IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
****

RSA-2429-1997
Date of decision : 08.01.2025

Bharat Electronics Panchkula Employees' Union (Regd.)

... Appellant

Versus

Bharat Electronics Limited Registered and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Vivek Singla, Advocate
for the appellant.

Ms.Sanchi Bindra, Advocate and
Mr.Amar Vivek Aggarwal, Advocate
for the respondents.

VIKAS BAHL, J.(ORAL)

1. Challenge in the present regular second appeal is to the judgment dated 04.06.1997 vide which the Ist Appellate Court had set aside the judgment and decree dated 13.08.1994 passed by the trial Court and allowed the appeal filed by respondents no.1 and 2 / defendants and had dismissed the suit filed by the plaintiff/present appellant.

2. Learned counsel for the appellant has submitted that the plaintiff/ present appellant-Union had filed a suit for permanent injunction restraining defendant no.2/respondent no.2 from deducting the salary of the employees of defendant no.2, who were the members of the appellant Union, for the days i.e., 01.08.1989 to 03.08.1989 (both the days inclusive)

from the salary of the employees for the month of August 1989 on the plea that the defendants had not issued the complete uniform for the year 1987-88 and 1988-89 in spite of repeated requests and on 01.08.1989, the members of the plaintiff-Union, who were also the employees of defendant no.2, although had reported for duty in their own dresses but defendant no.2 had refused the workers of the plaintiff-Union to enter the premises of the factory till the time they wore the uniforms. Similarly, even on 02.08.1989 and 03.08.1989, the defendants did not permit the workers of the plaintiff-Union to enter the factory because of the said aspect and yet they had deducted the salary for the said three days without any fault of the members of the plaintiff-Union.

3. It is submitted that it were not the members of the plaintiff-Union who were not wanting to work and it was in fact the defendants, who had stopped them from entering into the premises and thus, the deduction of the salary of the members of the plaintiff-Union for the said three days was illegal and the members of the plaintiff-Union, from whose salary the said amount had been deducted, are entitled to the said salary. It is submitted that the trial Court had rightly considered the issues and had decreed the suit of the plaintiff/present appellant-Union, whereas the Ist Appellate Court had illegally set aside the said judgment and had wrongly reversed the findings on the issues in question. It is prayed that since the amount has already been deducted, thus, the defendants be directed to pay the said amount to the members of the plaintiff-Union along with interest.

4. On the other hand, learned counsel appearing for the

respondents has vehemently opposed the present appeal and has submitted that a simpliciter suit for permanent injunction is not maintainable, inasmuch as, no declaration with respect to any action of the defendants being illegal has been prayed nor any suit for recovery has been filed and since the deduction has already been made, thus, it was incumbent upon the plaintiff to file a suit for recovery. It is further submitted that the details of the workers, whose salary have been deducted as per the claim of the plaintiff, has not been given and thus, the present suit filed by the Union without impleading the individual employees is not maintainable. It is further submitted that the defendants never stopped the workers from entering the factory premises and some of the workers, who had staged "Dharna" and were using arm twisting methods to get their illegal demands fulfilled, did not choose to work on the said three days in question and that some of the employees had come to work and the said employees who had come to work have already been paid and it is only those employees who did not actually come to work have not been paid the salary for the said three days. It is submitted that the Ist Appellate Court has rightly observed that there was no occasion for the defendants to not permit the members of the plaintiff to enter the factory premises as it was the work of the defendants, which would have suffered in case no work was carried out in the factory premises for the said three days. It is submitted that the judgment of the Ist Appellate Court is well reasoned and detailed and the same be upheld.

5. This Court has heard the learned counsel for the parties and has

perused the paper book and finds the judgment of the Ist Appellate Court is in accordance with law and deserves to be upheld and the present appeal deserves to be dismissed for the reasons stated hereinafter.

6. The trial Court had framed the following issues:-

1. Whether defendants are not entitled to deduct the salary for the period from 1.8.89 to 3.8.89 of the plaintiff?OPP

2. Whether the plaintiff is entitled to the injunction prayed for on the averments made by him in his plaint?OPP

3. Whether the suit of the plaintiff is not maintainable in the present form?OPD

4. Whether the plaintiff has no locus standi to file the present suit ?OPD

5. Whether the suit of the plaintiff is bad for mis-joinder of necessary parties?OPD

6. Whether the civil court has no jurisdiction to try the present suit in view of preliminary objection?OPD

7. Relief."

7. Vide judgment dated 13.08.1994, all the issues had been decided by the trial Court in favour of the plaintiff and accordingly the suit of the plaintiff was decreed. The Ist Appellate Court vide judgment dated 04.06.1997 had reversed the finding on all the said issues and had thus, dismissed the suit of the plaintiff.

8. It is not in dispute that the present appellant-Union had filed a suit for permanent injunction and no prayer for recovery of the amount

deducted or declaration with respect to the action of the defendants of not paying salary / deducting salary from 01.08.1989 to 03.08.1989 being illegal was made. It is also not in dispute that the suit was filed by the Union without giving the details of the individuals, whose salary was sought to be or was deducted and none of the members/employees, whose salary was so sought to be deducted or was actually deducted were made party.

9. It was the case of the plaintiff in the plaint that the defendants had not given them the uniform and on 01.08.1989 had not permitted the members of the plaintiff- Union, who were also employees of the defendant no.2, to enter the premises as they were not wearing their uniforms. On the contrary, it was the case of the defendants in the written statement that some of the members of the plaintiff-Union were adopting illegal and coercive methods for seeking illegal benefits and had resorted to “Dharna” on the main gate and that the workers who had actually come to work and had performed their work from 01.08.1989 to 03.08.1989 had been given full salary and no amount was deducted from their salary and it is only these persons who had stayed outside and had sat for “Dharna” and had not worked on 01.08.1989 to 03.08.1989, whose salary was deducted for the said three dates. The Ist Appellate Court in the said circumstances had rightly come to the conclusion that the plea raised by the plaintiff / present appellant to the effect that they were not permitted to enter the factory premises on account of the workers not wearing uniform was not believable, as it was the case of the plaintiff that the complete uniform had not been supplied by the defendants and it was also the plea of the defendants that

they could have supplied uniform at any time during the financial year. It was further rightly observed that the plea of the defendants to the effect that the members had gathered at the main gate only for demonstration and only some of the workers had reported for duty and those who had reported for duty were paid salary, carries weight and thus, the Ist Appellate Court had rightly reversed the finding on issue no.1 in favour of the defendants. It is the case of the defendants that they had suffered irreparable loss on account of some of the workers not working from 01.08.1989 to 03.08.1989 and thus, it defies logic as to why the defendants would not permit the members of the plaintiff-Union to enter the premises and work for them. The said finding of the Ist Appellate Court is in accordance with law and deserves to be upheld and has not been shown to be perverse or illegal. Moreover, the said aspect finds support from the evidence of DW-1 R.K. Mishra, Deputy Manager, who had specifically stated in his evidence that the employees who had come on 01.08.1989, 02.08.1989 and 03.08.1989 to work had been paid their salary and the employees, who did not report for duty and were demonstrating outside the factory gate, were not paid their salary. Thus, the said finding is based on the pleadings and the evidence on record.

10. Even with respect to issue no.2, the Ist Appellate Court had rightly come to the conclusion that the plaintiff was required to file a suit for recovery of wages for the period from 01.08.1989 to 03.08.1989 instead of merely filing a suit for permanent injunction, as it is not disputed before this Court that the amount of salary had already been deducted and in spite of the said fact, no subsequent amendment seeking recovery of the said

amount had been sought and thus, finding on issue no.2 was also rightly reversed by the Ist Appellate Court in favour of the respondents. The said finding could not be shown to be perverse or illegal before this Court.

11. Under issue no.3, it was held by the Ist Appellate Court that the suit in the representative capacity was not maintainable as the individual members whose salary had been deducted for the said three days had not been made party. Even the said finding has not been shown to be perverse or illegal. It would be relevant to note that in the entire plaint, there are no details of the persons whose wages are sought to be deducted or have been deducted nor the details of the amount of the said wages have been given and thus, the question of granting recovery to the said persons, without there being any prayer for recovery, does not arise. On the said aspect, even issue no.4 with respect to locus standi has been rightly decided by the Ist Appellate Court. It has also been held by the Ist Appellate Court that the suit of the plaintiff was bad for mis-joinder of necessary parties and the Civil Court had no jurisdiction to try the present case as the case in question fell under the provisions of Industrial Disputes Act, 1947. It is the case of the plaintiff-Union in paragraph 3 of the plaint that the defendants come within the purview of industries / factories and thus, the objection raised on behalf of the defendants in paragraph 8 of the preliminary objections to the effect that the individual members of the plaintiff-Union should have approached the authority under the Payment of Wages Act, 1936 or under the Industrial Disputes Act, 1947 by raising an industrial dispute instead of filing the civil suit, was meritorious and has rightly been upheld by the Ist

Appellate Court. The said finding also has not been shown to be perverse or illegal.

12. Keeping in view the abovesaid facts and circumstances, this Court is of the opinion that the judgment of the Ist Appellate Court dated 04.06.1997 is in accordance with law and deserves to be upheld and the present appeal being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

January 08, 2025.
Davinder Kumar

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