

(2013) 07 P&H CK 0834

High Court Of Punjab And Haryana At Chandigarh

Case No: CM No. 2145-47-C of 2012 in Regular Second Appeal No. 796 of 2012

Punjab State Electricity Board

APPELLANT

Vs

Raj Kumar Goel

RESPONDENT

Date of Decision: July 25, 2013

Citation: (2014) 1 SCT 58 : (2014) 2 SLJ 376

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: Vishnav Gandhi, for Mr. Kapil Kakkar, for the Appellant; R.K. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

CM No. 2145-C of 2012

Application is allowed subject to all just exceptions.

CM No. 2146-C of 2012

For the reasons mentioned in the application, which is supported by an affidavit, delay of 80 days in filing the appeal is condoned.

CM stands disposed of.

RSA No. 796 of 2012 (O&M)

1. This is defendant's second appeal challenging the judgment and decree dated 04.11.2008 of the trial Court, whereby suit of the plaintiff-respondent has been decreed and the judgment and decree dated 23.08.2011 of the first appellate Court dismissing the appeal filed against the aforesaid judgment and decree of the trial Court.

2. Brief facts of the case are that the plaintiff-respondent joined the service of the appellant on 17.12.1984 as Lower Division Clerk. An order of punishment was passed against him vide office order dated 09.08.2002 and his five increments were stopped without cumulative effect.

3. It is the case of the plaintiff-respondent that while implementing the said office order, the appellant committed illegality as no increment has been granted to him after the said date, which were due in the years 2003, 2004, 2005 and 2006. According to the plaintiff-respondent, one increment should have been stopped every year and that should have been restored after one year, and thereafter, the next increment should have been stopped for one year and should have been restored after completion of one year; whereas against the order of punishment of stoppage of five increments, 15 increments of the plaintiff-respondent have been stopped and thus, the punishment order purported to be issued for minor punishment has been converted into a major punishment while implementing the same. Hence the suit.

4. Upon notice, the appellant contested the suit submitting that the increments have been stopped in accordance with law and the plaintiff-respondent was not entitled to any increment during the period of five years. The order has been implemented as per the letter and spirit, and there is no illegality in its implementation. The remaining averments were denied and dismissal of the suit was prayed.

5. From the pleadings of the parties, following issues were framed:

(1) Whether the plaintiff is entitled for declaration to the effect that action and order of the defendants of wrongly and illegally implementing order No. 329 dated 9.8.2002 and inflicting punishment of stoppage of five annual grade increments without future effect and not granting increments to the plaintiff after passing punishment order, is illegal, null and void and liable to be set aside and plaintiff is entitled for arrears of payment with interest as prayed for? OPP

(2) If issue No. 1 is proved, whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP

(3) Whether the suit as framed is not maintainable? OPD

(4) Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD

(5) Relief.

6. The parties led evidence.

7. The trial Court decreed the suit of the plaintiff-respondent vide judgment and decree dated 04.11.2008.

8. Aggrieved from the aforesaid judgment and decree of the trial Court, the appellant-defendant filed an appeal before the first appellate Court, but the same was also dismissed vide judgment and decree dated 23.08.2011. While affirming the findings of the trial Court, the first appellate Court observed as under:

10. In view of the foregoing facts, I am also of the opinion that the appeal filed by the defendant/appellant/PSEB against the judgment and decree dated 4.11.08 is liable to be dismissed being without merit. No doubt vide order dated 9.8.02, 5 increments of the plaintiff/respondent were stopped without cumulative effect. Accordingly the defendant/appellant stopped the first increment of the plaintiff/respondent on 1.12.02, second on 1.12.03, 3rd on 1.12.04, 4th on 1.12.05 and 5th on 1.12.06. Since the first increment w.e.f. 1.12.02 was stopped only for one year, as such, its effect should have come to an end on 1.12.03. Before stopping the 2nd increment on 1.12.03, the defendant/appellant was required to release the first increment of the plaintiff/respondent which was stopped w.e.f. 1.12.02. Similarly before stopping the third increment w.e.f. 1.12.04, the defendant/appellant was required to release the second increment which was stopped w.e.f. 1.12.03 and to release the third increment on 1.12.04 which was stopped on 1.12.03 and 4th increment on 1.12.05 which was stopped on 1.12.04 and 5th increment on 1.12.07 which was stopped on 1.12.06. Since this was not done by the defendant/appellant-PSEB, as such, aggrieved from this order the plaintiff/respondent rightly filed the suit for declaration to declare the implementation of the order dt. 9.8.02 to be illegal, null and void. Keeping in view all these facts since the Ld. Lower Court rightly decreed the suit of the plaintiff/respondent vide the judgment and decree dt. 4.11.08, I think there is no infirmity and illegality in the judgment and decree dt. 4.11.08. Accordingly, this judgment and decree dt. 4.11.08 is upheld and the appeal filed against this judgment and decree stands dismissed being without merit. Decree be drawn. Lower Court records be returned and appeal file be consigned to record room.

9. Still not satisfied, the defendant-Board has filed the instant appeal submitting that the following substantial questions of law arise in this appeal:

(i) Whether the plaintiff/respondent is entitled to the declaration as prayed in the suit?

(ii) Whether the judgments and decrees passed by the courts below are liable to be set aside being against the facts and law?

(iii) Whether the manner adopted by the appellant implementing the order of punishment is legal and justified?

(iv) Whether the judgments and decrees passed by the courts below are against the law laid down by this Hon"ble Court in the manner referred above?

10. Learned counsel for the appellant has cited the judgment delivered in the case of "Om Phal v. State of Haryana and others" 1991 (3) RSJ 632 to contend that if five increments are stopped then the first increment would be released in the sixth year along with regular increment.

11. The judgment cited by learned counsel for the appellant is not applicable in the facts and circumstances of this case as in Om Phal's case (supra), the order of stoppage of increments was not placed before the Court and in fact counsel for the petitioner had not seriously disputed the proposition as canvassed in the said judgment keeping in view the fact that the period of stoppage of two increments had already come to an end.

12. Learned counsel for the appellant could not dispute the fact that the punishment order is for stoppage of five increments without cumulative effect, whereas the effect of implementing the said order has resulted into stoppage of 15 increments of the respondent, which is against the spirit of the orders passed and amounts to stoppage of increments with cumulative effect.

13. Hon"ble the Supreme Court in the case of [Kulwant Singh Gill Vs. State of Punjab](#), has taken a view that punishment of stoppage of increments with cumulative effect is a major penalty and can be imposed only after holding a regular departmental enquiry. In the instant case, it is not in dispute that no departmental enquiry was held before passing the order of minor punishment.

14. In view thereof, no fault can be found with the findings of the courts below. No substantial question of law, as raised, arises in this appeal. Dismissed.