

RSA-2753 of 1998 (O&M)

2024:PHHC:048634

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

RSA-2753 of 1998 (O&M)

Date of decision: 09.04.2024

Jaspal Singh

.....Appellant

Versus

Punjab State Electricity Board, Patiala

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Ms. Ritu Punj, Advocate, and
Ms. Suraksha Masih, Advocate, for the appellant.
None for the respondent.

NAMIT KUMAR, J.

CM-5002-C of 1998

1. This application has been filed by the applicant-appellant under Section 5 of the Limitation Act for condonation of delay of five days in filing the appeal.

2. In view of the averments made in the application, which is duly supported by an affidavit, same is allowed. Delay of five days in filing the appeal is condoned.

CM-5003-C of 1998

1. This application has been filed by the applicant-appellant under Section 151 CPC for condonation of delay of 35 days in refilling the appeal.

2. In view of the averments made in the application, which is duly supported by an affidavit, same is allowed. Delay of 35 days in refilling the appeal is condoned.

RSA-2753 of 1998

1. This regular second appeal is directed against the judgment and decree dated 22.07.1995 passed by the Court of learned Senior Sub Judge, Patiala, whereby suit for declaration filed by the appellant-plaintiff was dismissed as well as against the judgment and decree dated 22.10.1997 passed by the Court of learned Additional District Judge, Patiala, whereby appeal filed by the appellant has also been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for declaration pleading therein that action of the defendant for not paying travelling allowance to him from 6/90 to 2/91 is illegal, null and void and plaintiff is entitled to travelling allowance for these months alongwith interest @ 18% per annum. It is the case of the plaintiff that he is driver under the P.S.E.B. Earlier to 30.05.1990 he was attached with Sh. K.C. Verma, Chief Engineer, PSEB. Head Quarter of Chief Engineer was at Chandigarh. Hence Head Quarter of the plaintiff was also at Chandigarh. Sh. K.C. Verma, retired from service on 30.05.1990. As per Instructions of PSEB, whenever the car is spare, the same is to return to common pool alongwith its driver. In compliance with those instructions, plaintiff reported at Patiala on 30.06.1990 alongwith the car. Since then he is working and performing his duties at Patiala. His formal transfer order dated 19.04.1991 was passed by the competent authority. Through this order, headquarter of the plaintiff was shifted from Chandigarh to Patiala w.e.f. 30.06.1990.

Plaintiff claimed that his Head Quarter was already at Chandigarh. He was never transferred to Patiala. His family was also residing at Chandigarh. From Chandigarh he was deputed to Patiala, as it was a tour for him. Hence, he put forward the claim of travelling allowance from 6/90 to 2/91. The said claim was rejected by the defendant.

3. Upon notice, defendant appeared and filed written statement stating that after retirement of Sh. K.C. Verma on 30.05.1990, staff car was to return to common pool at Patiala and in compliance with those instructions, plaintiff reported at Patiala on 30.06.1990 and since then Head Quarter of the plaintiff is at Patiala. Therefore, he is not entitled to any travelling allowance for this period. It is also pleaded that formal transfer order of the plaintiff was also issued on 19.04.1991 which was made operative w.e.f. 30.6.1990. Therefore, the plaintiff is not entitled to the travelling allowance and his suit is liable to be dismissed.

4. In the replication plaintiff denied the contentions of the defendant and reiterated his averments made in the plaint.

5. From the pleading of the parties, following issues were framed by the trial Court: -

1. Whether action of the defendants by not paying the amount of travelling allowance bills to the plaintiff for the period from 6/90 to 2/91 and office order dt. 19.4.1991, whereby plaintiff was transferred to Patiala are illegal, null and void ultravires unconstitutional? OPP
2. Whether suit is not maintainable in the present form? OPD
3. Whether matter in dispute is not justiciable by civil court? OPD

4. Whether plaintiff has no cause of action to file the present suit? OPD
5. Relief.
6. The parties led their respective evidence. The Court of the first instance, after appreciating evidence on record, vide judgment and decree dated 22.07.1995, dismissed the suit filed by the plaintiff.
7. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which also met the same fate, vide judgment and decree dated 22.10.1997.
8. Learned counsel for the appellant contended that both the Courts below erred in dismissing the suit of the plaintiff. She further contended that both the Courts below failed to appreciate that Head Quarter of the plaintiff continued to remain at Chandigarh till 19.04.1991 and appellant was also residing at Chandigarh, therefore, he is entitled for travelling allowance from 06/1990 to 02/1991. She further contended that judgments and decrees of both the Courts below are based on conjectures and surmises, therefore, same are liable to be set aside.
9. No one has put in appearance on behalf of the respondent.
10. I have heard learned counsel for the appellant and perused the record.
11. Perusal of the record shows that as per standing orders issued by respondent-defendant, plaintiff-appellant was to report along with staff car at Patiala after the officer with whom that car was attached, retired. Admittedly, appellant-plaintiff was attached with

Chief Engineer at Chandigarh, who retired on 30.05.1990. Therefore, headquarter of the appellant was automatically changed from Chandigarh to Patiala. During his cross-examination, plaintiff has stated that he was verbally told to report at Patiala in common pool Secretariat. Lower Appellate Court has rightly observed that nature of the duty of the plaintiff itself makes it clear that his headquarter was to be deemed at the place where the staff car was to be kept. When the headquarter of the plaintiff itself was changed to Patiala, there was no question of payment of any travelling allowance to him from Chandigarh to Patiala. Thus, the claim of the plaintiff-appellant has rightly been rejected by the Courts below.

12. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

13. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

14. In view of the above, present appeal is dismissed.

(NAMIT KUMAR)
JUDGE

09.04.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No