

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

(291)

RSA-1709-1995 (O&M)

Date of Decision : April 17, 2023

Punjab State Electricity Board Patiala and others .. Appellants

Versus

Jit Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Suresh Kumar, Advocate, for
Mr. Roshan Lal Sharma, Advocate, for the appellants.

Mr. Sandeep Kumar Sharma, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed challenging the judgment and decree of the lower Appellate Court dated 22.04.1995 by which, the judgment and decree of the trial Court dated 12.09.1994 dismissing the suit filed by the respondent-plaintiff, has been set aside and the suit filed by the respondent-plaintiff has been allowed.

Certain facts needs to be mentioned for the correct appreciation of the controversy in hand.

Respondent-plaintiff was working as Assistant Lineman with the appellants-Electricity Board and on the ground of absence from 02.06.1980, vide order dated 31.12.1980, services of the respondent-plaintiff Jit Singh were terminated by the appellant-Board. The said termination was challenged by the respondent-Jit Singh by filing a civil suit, which civil suit came to be allowed by the trial Court on 11.12.1986 holding

the order terminating the services of the respondent-plaintiff as bad and he was held entitled for the salary for the period for which respondent-plaintiff remained out of service. Appeal was preferred against the judgment of the trial Court dated 11.12.1986 but the same was dismissed on 15.02.1988. After the dismissal of the said appeal, no regular second appeal was filed and the proceedings attained finality according to which, the termination order dated 31.12.1980 was set aside and the respondent-plaintiff was held entitled for the salary for the period he remained out of service i.e. 02.06.1980 till 22.04.1988.

As the Department was given liberty to hold disciplinary proceedings afresh in respect of the absence of the respondent-plaintiff, the disciplinary proceedings were initiated and ultimately, on proving of the charges, penalty of stoppage of one annual increment without cumulative effect was imposed vide order dated 26.04.1989. While passing the said order, the Department also directed that period of the absence i.e. from 02.06.1980 till 22.04.1988 will be treated as leave of the kind due.

The respondent-plaintiff challenged the said order dated 26.04.1989 before the Civil Court stating that once for the period for which the respondent-plaintiff had remained out of service, he has already been granted the full salary in the earlier litigation, which proceedings had already attained finality, in the fresh departmental proceedings conducted thereafter, the order treating the said period of absence as leave of kind due could not have been passed by the Department as the same will override the order passed by the competent Court of law, which is not permissible.

The suit filed by the respondent-plaintiff challenging the order

dated 26.04.1989 was dismissed by the trial Court vide judgment and decree dated 12.09.1994 against which, appeal was preferred by the respondent-plaintiff, which appeal was allowed by the lower Appellate Court on 22.04.1995 holding that once the period for which the respondent-plaintiff remained out of service, is to be treated as duty period, which judgment of the competent Court of law had already attained finality, there was no jurisdiction with the Department to treat the same period as a leave of kind due being contrary to the judgment and decree of the competent Court of law, which judgment/decreed has already attained finality. Even the punishment of stoppage of one increment without cumulative effect was set aside. The said judgment and decree of the lower Appellate Court dated 22.04.1995 is under challenge in the present regular second appeal.

Learned counsel for the appellants submits that during the pendency of the present Regular Second Appeal, while executing the judgment and decree of the trial Court dated 11.12.1986, the respondent-plaintiff has already been given the salary for the period from 02.06.1980 till 22.04.1988 amounting to Rs.78,866/-, hence, the appeal qua the direction given by the lower Appellate Court that the respondent-plaintiff is entitled for the salary for the intervening period he remained out of service and the said period cannot be treated as leave of kind due, has already rendered infructuous and same is not being pressed in the present appeal.

Learned counsel for the appellants further submits that qua the imposition of penalty of stoppage of one increment without cumulative effect, the judgment and decree of the trial Court dated 11.12.1986 is very clear that the Department was free to initiate the departmental proceedings

and decide accordingly, hence, the lower Appellate Court could not have passed contradictory orders and set aside the punishment of stoppage of one increment which was imposed upon the respondent-plaintiff vide order dated 26.04.1989.

At this stage, learned counsel for the respondent-plaintiff submits that he has instructions to submit that in the suit filed by the respondent-plaintiff, the prayer qua the challenge to the imposition of punishment of stoppage of one increment be treated as withdrawn and the respondent-plaintiff will not raise the grievance qua the imposition of the said punishment.

Learned counsel for the respondent-plaintiff further submits that as the respondent-plaintiff is not challenging the imposition of punishment of stoppage of one increment, the appeal filed by the Corporation has been rendered infructuous.

Faced with this situation, learned counsel for the appellants submits that as the learned counsel for the respondent-plaintiff has withdrawn his prayer qua the challenge to the imposition of punishment of stoppage of one increment without cumulative effect and will not raise any such grievance, the present appeal may kindly be disposed of having been not pressed any further as the same has been rendered infructuous.

Ordered accordingly.

Pending application if any is also disposed of.

April 17, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No