



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-1033-2006

Decided on : 05.11.2024

PSEB AND OTHERS

... Appellants

Vs.

SALINDER SINGH

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parminder Singh, Advocate
for the appellants.

Mr. Satish Sharma, Advocate for
Mr. Arun Takhi, Advocate
for the respondent.

HARPREET SINGH BRAR, J.

1. The appellants through instant second appeal are seeking setting aside of judgement and decree dated 28.04.2005 passed by learned Additional Civil Judge (Sr. Div.), Phagwarain allowing Civil Suit No. 326 of 26.10.2002 filed by the respondent for mandatory injunction to the effect that appellants-defendants be directed to treat his suspension period from 07.10.1996 to 30.08.1999 as On Duty period and subsequently make the full payment of his salary for the aforesaid period. At the same time, prayer is also made in the instant second appeal for setting aside the judgement and decree dated 12.09.2005 passed by learned District Judge, Kapurthala vide which the first appeal filed by the appellants was dismissed.

2. Tersely put, the facts of the case are that the respondent-plaintiff was working as Assistant Lineman in Punjab State Electricity Board (PSEB),

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i.e., appellant no.1 and was posted as such at Sub-Division, Chaheru in the year 1996. During that time, the respondent was implicated in FIR No.69 dated 01.07.1996 registered under Section 306 of IPC at Police Station-Mahilpur, Hoshiarpur. Consequently, he was arrested by the jurisdictional police on 07.10.1996 but the trial culminated in his acquittal on 22.05.1999. When the appellants-defendants came to know about the arrest of the respondent, they placed him under suspension on 22.11.1996 w.e.f. 07.10.1996 under Regulation 4(1)(b) of Punishment & Appeal Rules, 1971 of the PSEB. After his acquittal, the respondent-plaintiff made a representation to the appellants on 01.06.1999 for his reinstatement to the service as well as regular allowances for the suspension period. Resultantly, he was reinstated on 01.09.1999 but his allowances were withheld for the period from 07.10.1996 to 30.08.1999. However, the respondent-plaintiff was given suspension allowance during the aforesaid period. Upon refusal of the appellants-defendants to impart full pay and allowances for the suspension period even after his reinstatement, the respondent-plaintiff proceeded to file the present suit seeking mandatory injunction.

3. Upon notice, the respondents appeared before the learned trial Court and contested the suit. In their written statement, the appellants-defendants pleaded that the suit was not maintainable. It was also pleaded that the respondent-plaintiff had no locus standi to file the suit and that he failed to serve notice under Section 80 of the Civil Procedure Code upon them before filing the suit. It was further pleaded that since the respondent-plaintiff did



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not perform his duties for the period from 07.10.1996 to 30.08.1999 on account of his suspension due to his arrest in a criminal case, he was not entitled to full pay and allowances for this period. In the replication filed by the respondent-plaintiff, he reiterated all the averments made in his plaint and refuted the ones made in the written statement of the appellants-defendants. On the basis of their pleadings, as many as 6 issues were framed including the issue of relief. Thereafter, the respondent-plaintiff himself stepped into the witness box as PW-1 whereas the appellants-defendants did not lead any evidence to support their claim and their evidence was closed on 25.04.2005. Ultimately, the suit of the respondent-plaintiff was allowed and the appellants-defendants were directed to treat the suspension period of respondent-plaintiff from 07.10.1996 to 30.08.1999 as period spent on duty and they were further directed to make full payment of remaining salary to him after excluding the suspension allowance. Affronted, the appellants-defendants preferred an appeal before the learned lower Appellate Court which was dismissed being bereft of any merit. However, it was recorded by the learned District Judge, Kapurthala that neither the learned trial Court has granted any interest to the respondent-plaintiff nor was he entitled to any interest claimed by him. Now, the appellants have approached this Court for a second bout.

4. In view of the judgments passed by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi Pal***



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Singh and others (2019) 17 SCC 71 and Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others, questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act, however, since this Court vide order dated 30.04.2018 has already framed the substantial questions of law as mentioned below, the same is being taken up for consideration herein: -

I. Whether the respondent is entitled to subsistence allowance, regulation of suspension period or not?

5. Learned counsel for the appellants *inter alia* contends that perusal of para 10 of the judgement of the learned trial Court clearly shows that the respondent-plaintiff was arrested on 07.10.1996 in a criminal case initiated against him and he remained in judicial lock up. Due to his legal confinement, the respondent-plaintiff could not have discharged his duties and therefore, he is not entitled to full salary for that period. It is also argued that the impugned judgments passed by the learned Courts below are not based on correct appreciation of law and are thus liable to be set aside.

6. Learned counsel for the respondent argues that the learned Courts have rightly based their decision on proper appreciation of the rules governing the service of the respondent-plaintiff. He further submits that once the respondent-plaintiff was reinstated to his post by the appellants on account of his acquittal in the criminal case, he became entitled to full pay and allowances for the suspension period since he could not perform his

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duties due to his detention in a judicial lock up.

7. I have heard the learned counsel for the parties and perused the paper-book with their able assistance. As per the circular/memo No. 128932/129557/I.R. 331 dated 11.10.2000 issued by the Punjab State Electricity Board which was addressed to all the Executive Engineers and Superintending Engineers regarding regularization of suspension period, it was directed that as per Rule 7-3(2) of M.S.R. Part No.1 Volume-1, in case an official is acquitted in a case, the period of suspension is to be treated as duty period and the official is entitled to full pay. Furthermore, nowhere it has been differentiated in the circular between the criminal cases instituted by the concerned department with regard to discharge of official duties and the criminal cases instituted against an employee in private capacity. In the case at hand, it has remained beyond dispute that the respondent-plaintiff was reinstated to his post on 01.09.1999 by appellant no.1-Punjab State Electricity Board soon after his acquittal in the criminal case instituted against him under Section 306 of IPC. Considering the fact that case of the respondent-plaintiff was squarely covered by the directions given in the aforementioned memo dated 11.10.2000, his period of suspension was required to be regularized. In the light of the aforementioned facts, this Court is inclined to opine that the learned Courts below have passed the respective judgments under challenge herein, after proper appreciation of evidence and law and have correctly held that respondent-plaintiff was entitled to full pay and allowances for the period from 07.10.1996 to 30.08.1999.

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8. As an upshot of the above, no reason exists for this Court to interfere in the judgment and decree dated 28.04.2005 passed by learned Additional Civil Judge (Sr. Div.), Phagwara as well as the judgment and decree dated 12.09.2005 passed by learned District Judge, Kapurthala.

9. Resultantly, the instant second appeal is hereby dismissed.

10. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

05.11.2024*manisha***(HARPREET SINGH BRAR)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No