



RSA-577-2001 (O&M)

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

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**RSA-577-2001 (O&M)
Date of Decision : 01.10.2024**

State of Punjab

....Appellant

Versus

Kamla Rani and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Inayat Khullar, Advocate
for the respondents.

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SUDEEPTI SHARMA, J.

1. The present appeal is filed by the State of Punjab against the impugned judgment and decree dated 28.08.1997 passed by the learned Civil Judge (Senior Division), Gurdaspur, whereby, the Civil Suit filed by the plaintiff-respondent for retiral benefits was allowed and the appeal filed by the State of Punjab against the judgment and decree dated 28.08.1997 was dismissed by the First Appellate Court, vide judgment and decree dated 29.07.2000.

2. Brief facts of the case as mentioned in the civil suit are as under:-

“Brief facts which led to the filing of the present suit are that Tarlok Nath Patwari now deceased and represented by his legal heirs joined his service as Patwari on 06.09.1954. He continuously worked upto June 1969 and he was given certificate in the year 1954 showing his service with effect from 8.9.1954 and the said certificate was issued on 19.10.1965. It



has been alleged that due to some unavoidable circumstances, Tarlok Nath now deceased and represented by his legal heirs submitted request for voluntarily retirement and left the job in January 1969. He never earned any adverse entry and his entire service record was good. The defendants is not releasing the post retirement benefits after completion of the service according to the rules. A notice under section 80 C.P.C. was served on the defendant before filing the suit but of no avail. The writ petition filed by the deceased was also dismissed in limni on 07.07.1994 and it was not dismissed on merit. Hence this suit.

3. Upon notice, the defendant-appellant appeared and filed the written statement. The defendant took the preliminary objections that the suit is barred by the principles of 'Resjudicata' as the writ petition filed by Tarlok Nath was dismissed in limini on 07.07.1994 by the High Court; the suit is time barred and is not maintainable. The plaintiff has no cause of action to file the present suit. On merits, it was admitted that deceased Tarlok Nath was working as Patwari on temporary basis and joined on 06.09.54, the remaining averments were denied. Tarlok Nath was transferred from Gurdaspur to Pathankot on 12.07.1966 and therefore he remained on long leave. He resigned from the service of Patwari and thus he served only for 9 years 2 months and 8 days and this period could not be treated for pension/retirement benefits as required under the Punjab Civil Services Rules. It has been averred that Tarlok Nath deceased/plaintiff never applied for voluntary retirement and his work and conduct was also not satisfactory. The



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receipt of notice under Section 80 CPC was admitted but its legality and validity was challenged. The remaining allegations were denied.

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

1. Whether the suit is not maintainable in the present form?

OPD.

2. Whether the suit is barred under the principal of resjudicata?

OPD.

3. Whether the suit is within time? OPP.

4. Whether the plaintiff is entitled to the mandatory injunction prayed for? OPP.

5. Relief.”

5. After hearing both the parties and perusing the whole record, learned Civil Judge (Senior Division), Grudaspur allowed the civil suit vide judgment and decree dated 28.08.1997. The appeal against the said judgment and decree was preferred which was also dismissed by the learned Additional District Judge, Gurdaspur. Hence, the appellant filed the present appeal.

SUBMISSIONS OF COUNSEL FOR THE PARTIES

6. Learned counsel for the appellant contends that judgments of both the Courts below are erroneous on facts and law. He further contends that the respondent failed to prove on record that he has rendered service which is sufficient for the grant of benefit of pension. He prays that the judgments and decrees passed by the Courts below be set aside and the present appeal be allowed.

7. Per contra, learned counsel for the respondent argues on the lines of the judgments and decrees passed by the Courts below and contends that the retirement benefits have rightly been granted to the respondent.



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8. I have heard learned counsel for the parties and perused the whole record of the case.

9. Relevant portion of the judgment passed by the learned Civil Judge (Senior Division), Gurdaspur is reproduced as under:-

“7. All these issues are interconnected. Hence I take them together.

8. According to Sunil Kumar (PW1), Tarlok Nath his father was appointed as Patwari on 6.9.1954 and he sought voluntary retirement in January 1969. His father did not receive any retiral benefit. His father filed civil writ petition in the Hon'ble High Court which was dismissed on 7.7.94 with the direction to file a civil suit. He alongwith other plaintiffs are the legal heirs of the deceased, who has died during the pendency of the suit.

9. According to Shri Ram Lubhaya (DW1), Tarlok Nath joined as Patwari on 6.9.54. Tarlok Nath proceeded on long leave on 12.7.1966 when he was transferred to Pathankot. Tarlok Nath only served the department for 9 year 2 month and 6 day. According to Ram Lubhaya, Tarlok Nath deceased is not entitled to pension. Tarlok Nath sought voluntary retirement. Tarlok Nath did not serve notice under section 80 CPC before filing of the suit.

10. The fact that Tarlok Nath joined as Patwari on 6.9.1954 is not disputed. The dispute is with regard to his length of service in the department when he sought voluntary retirement. The defendants has not placed on file service book of the deceased



so that the court could ascertain the length of service rendered Tarlok Nath before he sought voluntary retirement. It is in para no. 2 of the plaint that Tarlok Nath sought voluntary retirement in January 1969 and this fact has not been denied in the written statement. This clearly shows that at the time of voluntary retirement Tarlok Nath had put in 14 years and 3 months of service and defendant has failed to prove that length of service of the deceased is only 9 years 3 months and 6 days. No doubt under the Civil Services Rules qualifying for the grant of pension is 20 years, but our Hon'ble High Court has consistently held that person who retires voluntarily is entitled to the grant of pension and the relief of pension is entitled to the grant of pension and the relief of pension is never time barred because the pension is recurring cause of action. The cause of action for filing the suit for pension arises at the end of every month. So, in my opinion, the plaintiff is entitled to the pension and other retiral benefits, upto the date on which he sought voluntarily retirement and up to 21-3-97 when he died and after 21.3.97 his widow is entitled to receive the widow pension.

11. Further voluntary retirement from service cannot be treated as to dismiss or remove the employees from service for which only punishing authority/competent authority under the service rules could pass such an order. So, in this case voluntary retirement sought by Tarlok Nath cannot be termed as removal from service.”



CONCLUSION:-

10. A perusal of the judgments passed by the Courts below show that these are self speaking and after taking into consideration the evidence on record, the retiral benefits have been granted to the respondent. The fact that the respondent-Tarlok Nath joined as Patwari on 06.09.1954 is not disputed. Tarlok Nath sought voluntary retirement as per the record in June, 1969. This fact was never denied by the defendant-appellant in the written statement. This shows that at the time of voluntary retirement, Tarlok Nath had put in 14 years and 3 months of service. Therefore, the defendant-appellant wrongly calculated the length of service of Tarlok Nath as 9 years, 3 months and 6 days. Therefore, I do not find any infirmity in the judgments and decrees passed by the Courts.

11. The appeal stands dismissed.

12. Decree sheet be drawn.

13. Pending application(s), if any, also stand disposed of.

October 01, 2024
A.Kaundal

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No