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

**RSA-3281-2002 (O&M)
Date of Decision: 18.01.2025**

The Haryana State Electricity Board and others

.....Appellants

Vs.

Harish Chander

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pritam Singh Saini, Advocate,
for the appellants.

Mr. Naveen Daryal, Advocate,
for the respondent.

SUDEEPTI SHARMA J. (ORAL)

1. The challenge in the present appeal is to the judgment and decree dated 30.04.2002 passed by the learned Additional District Judge, Panipat, whereby the appeal filed by the respondent was allowed.

2. Learned counsel for the appellants contends that the Court of Civil Judge (Junior Division), Panipat, (for short, 'trial Court') did not allow the amendment of the civil suit challenging the order dated 29.10.1998 (Exhibit D-6) and the learned Additional District Judge, Panipat, (for short, 'First Appellate Court') also did not allow the amendment, but allowed the appeal of the respondent by taking into consideration Exhibit D-6, which is the order of punishment dated 29.10.1998.

3. Per contra, learned counsel for the respondent submits that the learned First Appellate Court has rightly allowed the appeal filed by the respondent.

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4. I have heard learned counsel for the parties and perused the whole record of this case.

5. A perusal of the record shows that admittedly, FIR No.301 dated 07.07.1990 was registered under Section 379 of the Indian Penal Code, 1860, against the respondent and he was suspended on 09.07.1990 with effect from 07.07.1990. Thereafter, he was acquitted by the Court of learned Additional Chief Judicial Magistrate, Panipat, vide judgment dated 20.11.1996 and on the basis of the acquittal, he was reinstated vide order dated 06.12.1996. On 01.08.1997, the respondent instituted the civil suit for declaration that he would be entitled to the pay and allowances of the suspension period beyond subsistence allowance already paid to him alongwith interest @ 18% per annum. In the civil suit, the respondent relied upon the order dated 06.12.1996, whereby, he was reinstated in view of his acquittal in the aforesaid FIR No.301 dated 07.07.1990. During the pendency of the civil suit, the respondent placed on record copy of order dated 29.10.1998 (Exhibit D-6), whereby, services of the respondent were censured and the period of suspension till his reinstatement was treated as leave of kind due. The respondent moved an application for amendment of the plaint by challenging the order dated 29.10.1998 (Exhibit D-6), which was passed during the pendency of the civil suit. The application filed by the respondent under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint was dismissed on the ground that the application is vague and indefinite and the evidence was already led regarding that event/the order which the respondent wanted to challenge. The civil suit filed by the respondent was dismissed by the learned trial Court vide judgment and decree dated 18.03.1999. He filed an appeal against the said judgment and decree dated 18.03.1999, which was allowed, vide judgment and decree dated 30.04.2002, by



the learned First Appellate Court. The learned First Appellate Court though took into consideration the order dated 29.10.1998 (Exhibit D-6) and held that no amendment of the plaint was required, since the copy of order dated 29.10.1998 (Exhibit D-6) was already placed on record by the appellants herein and decided the appeal in favour of the respondent. A perusal of the record further shows that the learned trial Court, while deciding the civil suit, framed the following issues:-

- “1. Whether the plaintiff is entitled to pay and allowances of suspension period beyond subsistence allowance alongwith interest at the rate of 18% per annum? OPP.*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
- 3. Whether the suit of the plaintiff is liable to be rejected under Order 7 Rule 11 C.P.C.? OPD.*
- 4. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD.*
- 5. Relief.”*

6. The relevant portion of the decision on Issue No.1 given by the learned trial Court is reproduced as under:-

“17. Keeping in view the aforesaid, since, the order Ex.D6 has been passed vide which the suspension period of the plaintiff is to be treated as leave of kind due and present case also falling within the framework of the decision held in AIR 1997, SC, P-1434 (Supra), this issue is answered against the plaintiff.”

7. A perusal of the above shows that the only reasoning given by the learned trial Court for dismissing the civil suit is to the order dated 29.10.1998 (Exhibit D-6). On the one hand, though, Exhibit D-6 is placed on record by the appellants during the pendency of the civil suit and the learned trial Court has taken into consideration the same while dismissing the civil suit, whereas, the

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the learned trial Court. Further, the respondent in the civil suit placed reliance on his reinstatement order dated 06.12.1996, which was admitted by the appellants in their written statement and order dated 29.10.1998 (Exhibit D-6) was passed during the pendency of the civil suit. Further, the learned First Appellate Court also decided the appeal by placing reliance on order dated 29.10.1998 (Exhibit D-6). Therefore, this Court is of the considered view that the issues are not properly framed by the learned trial Court.

8. As a result of the above discussion, impugned judgment and decree dated 18.03.1999 passed by the learned trial Court and the judgment and decree dated 30.04.2002 passed by the learned First Appellate Court are set aside and the case is remanded back to the learned trial Court to decide the suit afresh after framing proper issues as per observation made herein-above. The parties are directed to appear before the learned trial Court on 04.02.2025.

9. Since, this matter pertains to the year 1997, therefore, the learned trial Court is requested to decide the same expeditiously preferably within a period of six months on day to day basis. Lower Court record be transmitted forthwith along with the copy of this judgment.

(SUDEEPTI SHARMA)
JUDGE

18.01.2025

Virrendra

Whether speaking/non-speaking : Yes
Whether reportable : Yes/No