

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5066 of 2019 (O&M)

Date of Decision: 16.08.2023

Sukhbir Singh

... Appellant(s)

Versus

Haryana Bijli Vitran Nigam, Panchkula and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.S.Kundu, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The correctness of the concurrent findings of facts arrived at by both the Courts below are challenged by the plaintiff in the second appeal.

3. The plaintiff's suit for the grant of decree of declaration that the order dated 28.11.2008, whereby his services were wrongly terminated has been dismissed by both the Courts below. As a matter of fact, it has been found that the plaintiff never passed the examination for recruitment of the Assistant Lineman (hereinafter referred to as "the ALM").

4. The learned counsel representing the appellant fairly admits that there is no material on the record to prove that the plaintiff ever passed

the aforesaid recruitment examination. However, he submits that the plaintiff continued to serve the department for a period of 11 years, therefore, his termination order is not appropriate. He further submits that the plaintiff cannot be held guilty of playing fraud as Sh.M.M.Gupta, Executive Engineer (DW.1) has admitted that there was no plot on the part of the plaintiff. The learned counsel also relies upon the judgment passed by the Division Bench of this Court in ***Bidhi Chand v. Uttar Haryana Bijli Vitran Nigam, Panchkula and Others 2002(8) SLR 382.***

5. This Court has considered the submissions. For recruitment to the post of Assistant Lineman, a recruitment examination was held. The plaintiff failed the same. However, he was issued the appointment letter. The respondent No.1-Nigam came to know that fact. Thus, a charge sheet was issued and the disciplinary proceedings were held. The plaintiff FIRST challenged the Show Cause Notice by filing the Civil Suit No. 400 dated 24.11.2005 which was dismissed on 10.12.2009. He withdrew the first appeal to file a separate suit.

6. The *sine qua non* for recruitment to the post of the ALM is passing of the recruitment examination. Once, the plaintiff failed in the recruitment examination, he was not entitled to appointment. The reliance placed by the learned counsel representing the appellant on the judgment in ***Bidhi Chand's case (supra)*** is misplaced because Bidhi Chand was in service when he filed the writ petition, which was decided, whereas the appellant herein is out of service for the last 15 years. In substance, he wants his reinstatement.

7. Keeping in view the findings of facts arrived at by both the Courts below with regard to the plaintiff having failed in the recruitment examination, no ground is made out to interfere. Hence, the present appeal is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 16, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No