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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-1664-2015

Date of Decision : November 19th, 2015

DAV Sr. Secondary School & another

.... Appellants

Versus

Brij Pal Sharma and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

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. Vikas Chatrath, Advocate,
for the appellants.

SHEKHER DHAWAN, J.

Present intra-court appeal under Clause X of the Letters Patent has been filed by the appellants against the order dated 8.7.2015 passed by the learned Single Judge, whereby writ petition filed by respondent – Brij Pal Sharma was accepted.

2. Originally, Civil Writ Petition No. 7301 of 2012 was filed by the Brij Pal Sharma, respondent No.1 herein, for quashing of order dated 30.3.2009 and for issuance of directions for his reinstatement in service till the age of superannuation and for making payment of arrears of the salary,

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gratuity, revised pension etc. alongwith interest.

3. Learned Single Judge allowed the writ petition vide order dated 8.7.2015 and set-aside the order dated 30.7.2009 [Annexure P/13] and respondents No. 4 and 5 [appellants herein] were directed to make deemed reinstatement of the petitioner [respondent No.1] in service till the age of superannuation, i.e., from 26.03.2001 till 31.10.2003 and to release all the arrears of salary, gratuity, revised pension as per Haryana Aided Schools [Special pension and Contributory Provident Fund] Rules, 2001, leave encashment, provident fund and other retiral dues to which he stands entitled along with interest @ 8% per annum from the date it became due till the date of actual payment.

4. Learned counsel for the appellants contended that respondent No.1 was not entitled to seek any relief in view of order dated 20.3.2007 [Annexure P/9] coupled with order dated 13.7.2009 [Annexure P/14], whereby liberty was sought and granted to a limited extent regarding the claim of salary qua the period from 26.3.2001 to 31.10.2003. He is barred from raising such a plea which has already been adjudicated and the same shall be deemed to have been given up. Moreso, respondent No.1 stood superannuated with effect from 26.3.2001 for which he was granted pensionary benefits when the order dated 20.3.2007 was passed. Respondent No.1 had accepted the benefits without raising any grievance.

5. We have considered the submissions made by learned counsel for the appellants. Respondent No.1 was appointed as a Master on 6.12.1978 and his date of superannuation was 31.10.2003. He was compulsorily retired from the services vide order dated 25.3.2001

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[Annexure P/2]. Respondent No.1 challenged the said order by way of Civil Writ Petition No. 4771 of 2001 and the same was disposed of by this Court vide order dated 29.03.2001 [Annexure P/3] with a direction to file a representation before the appropriate authority. However, the representation of respondent No. 1 was rejected vide order dated 9.8.2001 [Annexure P/4]. Thereafter, he filed another petition bearing CWP No. 12406 of 2001 but the same was withdrawn vide order dated 8.12.2004 as during the intervening period, order dated 9.8.2001 was recalled by the Director and the compulsory retirement order was set-aside. However, respondent No. 5 [present appellant] was directed to pay all the arrears of salary w.e.f. 27.3.2001 [date of compulsory retirement] till 31.10.2003 [date of superannuation] and the arrears of retiral benefits with 18% simple interest within one month.

6. Respondent No. 5 [appellant before us] challenged the said order by filing CWP No. 15177 of 2005 and the same was disposed of as per statement made by learned counsel representing the appellants that all retiral benefits had been sanctioned in favour of Brij Pal Sharma, respondent No.1 and the writ petition was withdrawn vide order dated 20.3.2007 [Annexure P/9]. It was also made clear in the order, Annexure P/9, that irrespective of the fact whether the present appellant-Institute revives the grant-in-aid from the Government or not, the pension of respondent No. 3 [respondent No.1 herein] shall be deposited in his account before 7th of each month and with these directions the writ petition was disposed of. The appellants had undertaken that the payment is to be made in terms of order dated 30.6.2005. [Annexure P/6]. Learned Single

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Judge has already dealt with this aspect and passed the detailed order dated 8.7.2015. There are no grounds calling for interference in the said order. The appeal is without any merit and the same stands dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(SHEKHER DHAWAN)
JUDGE

November 19th, 2015
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