

(2011) 05 P&H CK 0234

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2013 of 2011 (O and M)

Kuldip Singh

APPELLANT

Vs

The Punjab State Electricity
Board and Others

RESPONDENT

Date of Decision: May 23, 2011

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

C.M. No. 5656-C of 2011:

1. Allowed as prayed for.

C.M. No. 5657-C of 2011:

2. Allowed as prayed for.

C.M. No. 5654-C of 2011 and Main Appeal:

3. Plaintiff Kuldip Singh having failed in both the courts below has filed the instant second appeal. Along with appeal, Appellant has moved C.M. No. 5654-C of 2011 for condonation of delay of 1344 days in filing the appeal.

4. I have heard learned Counsel for the Appellant and perused the case file.

5. Plaintiff-Appellant joined the service of Defendants/Respondents. Charge-sheet was served on him for major penalty. He did not submit any reply to the charge-sheet in spite of reminder. Regular departmental inquiry was held against him. He was held guilty in the said inquiry. Copy of Inquiry Report was sent to him, with liberty to file objections against the Inquiry Report. He filed reply to the same. He was also granted opportunity of personal hearing. Simultaneously, criminal case

was also lodged against the Plaintiff. He was convicted in the said case by learned Magistrate vide judgment dated 12.01.1999. His appeal against the said judgment was dismissed by learned Additional Sessions Judge, vide judgment dated 18.02.2002. However, his Criminal Revision has been allowed by this Court vide judgment dated 27.10.2009 and accordingly, the Plaintiff stands acquitted in the criminal case.

6. Meanwhile, the punishing authority, vide order dated 07.02.2000, accepted the departmental Inquiry Report and ordered termination of the services of the Plaintiff and declared him as 'unfit' for service of the Defendants in future. The Plaintiff, by filing suit, challenged the said termination order on various grounds. Defendants, however, defended the termination order.

7. Learned Civil Judge (Junior Division), Gurdaspur, vide judgment and decree dated 28.02.2002, dismissed the Plaintiff's suit. First appeal preferred by the Plaintiff has also been dismissed by learned Additional District Judge, Gurdaspur, vide judgment and decree dated 30.05.2007. Feeling aggrieved, Plaintiff has filed the instant second appeal.

8. In application for condonation of delay, it has been pleaded that the Plaintiff did not file the second appeal in time because at that time, his conviction in the criminal case stood affirmed by the appellate court, and therefore, there was no chance of success in the second appeal, but after Plaintiff's acquittal in the criminal case by this Court, the Plaintiff made representation to the Defendants for reinstatement and then filed Civil Writ Petition, which was dismissed as withdrawn, with liberty to file second appeal resulting in aforesaid delay in filing the second appeal.

9. I have carefully considered the averments made in the application for condonation of delay, which have been reiterated by counsel for the applicant-Appellant. However, I find no sufficient ground for condonation of long delay of 1344 days i.e. delay of more than 03 years and 08 months in filing the appeal. Merely because the Plaintiff's conviction stood affirmed, when he could have filed the second appeal and merely because he was later on acquitted in the criminal case, does not provide a ground to the Plaintiff to approach this Court by way of instant second appeal after long delay of more than 03 years and 08 months.

10. Even on merits, the Appellant cannot succeed. Learned Counsel for the Appellant very emphatically contended that conviction in the criminal case is basis for terminating the services of the Plaintiff and since conviction in the criminal case has been set aside, the Plaintiff is entitled to reinstatement. The contention is completely fallacious and merit less. Perusal of the termination order Annexure A-2 reveals that the same is not based on conviction of Plaintiff-Appellant in the criminal case. On the contrary, even before his conviction in the criminal case, charge-sheet for major penalty was served on him and regular departmental inquiry was ordered, although the Inquiry Report was received after conviction of the Plaintiff in the

criminal case. However, the fact remains that disciplinary proceedings against the Plaintiff were initiated and concluded independently of the criminal case. The Plaintiff was served with charge-sheet and regular departmental inquiry was held and thereafter, show cause notice was issued to the Plaintiff and after considering his reply, and also after granting him opportunity of personal hearing, impugned termination order dated 07.02.2000 (Annexure A-2) was passed by the competent authority. The said termination order is not based on conviction of the Plaintiff in criminal case. Consequently, acquittal of the Plaintiff in criminal case does not ipso facto entitle the Plaintiff-Appellant to reinstatement nor it renders the impugned termination order to be illegal or invalid. On the contrary, the Plaintiff miserably failed to point out any flaw or infirmity in the disciplinary proceedings leading to the impugned termination order.

11. For the reasons aforesaid, I find no merit in the application for condonation of delay in filing the appeal as well as in the instant second appeal. Consequently, the application as well as the main appeal are dismissed in limine.