



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

RSA-3071-2006 (O&M)
Reserved on: 21.01.2025
Pronounced on: 29.01.2025

Punjab State Electricity Board, Patiala
and others

....Appellants

Versus

Vinod Kumar through his L.R. Asha Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Pratula Sethi, Advocate for
Mr. P.S. Brar, Advocate
for the appellants.

Mr. Nikhil Singh, Advocate
for the respondent.

HARPREET SINGH BRAR, J.

1. The instant regular second appeal is preferred by the defendants-appellants against the judgment and decree dated 02.05.2006 passed by the learned lower Appellate Court whereby the judgment and decree dated 01.03.2002 passed by the learned trial Court were affirmed and the respondent-plaintiff was held entitled to the mandatory injunction as prayed for. Against the aforesaid judgment of the learned lower Appellate Court, the instant regular second appeal has been preferred by the appellants-defendants.

2. Succinctly, the bone of contention is that the respondent-plaintiff was appointed as a '*Morter Mate*' in the Punjab State Electricity Board (PSEB) and joined his duties on May 7, 1975. Subsequently, he was promoted to the post of '*Work Mistry*'. Throughout his tenure, he performed his duties honestly, efficiently, and diligently, earning the satisfaction of his senior officials. He



appellant No.4. On August 14, 1995, the respondent-plaintiff applied for earned leave due to ill health of his wife. However, no communication was received from the competent authority regarding the approval or rejection of his leave application. After his wife recovered, the respondent-plaintiff made multiple representations to the appellants-defendants, requesting permission to resume his duties and the issuance of posting orders. Despite these efforts, the appellants-defendants neither allowed him to rejoin duty nor issued any posting orders. No reasons were provided by the appellants-defendants for their refusal to issue the posting orders. Instead, an adverse order was passed against him. Left with no other recourse, the respondent-plaintiff was compelled to file the present suit, seeking a mandatory injunction.

3. The appellants-defendants appeared and contested the suit by filing written statement raising preliminary objections qua maintainability. On merits, it was stated that the respondent-plaintiff voluntarily left the job as a '*Work Charger*' on 01.06.1995. He remained absent from duty from 01.06.1995 to 30.06.1995 and thereafter, never turned up for the job. All the terminal service benefits were also duly received by him; however, the respondent-plaintiff deliberately concealed this fact from the Court. As such, he is not entitled to mandatory injunction.

4. On the basis of pleadings, the learned trial Court framed as many as four issues including relief. Parties led their respective evidence and on appreciation of the evidence, the learned trial Court decreed the suit filed by the respondent-plaintiff vide judgment and decree dated 01.03.2002. The appellants-defendants preferred an appeal against the judgment passed by the learned trial Court which was dismissed vide judgment and decree dated 02.05.2006. The same is under challenge in the instant regular second appeal.



5. Learned counsel appearing on behalf of the appellants-defendants argued that both the Courts below have erred in passing decrees in favour of the respondent-plaintiff as he voluntarily left his job. All the terminal service benefits amounting to Rs. 57924/- and Rs. 9484/-were received by him on 13.06.1996 and 15.03.1996, respectively, as substantiated from Form-19 (Ex. D-1), which clearly indicates that the respondent-plaintiff availed his General Provident Fund benefits. A perusal of Form-19, specifically, Column No.8, further shows that the respondent-plaintiff himself stated the date of leaving the job as '5/95' i.e., May of 1995. Hence, the findings of both the Courts below are erroneous and the suit of the respondent-plaintiff is liable to be dismissed.

6. *Per Contra*, learned counsel for the respondent-plaintiff argued that the respondent never resigned from his job. The respondent had applied for earned leave on 14.08.1995. There is nothing on record to suggest that the said request was declined by the appellants yet, when the respondent tried to join back, he was not allowed to do so. The respondent made multiple representations to the department concerned all of which went unanswered. Crucially, there is no termination order which has been passed by the appellants suggesting that the respondent was no longer employed by the appellants.

7. I have heard learned counsel for the parties and have gone through paper book with their able assistance.

8. It transpires that the respondent moved three representations dated 12.05.1996, 10.08.1997 and 08.06.1999 which were duly dispatched but to which no reply was given by the appellants. A perusal of the said representations also reveals that the respondent was not gainfully employed anywhere else during the intervening time. Moreover, the appellants have failed to prove that the respondent voluntarily resigned from his job. Ex.D1



only establishes the withdrawal of the provident fund, and Ex.D2 merely proves the submission of Form No.19. While the witnesses of appellants-defendants claimed that the respondent resigned, no written resignation or its acceptance has been placed on record. Furthermore, it was rightly pointed out by the learned lower Appellate Court that the respondent, having served the appellants since 7.5.1975, had completed 20 years of service at the time of the alleged resignation in 1995. If the respondent had wished to leave, he would have opted for voluntary retirement and claimed retirement benefits. The absence of any documentary evidence of resignation or its acceptance strongly indicates that the respondent did not resign.

9. Additionally, surprisingly, no adverse action was initiated against the respondent for his alleged absence since 31.5.1995. The appellants neither issued any letters seeking an explanation for his absence nor initiated disciplinary proceedings. During the trial, the respondent filed an application under Order 11 Rule 14 CPC, seeking production of documents such as the resignation letter, its acceptance, and records of departmental proceedings. In response, the defendants claimed that the plaintiff left on his own and denied possession of these documents. However, during cross-examination, DW2, namely, Sukhdev Singh, who was the Deputy Director at the time admitted that the service record of the respondent is with the appellants and that no resignation application was submitted or accepted by the Punjab State Electricity Board. This admission, coupled with the lack of evidence, warrants drawing an adverse inference against the appellants/defendants.

10. 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 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 Act.

11. Consequently, this Court does not find any illegality and perversity in the judgments and decrees rendered by both the Courts below, which are based upon correct appreciation of facts and law. No ground for interference is made out. Resultantly, the instant regular second appeal stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

29.01.2025
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No