IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 4370 of 2011 (O&M)
Date of decision:- 27.04.2015

Ashwani Kumar and others ...Appellants

Versus

State of Haryana and others ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Karan Nehra, Advocate
for the appellants

Mr. Sidharth Sanwaria, DAG, Haryana

RITU BAHRI J.

This regular second appeal is directed against the judgment dated 25.04.2011 passed by learned Addl. District Judge, Bhiwani, which was filed against the judgment and decree dated 03.12.2009 passed by learned Civil Judge (Jr. Divn.), Bhiwani, whereby the suit filed by the plaintiff-appellants (herein after to be referred as 'the appellants') against the defendants-respondents (herein after to be referred as 'the appellants') for declaration to the effect that they being legal heirs of Hari Ram Halu are entitled to all service benefits including gratuity, pension etc, was dismissed.

Brief facts of the case are that Hari Ram Halu was appointed as an Expert Weaver in the office of Supervisor, Government Woolen Industries Development

Centre, Panipat, under the control of Industries Department, Punjab Government, through the Subordinate Service Selection Board, Punjab vide order dated 22.10.1964.He joined his duties on 12.01.1965. His services were allocated to the State of Haryana at the time of its re-organisation on the same post. He was promoted to the post of Zonal Statistical Inspector and his services were regularized as such. The Government of Haryana formed a Handloom and Handicraft Corporation consisting of Carpet Market Training Centre, Panipat, Textile Officer, Panipat of Textile Handicrafts Industries, Panipat and Development of Textile Industries and their entire staff was transferred to the said Corporation. The service of father of the appellants was put under the control of said Corporation. Respondent No. 2 terminated the service of father of appellants on the ground that 6th post held by him was not available with the Corporation being withdrawn vide order dated 11.02.1985. Their father expired on 23.01.1997.

Upon notice, the respondents appeared and filed written statement and took several preliminary objections viz suit being bad for want of notice under Section 80 CPC, limitation etc. They have alleged that as per provision of Rule 9.2 of Civil Services Rule, Volume-II, the claim can be filed only by the deceased employee in the year 1985 after abolition of his post and the scheme in which he was working. He remained alive till 22.01.1997 but he did not file any civil suit. In one of the application dated 19.07.1997, submitted by appellant No. 1, he has stated that his mother to have expired in the year 1983 whereas the date of birth of his sister Ms. Jotsana has been shown as 12.07.1986 born from the same mother. Thus, the succession of the dues, if any, could only be established after having received a certified copy of succession certificate in their favour.

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

"1. Whether the plaintiffs are legal heirs of deceased Hari Ram Halu and are entitled to get the service benefits? OPP

2. Whether the suit is bad for want of notice under Section 80 C.P.C? OPD

3. Whether the suit of the plaintiff is barred by limitation? OPD

4. Relief."

The facts not in dispute that father of the appellants had joined services of the respondent-department on 12.01.1965 and served till 11.02.1985. He expired on 23.01.1997. He did not file any suit for 12 years from the date of his termination nor any representation was filed with the department claiming the service benefits. The appellants have placed on record Ex P3 i.e matriculation certificate of appellant No. 1 where his date of birth has been shown as 05.07.1968, that of Rajeev as 14.09.1975 (Ex P4), Lalit as 24.02.1982 vide Ex P5, Geetanjali as 26.02.1978 vide Ex P6 and Jyotasana as 18.03.1983 vide Ex P7. Thus at the time of the death of their father, appellants were major and they could not be entitled for any family pension. The appellants have filed the suit on 27.10.2007 i.e after ten years of the death of their father. The claim of the appellant Jyotasana was considered by the trial Court. The appellants have placed on file the certificate regarding death of Jyotasana, wherein her date of birth is recorded as 18.03.1983 while in the matriculation examination certificate, her date of birth is recorded as 12.07.1985. As per death certificate of their mother, she died on 30.12.1983. Thus, Jyotasana was born after the death of her mother. However, it has been alleged that the father of the appellants never performed second marriage. The department directed the appellants to produce the succession certificate from Competent of jurisdiction. In the absence of the succession certificate, the claim of the appellants could not be disbursed.

The suit was dismissed being time barred as it was filed after a gap of 23 years.

Feeling aggrieved against the judgment passed by the learned trial Court, the appellants filed an appeal, which was also dismissed.

During the pendency of the appeal, this Court vide order dated 18.02.2015 had observed that legal heirs of Hari Ram were entitled to admissible amount of gratuity, leave encashment etc, on production of succession certificate. Learned counsel for the appellants has informed the Court that two daughters on account of their status, as a divorced daughter and the other being unmarried are entitled for grant of family pension. The State was granted time to get relevant instructions from the office Director Industries, Haryana.

As per judgment dated 01.08.2009 (A-1), appellant No. 4 got married on 27.06.2004 but her marriage was dissolved, vide order dated 01.08.2009. As per Annexure A-2, various representations were filed by the appellants but the respondents had taken a stand that the appellants should submit the Succession Certificate in favour of the appellants on account of death of their father, so that the respondents could process the file. The said stand has been communicated by the respondent, vide letter dated 18.05.2010. During the pendency of the appellant, appellant No.1 filed a petition for the issuance of succession certificate in favour of legal heirs of the deceased before the Competent Court in Bhiwani in which notice has been issued to the General Public and the present co-appellants (A-3). Certified copy of order dated 24.12.2013 passed by learned Civil Judge (Sr. Divn) exercising powers of District Judge, Bhiwani in the petition filed by appellant No. 1 is Annexure A-4.

A perusal of Annexure A-1 to A-4 shows that the respondents had admitted the claim of the appellants, subject to production of succession certificate.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of S.K. Mastan Bee vs. The General Manager, South Central Railway, 2002 (7) SLR 1 wherein Hon'ble the Supreme Court had held that it is the mandatory duty and obligation of the employer to compute and disburse the family pension available to the dependents of deceased employee. If the employer illegally denies and reject the claim of family pension to illiterate and destitute dependents of the deceased, the claim of the petitioners cannot be restricted for the fault of the employer itself. In para 6 of the judgment, it has been held as under:-

> "6. We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that

the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension ? In this case as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellant's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal inspite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate. The learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992.

A full Bench of this Court in a case of R.S. Randhawa v. State of Punjab and others, 1997(3) RSJ 318 has held that in a claim for recovering pension or other retiral benefits which the State has wrongly withheld or even when interest is claimed on those amounts, the plea of bar of limitation cannot be permitted to because the State has defaulted in the performance of the duty in not paying the amount when it became due. In para 9, it has been observed as under:-

> “The question that now arises for our consideration is whether a retiree can approach this Court under Article 226 of the Constitution to claim interest only on the delayed payment of pension and other retiral benefits. As observed earlier, there is a duty cast on the state to disburse pension and retiral benefits immediately when they become due and it the non-performance of this statutory duty which gives rise to the retiree to claim compensation by way of interest. The right to claim interest partakes the nature and character of the retiral benefits and cannot be separated therefrom. This being so, a claim for interest thereon arising out of contractual obligations. Moreover, in a claim for recovering pension or other retiral benefits which the State has wrongfully withdraw or even when interest is claimed on those amounts, the bar of limitation

cannot be permitted to be raised because the State has defaulted in the performance of its duty in not paying the amount when it became due. In this view of the matter, it follows that when a retired government employee can seek his remedy by invoking the jurisdiction of this court under article 226 of the Constitution to claim pension and reitral benefits by the issuance of a writ of mandamus or any other order or direction, he is equally entitled to seek relief in the same way for claiming interest only delayed payments which is an enforcement of an incident of the same right. It will, of course, be open to the State to plead and prove that there has been no delay muchless culpable delay on its part in disbursing the amount so as to entitle a retired employee to any interest as claimed by him. To put it differently, if a retired government employee can show that there was delay in payment of pension or any other retiral benefits to him, the onus would be on the State to show that it is not guilty of any culpable delay and if it is unable to discharge the onus or satisfy the Court as to the reasons for the delay a direction to pay interest for the period of delay would invariable issue."

In the present case, during the pendency of the appeal, the department had accepted its liability and was ready to disburse the retiral benefits, on production of succession certificate. The appellants at the same time had filed a petition for grant of succession certificate (A-3) in which notice has been issued to the General Public and the present co-appellants.

Applying the ratio of the judgments mentioned above and keeping in view the fact the appellants had filed a petition for grant of succession certificate, the present appeal is allowed and the suit of the appellants is decreed with a direction that the respondents shall release the service benefits including gratuity, pension etc, within two months, after the grant of succession certificate (A-3).

27.04.2015 (RITU BAHRI)
G Arora JUDGE