(2010) 01 P&H CK 0176

In the Punjab And Haryana At Chandigarh

Punjab State Electricity Board and Another — APPELLANT

Vs

Jagjit Singh and Others — RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 01 P&H CK 0176

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—As one is generally aware from frequent Newspaper reports that Punjab State Electricity Board (PSEB) is financially not in good health. Still this is no deterrence for the Board to avoid frivolous litigation. The Board has experts to advice if a case is fit one to file appeal. Still the appeals are being filed in case where it would show them to be "penny wise and pound foolish". Board must have a mechanism to check this uncalled for litigation. This appeal appears to be one such appeal. Board may wish to check, how much it has spend to contest the claim for recovery of approximately Rs. 1 Lakh.

2. Chief Engineer, Central Zone, Punjab State Electricity Board, Ludhiana directed a recovery of sum of Rs. 1,31,000/- from Jagjit Singh, respondent-plaintiff. Jagjit Singh (respondent) filed a suit to challenge the said order and recovery on the ground that the said order was illegal null, and void.

3. On being promoted as Junior Engineer on 13.09.1993, the respondent was posted to work at Ludhiana. He was promoted as Assistant Engineer on 22.12.1978 and presently working at Giddarwaha (Muktsar). While working at Ludhiana, he was served a show cause notice on 15.5.1997 for recovery of the said amount as noted above. Thereafter, impugned order was passed on 2.6.99, directing recovery from the salary of respondent-plaintiff. The respondent accordingly challenged the same by filing civil suit.

4. As per the pleadings, the respondent-plaintiff was transferred from City Sub Division, West on 7.8.1991 and at that time he had given the complete charge of

office to Assistant Engineer Focal Point Sub Division (defendant No. 5). It is stated that respondent was issued account referring certificate on the basis of which, the plaintiff joined the place of transfer at West Division. The grievance of the plaintiff is that his reply to the show cause notice was not considered by the competent authority and the impugned order was passed arbitrarily, without holding any enquiry. Referring to the case of Manpal Verma v. The Haryana State Federation of Consumer Coop Wholesale Stores Ltd. and Ors. 1996 (1) RSJ 683 it was pleaded that recovery order cannot be passed without holding inquiry. It was further pointed out that though the procedure of recovery has been prescribed in Regulation 10 (1) of the PSEB Employees(Punishment and Appeal) Regulation, 1965 but sub rule (iv) provides that such order should state reasons. The impugned order was termed as cryptic. It is also urged that in view of the law laid down in Deep Chand Sharma v. State of Haryana 1981 (3) SLR 188, the order imposing punishment for recovery without discussing the explanation of the employee would make the order non speaking and thus not competent.

5. The Courts have held that before passing this order of punishment, inquiry was essential which finding of course is disputed by the Board. But this aspect need not be gone into in view of the some other very valid grounds which were considered by the Courts to allow the suit and to dismiss the appeal. It is seen that there was culpable delay on the part of the Board to initiate the process of recovering which could not have been effected even in terms of the policy formulated by the Board.

6. Concededly, the respondent-plaintiff was transferred from the Sub Division West on 14.8.1991, where shortages are alleged to have taken place . The show cause notice in this case was issued to him on 15.5.1997 and ultimately recovery was directed on 02.06.1999. The trial court as well as the appellate Court have placed reliance on Ex.PX, which is issued by way of instruction and provides that when an employee is transferred from one place to another then he must be informed about any shortage in his account or the material within six months from the date of transfer and in case this is not done then no recovery can be effected from such an employee.

7. Counsel for the Board would submit that these instructions would not apply, as these were issued on 1997, whereas this show cause notice was issued prior to the date of issuance of these instructions. This is countered by the counsel for the respondents, who has referred to the instructions dated 12.6.1997 to point out that through these instructions issued in the year 1997, a period of time for intimating shortages was extended from 3 months to 6 months. His submission is that these instructions regarding requirement of intimating an employee about the shortages was not introduced for the first time through these instructions. The relevant portion of the instructions in this regard reads as under:

Instructions have also been issued from time to time that the work of taking check measurements and evaluation should be carried out by the concerned officer/official expeditiously and shortages, if any should be intimated to the

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official concerned within a period of three months of his rendering the accounts.

8. I have perused the instructions dated 12.7.1997. They clearly make a mention that the concerned officer/official is required to be informed about the shortages as expeditiously as possible and within a period of 3 months which is extended to 6 months. In that view of the matter, it cannot be said that these instructions introduced in the year 1997 would not apply to the existing or pending cases which were yet to be finalised when these instructions are issued. It cannot be said that these will govern all those cases which are relating to the dates after issuance of these instructions. If earlier instructions were to apply then the appellants were required to intimate the shortages to respondent-plaintiff within a period of 3 months. They certainly did not do so and intimating shortages after the lapse of nearly six years and ordered recovery after 8 years. This in itself would be unfair and unreasonable and thus unacceptable.

9. The submission by the counsel for the appellant that earlier instructions did not make provision for absolving of the employee if the shortage was not intimated in six months would not make much difference. This cannot justify the approach that the appellant would be having liberty to take action at any stage. The Board can be expected to appreciate the reasons as to why a time stipulation is/was provided. It appears to be with purpose i.e. not to rake up such issues after long delay when person would be rendered incapable of defending himself as one is likely to lose material if any relevant for defence.

10. Even if this submission is accepted for the sake of argument, the question would still remain, whether the person can be asked to make good any recovery without any consideration to time that has lapsed between the date of leaving the charge to the date of effecting the recovery. It is well settled principle of law that with the passage of time, person may not have in his possession any material to show his innocence and the fact that he had correctly accounted for everything. The authorities can not be permitted to wake up even after the lapse of 8 years to direct a recovery on account of something which had happened so long ago.

11. The view taken by the trial Court and by the First Appellate court is well considered. There is no substantial question of law arising in this case, which would require adjudication. The Board is rather well-advised not to file uncalled for litigation.

12. Dismissed with Rs. 20,000/- as costs.

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