

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.3687 of 2012 (O&M)

Date of decision: 04.09.2015

State of Haryana and others

..... Appellants

versus

Tota Ram

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Samarveer Singh, DAG Haryana for the appellants
Mr.Sanjay Mittal, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

This regular second appeal has been filed by the State of Haryana against the judgment and decree dated 31.1.2012, passed by the learned District Judge, Narnaul, reversing the judgment and decree dated 22.5.2009, passed by the learned Additional Civil Judge, Senior Division, Narnaul, which had dismissed the suit. In the appeal, the learned District Judge granted partial relief to the plaintiff.

The short controversy in this case is that the plaintiff was previously in the military service. Later on, he was appointed as JBT Teacher in the education department on 25.11.1991. He claimed that he has already been granted the benefits towards increment and seniority. vide order 26.3.2001 but same has been denied towards pensionary benefits. The appellate Court gave the following direction,

while decreeing the suit of the plaintiff:-

"In view of the above discussion, it is abundantly clear that the Government has not correctly handled the plaintiff's claim for pension. It was required on the part of the Government to ascertain in the first place as to whether the plaintiff would complete the required qualifying service for pension on counting of the period of such military service which it had already taken into consideration for the purpose of granting of seniority and increments to the plaintiff. If the plaintiff on such assessment was fulfilling the conditions of qualifying service for pension, a duty was cast on the Government to give an option to the plaintiff to deposit bonus and gratuity received from defence authority. It was only in case the plaintiff fails to exercise the said option of refunding the bonus and gratuity that he could legitimately be denied the benefit of military service for pension. Aforesaid exercise as was otherwise required on the part of said Government was not conducted. The Government has rather misconstrued the rules and has proceeded on the assumption that the plaintiff cannot be granted pension because there was more than one year gap between the date on which he was discharged from Indian Army to the date on which he had joined the service under the State Government. In these circumstances, the plaintiff is entitled for declaration that

the Government shall consider his case afresh for grant of pension by counting the period of military service.

The reasoning given by the first appellate Court is that the instructions of 1965 relied upon by the lower Court while dismissing the suit are not applicable in the present case. The plaintiff in this case is not seeking benefit of gap between the retirement from the military service and joining of the government service in education department.

After hearing learned counsel for the parties, I am of the view that findings of facts have been recorded and the State Government has been merely directed to re-consider the plaintiff's claim by counting military service rendered during national emergency and pass the order. It means that the State is still left to consider the case and pass an appropriate order. These are the findings of facts and cannot be interfered with in the present regular second appeal.

The appeal is dismissed.

In view of disposal of the appeal, all the pending applications also stand disposed of.

04.09.2015
gk

(Kuldip Singh)
Judge