

Punjab State Electricity Board and Another

Vs

Baldev Singh

Civil Appeal No. 1916 of 1998

(G. B. Pattanaik, M. Jagannadha Rao JJ)

06.04.1998

ORDER

1. Delay condoned. Leave granted.

2. Heard the learned counsel for the parties. The defendant is the appellant, against the judgment of the High Court of Punjab and Haryana, dismissing the second appeal filed by the appellant and confirming the judgment of the lower appellate court. The plaintiff had filed a suit challenging the order of termination dated 8-1-1981, inter alia, on the ground that before issuance of the aforesaid order the plaintiff had no opportunity of being heard. The defendant-State Electricity Board had taken the stand in the written statement that the plaintiff's adjustment as Assistant Lineman was purely on ad hoc basis and when he was ordered to work as Charge I Mate, which is the substantive post, question of giving an opportunity of hearing does not arise. It was also stated that ever since he was posted as Charge I Mate he had remained absent and did not assume the charge. The learned trial court came to hold that the impugned order, strictly speaking, cannot be said to be an order terminating the services of the plaintiff from the Board and since the plaintiff was holding the post of Assistant Lineman on ad hoc basis against which post he had no right he was called upon to hold his substantive post as Charge I Mate and this order was passed on the basis of the instructions received from the higher authorities. The learned trial Judge further observed that the learned counsel for the plaintiff failed to show any rule or regulation according to which the show-cause notice was necessary to be issued before passing an order. With this conclusion, the suit having been dismissed, the plaintiff carried the matter in appeal. The lower appellate court, however, reversed the judgment and decree of the trial Judge on a finding that his reversion to his substantive post without giving him an opportunity of hearing amounts to punishment and the impugned order must be held to be invalid being against the principle of natural justice. With this conclusion the appeal having been allowed and suit having been decreed, the a Board approached the High Court in second appeal. The High Court by the impugned judgment having dismissed the appeal the defendant has approached this Court.

3. The sole question that is argued by the learned counsel appearing for the appellant in this Court is, that in view of the nature of appointment of the plaintiff against the post of Assistant Lineman on mere ad hoc basis, no rights had accrued in favour of the plaintiff and, therefore, the question of giving an opportunity of hearing before passing an order dated 8-1-1981 reverting the plaintiff to his substantive post of Charge I Mate does not arise. According to the learned counsel, the lower appellate court as well as the High Court committed serious error of law in interfering with the order on a wrong notion about applicability of the principle of natural justice to the case in hand. The learned counsel appearing for the respondent, however, contended that since the plaintiff had been posted as a Regular Assistant Lineman, before passing any order and altering his position he

was entitled to be heard and no opportunity of hearing having been given, the impugned order could not have been sustained in law, and, therefore, the lower appellate court rightly set aside the order of termination.

4. Having heard the learned counsel for the parties and examining the materials on record we have no hesitation to hold that in the facts and circumstances of the case the question of giving an opportunity of hearing to the plaintiff before passing the order dated 8-1-1981 does not arise. Since the plaintiff's appointment/promotion to the post of Assistant Lineman was purely on ad hoc basis and the higher authorities directed to discontinue such ad hoc appointment, the competent authority passed the impugned order posting the plaintiff against his substantive post of Charge I Mate. The plaintiff had not acquired any right to the post of Assistant Lineman and further, the impugned order dated 8-1-1981 cannot be held to be penal in nature.

5. In that view of the matter, the question of giving an opportunity of hearing does not arise. The lower appellate court as well as the High Court committed serious error in interfering with the judgment of the trial court.

6. In the aforesaid premises, the judgment of the lower appellate court and the High Court are set aside and this appeal is allowed. The plaintiff's suit is dismissed. But in the facts and circumstances of the case, there will be no order as to costs.