

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 4523 of 2011 (O&M)
Date of decision:- 10.04.2015

State of Punjab and others ...Appellants

Versus

Kesar Singh ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vaibhav Sharma, DAG, Punjab

Mr. Dharam Pal, Advocate
for the respondent.

RITU BAHRI J. (Oral)

The present regular second appeal is directed against the concurrent finding of facts recorded by both the Courts below whereby the suit of the plaintiff-respondent (for short 'respondent') was decreed to the effect that he is entitled to annual increments for each completed years of service from the date he attained the age of fifty years.

The respondent filed a suit for declaration to the effect that he is entitled to annual increments for each completed years of his service and directing the defendants-appellants (for short 'appellants') to release to the respondent his due annual increments from the date he has attained the age of 50 years and to pay the arrear thereof with interest @18% per annum from due date till its payment.

Brief facts of the case are that the respondent is an employee of the Punjab State under the department of Finance and is posted as Clerk in the office of District Treasury Officer, Rupnagar. He was appointed vide memo dated 18.09.1992 on priority basis. As per condition No. 8k of appointment letter of the respondent, he was required to clear a typing test within a period of 06 months from the date of his appointment. However, he could not clear the condition of this type test and now he has attained the age of 50 years. State of Punjab vide letter dated 27.08.1986 had issued instructions for giving relaxation from typing test to these employees who have attained the age of 50 years, the respondent sought the grant of his due increments, as per instructions of the State Government, contained in the letter dated 27.08.1996, but in vain. The respondent was served a legal notice upon the appellants vide receipt dated 05.10.2006. Appellant No. 3 vide letter dated 03.11.2006 has intimated that all necessary actions be taken by appellant No. 2 in the matter but the latter has not intimated anything in this regard to the respondent. The appellants refused to release the due annual increments of the respondent.

On notice, the appellants appeared and filed a joint written statement and contested the suit on the ground of non-applicability of instructions because the Government

of India's sponsored scheme for census of small scale Industrial Units, 148 Enumerators at a fixed salary of Rs.1200/- per month, but 107 Supervisors in the pay scale of Rs.1500-2640 were appointed in the department Industries for a short period till the completion of the census. On completion of the work, the services of these employees terminated w.e.f 31.07.1990. These persons had no claim whatsoever for adjustment or re-deployment or of compensation, as per service rules of the State Government. However, taking into consideration requests of the employees rendered jobless, the State Government took a sympathetic view and issued instructions as per which the departments were to call these employees for interview and select as per suitability. This process was to continue till such employees were absorbed against the ministerial posts, technical posts and other class III post as per their qualifications. Respondent was appointed as Clerk in the pay scale of Rs.950-1800 vide letter dated 18.09.1992. The case of the respondent not covers the case of those appointed on compassionate grounds in the category of dependent member of the family of a killed person or of 100% physically disabled in terrorist action or by security forces acting in aid of civil power in the State or the dependent member of the family of deceased Government employee by dying in harness or to disabled ex-servicemen etc. The

Government vide letter dated 31.01.2007 withdrew earlier instructions dated 27.08.1996 due to which also, respondent was not a regular employee of any Corporation or Board earlier, but he served for six months on a consolidated pay of Rs.1200/- per month and as per clause 8k of the appointment letter, respondent was required to clear the Punjabi Typing Test within six months from the date of appointment, but he could not do so despite offering opportunities.

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

- “1. Whether the plaintiff is entitled to annual increments? OPD
2. Whether the suit is not maintainable? OPD
3. Relief.”

The trial Court took into consideration the letter dated 27.08.1996 and 31.07.2007 issued by the State of Punjab. As per letter dated 27.08.1996 the persons who have been appointed on priority basis and have attained the age of fifty years but have remained unsuccessful in qualifying the typing test, are being exempted from the condition of passing the type test and their annual increments be released forthwith provided that such persons shall not be entitled to arrears of such increments. It is an admitted fact that the respondent was appointed on priority

basis. D.W.1 in his cross examination has stated that the respondent has attained the age of fifty years on 11.02.2004. It has not been controverted that the respondent has not passed the type test till the age of fifty years. Thus, letter dated 27.08.1996 are fully applicable in the case of the respondent. The appellants contended that the instructions dated 27.08.1996 have been revoked vide fresh instructions issued vide letter dated 31.01.2007, so the benefit granted under letter dated 27.08.1996 are not more available to any employee. A bare perusal of letter dated 31.01.2007 reveals that the same is silent as to from which date it would come into effect. It simply says that the Government has decided to withdraw the instructions issued vide letter dated 27.08.1996. Thus this letter dated 31.01.2007 was held to be not applicable in the case of the respondent, as the respondent has attained the age of fifty years in the year 2004 i.e much before the issuance of the letter dated 31.01.2007.

On appeal, the lower Appellate Court vide judgment dated 02.08.2011 had partly allowed the appeal of the appellants by modifying the judgment of the trial Court to the extent that the respondent is entitled for annual increments for each completed years of his service from the date he attained the age of 50 years, but until 31.01.2007 only and not thereafter.

The appellants have filed the present appeal on the sole ground that the instructions dated 27.08.1996 was not applicable to the respondent, as he was not appointed on priority basis. He was appointed through the scheme of Industries department and after completion of the scheme, he was terminated w.e.f 31.07.1990.

Learned counsel for the appellants has argued that the respondent was selected by the Departmental Selection Committee of the Appellants Department and was appointed as Clerk in the pay scale of Rs.950-1800 vide letter dated 18.09.1992. His appointment was against the direct quota post. His appointment cannot be treated on priority basis and hence he was not entitled for grant of increment after completion of 50 years, as per instructions dated 27.08.1996, which was revoked vide letter dated 31.01.2007. The Government of Punjab Department of Personnel and Administrative Reforms vide their letter dated 24.04.1996 circulated details in respect of candidates who were to be recruited on the priority category vis-a-vis other conditions applicable thereto. The said instructions have been reproduced in para 5 of the ground of appeal, which reads as under:-

- (i) A member of the family of a person killed as a result of terrorist action in the State and member of a family who lost their bread winner in riots in Delhi

and other places in India between October 31 to November 7, 1984 (both inclusive)

(ii) Employees declared surplus on account of abolition of Organization or some other reason fit by Government inter alia on account of assessment made by Staff Inspection Units.

(iii) Disabled Ex-service men (not unfit for civil services)

(iv) A member of a family of the deceased Government employee or a Government employee, who is retired from service on medical grounds.

(v) A member of a family of the Defense Service Personnel:-

(i) killed in service while performing duties or

(ii) who are severely disable and totally unfit for re-employment

(iii) Physically Handicapped persons.

(vi) The employees declared surplus on account of abolition of any post(s)/Department of Government and Public Sector Undertaking(s) of state Government or for some other reasons considered fit by Government, inter alia on account of abolition or reduction of post(s) as a result of assessment made by Staff Inspection Unit etc."

Clause vii of the above said instructions clearly

shows that all the employees who were declared surplus and thereafter appointed, would be treated on priority basis. Further, it provided that the respective Departmental Selection Committee were to call such candidates for interview and selection the best suitable from amongst them in the departments till their absorption against the ministerial posts as well as technical posts and other categories falls under other class III post as per their qualifications.

In the present case, the respondent who was working under the scheme was declared surplus and was terminated w.e.f 31.07.1990 and was thereafter appointed as Clerk in the pay scale of Rs.950-1800 vide letter dated 18.09.1992. The surplus employee along with the respondent were sent to Departmental Selection Committee, who called them to interview and selected them. Thus, as per the above instructions, the respondent was appointed on priority basis and his case was rightly considered by both the Courts below by entitling him to annual increments for each completed years of service from the date he attained the age of fifty years. However, the lower Appellant Court has modified the judgment of the trial Court to the extent that the respondent is entitled for annual increments for each completed years of his service from the date he attained the age of 50 years, but until 31.01.2007 only and not

thereafter.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

April 10, 2015
G Arora

(RITU BAHRI)
JUDGE