

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 2408 of 1990 (O&M)

Date of decision:- 04.03.2015

Surinder Singh

...Appellant

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.S. Ahluwalia, Advocate
for the appellant.

Mr. Vaibhav Sharma, DAG, Punjab

RITU BAHRI J.

This regular second appeal is against the judgment and decree dated 02.05.1990 passed by learned Additional District Judge, Gurdaspur dismissing the judgment and decree dated 11.11.1987 passed by the learned Sub Judge (Ist Class) Batala whereby the suit of the plaintiff-appellant (for brevity 'the appellant') was decreed.

The appellant filed a suit for declaration to the effect that order dated 08.08.1985 by which the defendant-respondents (for short 'respondents') refused to fix the appellant's pay at basic pay of Rs.375/- per month w.e.f 01.06.1974 in the pay scale of Rs.300-600 and at Rs.1080/- per month as basic pay in the revised pay scale of Rs.700-800 w.e.f Feb, 1978.

The appellant was working as Librarian in Guru

Nank College, Kala, Afghana w.e.f 21.07.1970. The College was a private college but later on the college was taken over by the Punjab Government w.e.f 1.6.1974 vide letter dated 12.04.1974. A gift deed was also executed for taking over of this college. As per terms and conditions, the employees of the college were to be taken as fresh entrants to the Government service but were to be allowed scale and grade of retrospective categories of the Government servants and their pay and scale was to be fixed on the basis of length of service in identical time scale. At the time of taking over the college by the Government, the grade admissible to the Librarian was Rs.220-500/-. This grade stood revised to Rs.300-600/- vide Punjab Government letter dated 03.03.1976 but the above mentioned revised grade was made applicable with retrospective effect from 01.11.1986. At the time of fixation of the pay in the grade of Rs.300-600 after the college was taken over the Government, the appellant was entitled to be fixed in the above mentioned grade, at the basic pay of Rs.375/- per month taking into consideration the length of service of the appellant. However, the pay of the appellant was wrongly fixed as mentioned above. The appellant represented his case and his grievance to respondent No. 2 through proper channel. The principal of the college recommended to fix the appellant at the basic pay of Rs.375/- per month w.e.f

01.06.1974 but the representation of the appellant was rejected by the department on 08.08.1985.

From the pleading of the parties, the learned trial Court framed the following issues:-

- “1. Whether the order dated 8.8.1985 is illegal, null and void? OPP
2. Whether the plaintiff is entitled to pay scale as alleged by him in the plaint? OPP
3. Relief.”

The learned trial Court examined the gift deed Ex P2 executed by the Management of the Guru Nanak College Kala Afghana in favour of the State and accepted by the State and the letter of sanction of the Governor Ex P1. In para No. 5 of the Gift deed, both parties i.e Management and the State have agreed that the members of the staff (including the appellant) of this college, are accepted for absorption in the Government service and shall be allowed scales of pay of respective categories of Government service. The pay in scale allowed to them will be fixed on the basis of length of service in equivalent/identical time scale, there shall not guarantee in regard to protecting their existing salaries. Further the Principal of the college vide letter Ex P6 dated 23.11.1984 had recommended to the State Government for fixation of pay w.e.f 21.07.1970 in Rs.300-600/- but that recommendation of respondent No. 3

was rejected by respondent No. 2. As per clause 2 (f) of the letter of sanction dated 12.04.1974 Ex P1, the members of the staff i.e the appellant has to be treated as fresh entrant and has to be placed at the bottom of the old Government employees in their respective cadre. The learned trial Court was of the view that this clause has been incorporated with regard to the seniority of the appellant whereas admitted by the respondents in the written statement as well as in the letter of sanction Ex P1 and Gift deed Ex P2, the pay of the appellant shall have to be fixed on the basis of length of service in equivalent/identical time scale. In para No. 3 of the written statement, the respondents have admitted that the appellant was taken over in Government Nanak College Kala Afghana on 21.07.1970 i.e he is to be given the benefit of his length of service w.e.f 21.07.1970. Thus, both the issues were decided in favour of the appellant and the suit was decreed to the effect that the appellant is entitled to be fixed at Rs.375/- per month as basi pay in the grade of Rs.300-600 w.e.f 01.06.1974 and at Rs.1080/- per month as his basic pay in the revised pay scale of Rs.700-800 w.e.f February 8, 1978. The appellant was held entitled to all the monetary benefits in the shape of arrears of pay and allowances attached to the above grades and impugned letter dated 8.8.1985 was declared illegal and against the terms of gift deed Ex P2 and sanction letter Ex P1.

On appeal, the learned Appellate Court allowed the appeal of the State and dismissed the judgment 11.11.1987 passed by the learned Sub Judge (1st Class) Batala whereby the suit of the appellant was decreed. The Lower Appellate Court has taken into consideration letter dated 21.02.1969 issued by the Secretary to Government, Punjab Education Department to the Director of Public Instructions, Punjab whereby the pay scale of the Librarians and other working in non-Government colleges were revised as mentioned therein. The Librarians were given pay scale of Rs.300-25-600 and the qualification prescribed were M.A/M.Sc C.M/C.M plus one year diploma in Library science. In the case of the existing staff with B.A/B.Sc/B.Com degree and a diploma in Librarian science or 8 years experience as Librarian they might be given the said revised scale. The Government issued letter dated 07.03.1968 vide which pay scale of librarians working in the Education Department including public library were revised. In the case of a post, the qualification prescribed was graduate with diploma in library science, the pay scale was to be Rs.220-8-300-10-400/20-500. This letter was applicable to those working in the Government Institutions including public library. So far as non-government college was concerned, they were to be governed by letter dated 21.02.1969 (Ex D1). The appellant has not disclosed what his qualification was when he was

appointed as a Librarian in the Guru Nanak College but he deposed that his pay scale was Rs.220-500/-. This college was handed over to the Government by its Management vide gift deed Ex P2 and the sanction of the Government was conveyed to the acceptance of the gift deed vide memo dated 12.04.1974 (Ex P1). One of the conditions was that only Government scales of pay of respective categories shall be admissible to the employees who were absorbed in Government service and there shall be no personal grade for any one; that their pay in the Government scales will be fixed on the basis of length of service in equivalent/identical or higher time scale and there shall be no guarantee in regard to protecting their existing salaries. The employees were to be treated as fresh entrants. Thus, the appellant was not to claim seniority qua the government employees already in service but was entitled to be fixed in the pay scale on the basis of length of service. As per appellant, his pay scale was Rs.220-500/- at the time of taking over the college. The appellant has not made any grievance that his pay was not fixed correctly at the time of his absorption, in Government service on the college being taken over by the Government. The letter dated 03.03.1976 was applicable to the librarians who was working in the Government College w.e.f 01.06.1974 vide Ex P1 and Ex P2, this pay scale was to be applied to him w.e.f 01.06.1974. Thus, the appellant was

correctly fixed at Rs.300/- in the revision pay scale of Rs.300-25-600/-. The pay scales of Rs.300-600 was revised to Rs.700-1200- w.e.f 01.01.1978 and in accordance with notification dated 18.10.1979, the employees were required to give option of the date from which the pay scale was to be made applicable to them, to which the appellant gave its option and opted for the revised scale w.e.f 08.02.1978.

Thereafter, the lower Appellate Court has gone through the circular/letter dated 01.12.1983 and the counsel has argued that as per this circular, the appellant was entitled to be fixed in the pay scale of Rs.300-600/- w.e.f 21.07.1970. However, this circular pertains to those librarians working in private college whereas the appellant is in Government service w.e.f 01.06.1974 in accordance with Ex P1 and P2.

In view of the above, the judgment dated 02.05.1990 passed by learned Additional District Judge, Gurdaspur, calls for no interference and does not suffer from any infirmity. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed

04.03.2015
G Arora

(RITU BAHRI)
JUDGE