

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2882 of 2010 (O&M)

Date of Decision: September 18, 2015

Sham Sunder

...Appellant

Versus

The Managing Director, Pepsu Road Transport Corporation, Patiala

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Naresh Chander, Advocate,
for Mr.R.S.Chauhan, Advocate,
for the appellant.

Mr.Ankit Aggarwal, Advocate,
for Mr.Anupam Singla, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The challenge in the present appeal is to the impugned judgment and decree of the Lower Appellate Court dated 18.12.2009, whereby the appeal filed by the respondent-defendant against the judgment and decree dated 31.7.2008 vide which the suit filed by the appellant-plaintiff had been decreed, has been allowed.

Mr.Naresh Chander, Advocate for Mr.R.S.Chauhan, Advocate appearing on behalf of the appellant submits that the trial Court, on the basis of the oral and documentary evidence, decreed the suit for declaration and

issued a direction to the respondent-defendant to release one annual increment in his favour from the relevant date, i.e., 20.1.1992 along with interest @ 6% per annum from the date of filing the suit till its realisation. The Lower Appellate Court dismissed the suit on the ground that the claim in the suit was barred by law of limitation as the suit in respect of the increment w.e.f. 1992 was filed in the year 2007. He further submits that such relief was a recurring cause of action and, therefore, the Lower Appellate Court has committed an illegality and perversity in reversing the well reasoned judgment and decree of the trial Court. He also submits that the following substantial questions of law for adjudication by this Court:-

“1) Whether the impugned judgment and decree vide which the well reasoned judgment and decree of the trial Court has been reversed, can be sustained?

2) Whether the issue of limitation would crop-up in the present appeal when appellant is suffering recurring monetary loss and increment was not released by the respondent itself and moreover, Section 22 of the Limitation Act provides that in case of continuous breach of contract, a fresh period of limitation begins to run every moment during which the breach continuous?

Mr.Ankit Aggarwal Advocate for Mr.Anupam Singla, Advocate appearing on behalf of the respondent submits that in pursuance to the order dated 2.7.2015, affidavit of Shri M.S.Narang, Managing Director, Pepsu Road Transport Corporation, Patiala has been filed, wherein it has been stated that the appellate authority had implemented the order dated 20.1.1992 and one increment of the appellant was released and consequently the salary of the appellant was re-fixed and the arrears of the

same have also been paid vide Bill No.421 dated 20.4.1993 amounting to ₹1230/-. The affidavit is taken on record.

I have heard the learned counsel for the parties and appraised the paper book.

The affidavit does not indicate whether it contained the element of interest or not. The decree has to be complied with. The contents made in paragraph 3 of the affidavit, read thus:-

“That it is further submitted that the order dated 20.01.1992 passed by the appellate authority was implemented by the respondent vide office order No.651/PRTC/P.D.-1 dated 21.07.1992 and one increment of the appellant was released. It is also submitted here that the salary of the petitioner was also re-fixed and arrears of the same were also paid to the petitioner vide bill no.421 dated 20.4.1993 amounting to Rs.1230/-.”

I do not find any justification in deciding the appeal on merits for the reason that the benefit of one increment had already been granted to the appellant way back in 1993 and the suit was filed in 2007 and this fact was admitted in the written statement and the trial Court adjudicated the matter without noticing the aforementioned contention.

In view of the fact that the appellant has already been given the increment, no cause of action survives and the appeal is disposed of in terms of the averments made in the affidavit.

September 18, 2015
ramesh

(AMIT RAWAL)
JUDGE