IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.907 of 2004(O&M)

Date of Decision:-13.01.2015

Rattan Dass Sharma.

......Appellant.

Versus

State of Punjab & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Prateek Mahajan, Advocate for the appellant.

Mr. Vaibhav Sharma, DAG Punjab.

Mr. R.S. Cheema, Advocate for respondent no.3.

***

JASWANT SINGH, J.(ORAL)

CM No.9614-C of 2012 has been filed by the appellant for early hearing of the appeal.

For the reasons stated in the application duly supported by affidavit of appellant itself, the same is allowed and main case is taken on board for hearing today itself.

RSA No.907 of 2004

Plaintiff is in second appeal against the concurrent findings recorded by both the courts below whereby his claim for counting of his previous service as a teacher w.e.f. 5.6.1982 till 31.03.1973 before his appointment against a government aided post w.e.f. 1.4.1973 has been declined while partly allowing the claim for grant of interest on delayed payments w.e.f. 1.1.1993, vide judgment and decree dated 11.09.2003 passed by the learned Civil Judge(Jr. Divn.), Amritsar, duly affirmed vide judgment and decree dated 30.01.2004 passed by the learned Additional District Judge, Amritsar.

Plaintiff/appellant has raised following substantial questions of law:-

(i) Whether the findings of the courts below to the effect that the period of service of the plaintiff prior to 1.4.1973 could not be taken into consideration for grant of pensionary benefits as the plaintiff has not deposited the amount of contributory provident fund can be sustained in law in view of the evidence on record including admission of DW-1 only witness of the defendants to the effect that the amount of contributory provident fund was to be deducted from arrears admissible to the plaintiff and the contributory provident fund relating to the period of service after 1.4.1973 was deducted from arrears admissible to the plaintiff and was not deposited by the plaintiff.

(ii) Whether the continuous service rendered by the plaintiff in different recognized schools against aided posts can be ignored while granting retiral benefits to the plaintiff.

(iii) Whether deduction of CPF made from the arrears admissible to the plaintiff was in excess and the plaintiff is entitled to refund of the same.

Having heard learned Counsel for the parties, this Court finds no merit in the present second appeal, since admitted fact is that the appellant/plaintiff initially joined service as JBT treacher in DAV Senior Secondary School, Amritsar on 5.6.1952 and remained in job with some break till date of his resignation w.e.f. 21.3.1972. He on said resignation thereafter joined as Principal of LMSD Senior Secondary School, Fatehgarh Churian on 22.3.1972 till 31.03.1973 when he resigned to join his fresh appointment as Principal with respondent no.3 College w.e.f. 1.4.1973. It is also not in dispute that w.e.f. 1.4.1973 till his date of retirement i.e. in April

1988, in the light of the Pension Scheme he has been granted the retiral benefits calculated w.e.f. 1.4.1973. It is also not in dispute that at the time of both resignations from his previous services he was paid his benefits like Contributory Provident Fund etc.

Learned Counsel for the appellant/plaintiff has placed reliance upon **M.R. Juneja Vs. State of Punjab & Ors. 2004(4) SLR 796** coupled with the cross examination of DW-1 to make out his case for calculating the benefits of service period prior to 1.4.1973. The argument, I am afraid does not advance his case at all, as it is apparent from the judgment and the evidence of DW-1 that the Pension Scheme had been introduced in the year 1992 for the private aided schools and although the petitioner had already retired in the year 1988, the benefit in the light of what is stated by DW-1 in terms of 1992 Scheme and in consonance with the law laid in cited judgments stands already paid to the plaintiff/appellant since concededly he has been granted pensionary benefits w.e.f. 1.4.1973. As far as the periods of service prior to 1.4.1973 and prior to his resignations and acceptance of whatever benefits were admissible for such periods, the same cannot be considered to be covered under 1992 Scheme or the cited judgment. Hence I find no ground to interfere with the concurrent findings recorded by both the courts below.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

January 13, 2015
Vinay