Court be set aside and that of the trial Court be restored so as to grant the benefit as extended by the trial Court of reinstatement by holding that the retrenchment notice dated 25.09.1987 was bad in law.

Certain facts need to be enumerated herein so as to appreciate the controversy in the right prospective.

The appellant-plaintiff joined the respondent-Corporation as

Chowkidar on 06.02.1980 and while he was working, keeping in view the fact that the respondent-Corporation was facing financial crunch, certain employees were declared as surplus, whose services were to be retrenched with and a notice was issued to the surplus staff on 25.09.1987 informing them that their services will stand terminate on 30.10.1987 i.e. on the expiry of the notice period given therein. The said notice dated 25.09.1987 with the consequential fact of terminating the service was challenged by the appellant-plaintiff before the Civil Court so as to claim a declaration that notice dated 25.09.1987 is illegal, null and void and hence, the appellant-plaintiff be treated to be in service w.e.f. 31.10.1987 when his services were terminated in pursuance to the notice dated 25.09.1987. The plea raised by the appellant-plaintiff before the trial Court was that he was a work-charge employee and while terminating the services, the procedure laid down under Section 25F and 25 (N) of the Industrial Disputes Act were not followed as the employees junior to the appellant-plaintiff were retained in service and Rule of last cum first go was not followed.

The respondent-Corporation appeared before the trial Court and filed a written statement stating that the appellant was a work charge employee and not a regular one and they had produced before the Court a seniority list to show that no one who was junior to the appellant has been retained in service and hence, the only plea taken that the services of the appellant-plaintiff were terminated by violating Section 25F and 25 (N) of the Industrial Dispute Act is incorrect.

The trial Court, on the basis of the evidence, which had come on record, decreed the suit by holding that though a seniority list was produced but the same was photocopy only and as original of the same was

not produced, no benefit of the said seniority list can be granted to the respondent-Corporation so as to contend that no junior of the appellant has been retained, hence, notice dated 25.09.1987 was declared illegal, arbitrary and void and non-operative and declaration was passed that the appellant-plaintiff will be deemed to be in service for all intents and purposes along with consequential relief of salary along with arrears as well.

The said order of the trial Court was appealed by the respondent-Corporation before the lower Appellate Court and the appeal filed by the Corporation was accepted by the lower Appellate Court vide order dated 20.08.1992 wherein, it has been held that as per the evidence on record, no one junior to appellant-plaintiff was retained in service and as the seniority number assigned to the appellant-plaintiff was 53 in the said seniority list, all the persons junior to him in the said seniority list were also given notice for retrenchment, hence, it cannot be said that any person junior to the appellant was retained so as to violate Section 25-N of the Industrial Disputes Act. The said order of the lower Appellate Court is under challenge in the present appeal.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The civil suit was filed by the appellant-plaintiff raising a grievance qua notice dated 25.09.1987 served upon him by the respondent-Corporation for retrenchment which will take effect from 31.10.1987. the said retrenchment notice has been challenged on the basis of the provisions of the Industrial Disputes Act according to which, for retrenchment purpose, the compensation required needs to be paid. Nothing has come on record that the said compensation has not been paid by the respondent-

Corporation. Plea qua non-compliance of Section 25 (F) of the Industrial Disputes Act was not valid in the present appeal which shows that appellant has no grievance qua Section 25 F of the Industrial Disputes Act.

At this stage, learned counsel for the appellant submits that keeping in view the judgment of the trial Court, grievance qua Section 25 F of the Industrial Disputes Act was not raised as only the question qua the retaining of the juniors of the appellant was agitated, on the basis of which, the civil suit filed by the appellant-plaintiff was allowed. Even otherwise, learned counsel for the appellants has not been able to point out that any evidence has come on record to show the violation of Section 25 F of the Industrial Disputes Act.

As far as the question of last cum first go principle to be adopted while retrenching the employees, learned counsel for the appellant concedes that no such detail was ever mentioned in the plaint but the said argument was raised as juniors were allowed to work. As no pleading was placed on record by the appellant-plaintiff regarding any junior being retained in service, no finding could have been given by the trial Court as even in the evidence led by the appellant, no names of the junior supposedly retained in service, have been brought to the notice of this Court by the learned counsel for the appellant even during the argument to substantiate the said fact.

Even otherwise, the respondents had produced a seniority list according to which, the appellant was at number 53 in seniority and every one below the said seniority list were retrenched by giving them show cause notice of the same date, which fact has already come on record. That being

so, all the surplus employees were retrenched by following due process of

law as envisaged under the Industrial Disputes Act.

Learned counsel for the appellant, even during the hearing today, has not been able to show as to how the findings of the lower Appellate Court on the said fact are contrary to the record or the evidence which has already come on record.

In the absence of any perversity being pointed out by the learned counsel for the appellant, no interference is called for in the order passed by the lower Appellate Court by which the suit filed by the appellant-plaintiff dismissed by setting aside the judgment of the trial Court.

No ground is made out for any interference called by this Court.

Dismissed.

January 18, 2023

harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes