

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3478 of 2012 (O&M)

Date of decision: 28.04.2015

The Municipal Council, Samana and another

.....Appellants

Versus

Raj Kumar and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Jaspreet Singh, Advocate,
for the appellants.

Ritu Bahri, J.

Municipal Council, Samana-defendant has come up in regular second appeal against the judgment dated 12.03.2012 passed by the Additional District Judge, Patiala, dismissing its appeal against the judgment and decree dated 26.02.2010 passed by the Civil Judge (Junior Division), Samana, whereby suit filed by plaintiff-Kaushalaya Devi has been decreed.

Kaushalaya Devi-plaintiff (mother of appellant) filed a suit for declaration, stating therein that she was legally wedded wife of Nasib Chand son of Panchayati Ram, who was serving in Municipal Council, Samana and had died on 01.01.2003, leaving behind plaintiff as widow and Raj Kumar (respondent No.1 herein) a married son. She had made an application to the

Fund, gratuity and arrears of pay, family pension etc. Thereafter, a resolution No.22 was passed by the Municipal Council for releasing the arrears of pay, gratuity, provident fund etc. However, the said benefits had not been released in favour of the plaintiff. In this regard, the plaintiff sent several notices to the defendants-appellants, but to no avail.

Upon notice, defendant Nos. 1 and 2 filed written statement taking objections with regard to maintainability, limitation and locus standi. It was submitted that Nasib Chand joined the defendants-appellants on 30.11.1991 as sweeper. However, he remained absent from duty w.e.f. 01.05.1997 till 31.12.2002. Several letters were sent directing him to resume his duty. In this regard, publication was also made in "The Tribune" newspaper, but he did not join his duty. Later on, Nasib Chand expired on 01.01.2003. It was further stated that on 12.01.1999, Nasib Chand had made an application stating therein that he was mentally upset due to the death of his nephew. Vide resolution No.176 dated 12.01.1999, he was allowed to resume his duty, but he failed to do so. It was submitted that since he remained absent from duty from 01.05.1997 to 31.12.2002, therefore, he LRs were not entitled to any benefit for this period. Nasib Chand had not opted for pension during his service tenure and he had waived his right to pension.

Defendant NO.3 filed separate written statement and took similar pleas as that of defendant Nos. 1 and 2.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to declaration to the effect that she is entitled to arrears of pay, gratuity, provident fund etc., attached to the post of Nasib Chand deceased? OPP
2. Whether instant suit is maintainable in the present form? OPP

3. Whether suit of the plaintiff is bad for want of notice under Section 49 of the Punjab Municipal Act? OPD
4. Whether suit of the plaintiff is bad for want of notice under Section 80 CPC? OPD
5. Whether plaintiff has no cause of action and locus standi to file the present suit? OPD
6. Relief.

The trial Court by relying upon the Full Bench judgment of this Court in **Saroj Kumari Vs. State of Punjab**, 1998 (3) SCT 664, held that the plaintiff was entitled to the arrears of pay of the deceased employee for the period of 38 months prior to institution of the suit along with family pension, gratuity and provident fund. As per Rule 4 (b) of the Punjab Municipal Employees Pension, Gratuity and GPF Rules, 1991, in case an employee dies without exercising his option, he would be deemed to have opted for these rules. Further, the objection of the defendants that no notice under Section 49 of the Punjab Municipal Act was given, was rejected and the notice dated 24.12.2007, Ex.P3, was considered as sufficient compliance of this section as well as Section 80 CPC. With these observations, the trial Court decreed the suit and the plaintiff was held entitled to the arrears of pay of deceased-Nasib Chand for a period of 38 months prior to the institution of the suit. She was also held entitled to the arrears of pension of deceased Nasib Chand as well as gratuity and provident fund.

On appeal, the lower appellate Court examined the deposition of Mohan Lal, Accountant (DW-1), who in his cross-examination, admitted that there was no order regarding suspension or dismissal of Nasib Chand.

No such order was passed against him. The lower appellate Court upheld the finding recorded by the trial Court that the plaintiff was entitled for pension

under Rule 4 (b) of the Punjab Municipal Employees, Pension, Gratuity and GPF Rules, 1991, which provides that in case an employee dies without exercising his option, he would be deemed to have opted for these rules. Hence, the plaintiff being widow of Nasib Chand was rightly held entitled to family pension. It was further held that the claim of family pension was a recurring cause of action. Hence, the suit could not be dismissed on the ground of limitation. Ultimately, the lower appellate Court dismissed the appeal of the defendant-appellants. Hence, this appeal.

Learned counsel for the appellants has not been able to show any judgment or law which would show that the plaintiff's case for family pension was not covered under Rule 4 (b) of the Punjab Municipal Employees, Pension, Gratuity and GPF Rules, 1991. There is no dispute with regard to the findings of facts recorded with regard to appointment of Nasib Chand, husband of plaintiff with defendant Nos. 1 and 2.

After going through the impugned judgments passed by the Courts below, no illegality, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

28.04.2015
ajp

(RITU BAHRI)
JUDGE