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

(120)

RSA-2741-1993

Date of decision:- 09.05.2024

Punjab State Electricity Board and others**... Appellants****Versus****Amar Singh****... Respondent****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Rajiv Sharma, Advocate
for the appellants.

None for the respondent.

SUVIR SEHGAL, J. (ORAL)

1. Mr. Rajiv Sharma, Advocate has put in appearance on behalf of the appellants and has filed Power of Attorney, which is taken on record.
2. Defendants-appellants are in second appeal assailing the concurrent finding recorded by the Courts below.
3. Pleaded case of plaintiff-respondent is that he was offered the post of officiating Assistant Lineman vide memo dated 09.01.1987 and an offer letter was issued to him. On his request, the posting station was changed from Bareta Sub Division to Moonak vide memo dated 02.03.1987 and the date of joining was extended. Along with the requisite documents, plaintiff reported for joining duty on 03.03.1987, but the joining report could not be signed by the Assistant Engineer, Sub Division, Moonak, as he

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was not available in his office. Plaintiff was deputed for replacement of Transformer alongwith other staff. In the evening, he was asked to produce documentary proof of his date of birth and he left for his native village to collect the requisite documents, but on the way, he met with a motor accident and was taken in custody. On being released on bail, he reported for duty with the necessary documents, but his joining report was not accepted and a charge-sheet dated 31.03.1987 was issued to him. The offer letter was cancelled vide memo dated 03.09.1987, which he challenged by filing a civil suit for declaration and mandatory injunction.

4. On being served, defendants filed a written statement opposing the suit. The service particulars and other details were admitted, however, it was submitted that the offer appointment was cancelled as the plaintiff never reported for joining duty at Moonak within the stipulated time. Plaintiff filed a replication controverting the stand taken by the defendants. Issues were framed on the pleadings of the parties and after they led evidence, Trial Court by judgment dated 27.01.1992 decreed that the cancellation letter is illegal. A mandatory injunction directing defendants to treat the plaintiff on duty for all intents and purposes w.e.f. 03.03.1987 was granted, subject to the condition that the plaintiff will be entitled to consequential monetary benefits from the date of the decree. In appeal, preferred by the defendants, learned Additional District Judge, Sangrur vide judgment dated 28.05.1993 modified the judgment and decree of the Trial Court to the extent that the plaintiff is entitled to full wages from the date of joining, i.e., 03.03.1987. In this background, the defendants are before this Court in the instant second appeal.



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5. I have heard the counsel for the appellants and examined the record with their able assistance.

6. From the evidence lead by the parties, it is evident that a charge-sheet was issued to the plaintiff-respondent, but the departmental proceedings were never held. Prior to the issuance of the cancellation letter, plaintiff-respondent was not given any opportunity to show cause nor was an opportunity of hearing afforded to him. As the cancellation letter has been issued in breach of the principles of natural justice, the Courts came to the conclusion that it is illegal, null and void. This finding by the Courts below does not call for any interference and is upheld.

7. The admitted case of the plaintiff-respondent is that on 03.03.1987, he met with a road accident and was arrested. He remained in prison and after being released on bail, he reported back to his office. In their evidence, defendants have produced a copy of the judgment dated 22.02.1988, Ex. D-1, passed by the learned JMIC, Sunam, whereby, after being tried in a criminal case, the plaintiff-respondent was convicted and was ordered to be released on probation under the Probation of Offenders Act, 1958. As the plaintiff-respondent was in confinement, he could not possibly have discharged his duty. Therefore, he is not entitled to the salary for the period when he was not in service. Reliance is placed upon the judgment of the Supreme Court in **Baldev Singh Versus Union of India, (2005) 8 SCC 747**, wherein it has been held as under:-

“7. As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to be noted that the



*appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in **Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board (1996) 11 SCC 603.***

*8. The position was reiterated in **Union of India Versus Jaipal (2004) 1 SCC 121.**”*

8. From the above-reproduced settled legal position, it is clear that the learned Additional District Judge has erred in granting wages to the plaintiff-respondent w.e.f. 03.03.1987. This finding is contrary to the view taken by the Supreme Court and cannot be sustained.

9. For the afore-going reasons, the finding recorded by the First Appellate Court granting salary to the plaintiff-respondent w.e.f. 03.03.1987 is reversed and the judgment and decree of the Trial Court is affirmed.

10. Appeal is disposed of.

11. Pending application(s), if any, stands disposed of.

09.05.2024
kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No