

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4271 of 2012 (O&M)

Date of Decision.31.08.2015

Pran Nath Verma

.....Appellant

Versus

State Bank of India and another

.....Respondents

Present: Mr. Sandeep Kotla, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

-.-

K. KANNAN J. (ORAL)

1. The plaintiff's suit was for a restraint against the Bank from making recoveries of ₹ 3,41,570/- being the salary drawn by the plaintiff by overstaying in the service beyond the period of superannuation. His date of birth as shown in the bank record was 5.4.1942 but in an assignment appraisal filled up by the plaintiff and handed over to the Bank, he had entered the date of birth as 5.4.1944. The entry allowed the bank to believe that his own date of birth was only the date as stated in the assignment appraisal and was allowed to overstay in his job. The contention by the plaintiff was that he had after all worked and the service record showed the date of birth as 5.4.1942 and he had been allowed to work beyond the period of superannuation taking note of entry in an assignment appraisal and entry made by the plaintiff. According to him, he has only drawn the salary for the period he has worked and a recovery cannot be made. The further argument was that

the plaintiff is entitled to leave salary of ₹ 1,99,056/- and that amount has not been paid. Recoveries could not be made without making the payment or making an adjustment to the amount which the plaintiff was entitled to.

2. The trial Court and the Appellate Court have dismissed the suit finding that on the showing the plaintiff himself, he had overstayed in the job and the salary drawn by him was not appropriate. I asked the counsel if there had been any violation of rule providing for recoveries for a person who had drawn more than what he was entitled to. I also asked the counsel whether it was not true that he was overstaying in the job by two years by virtue of entry in the date of birth as 5.4.1944 based on assignment appraisal. The counsel contends that there was no error in the procedure made and he also admitted that the date of birth was only 5.4.1942. According to him, date of birth as 5.4.1942 only could have been acted upon, as per the service book and the statement made by the plaintiff as the date of birth was 5.4.1944 in the assignment appraisal was wholly irrelevant and if the bank had omitted to take notice of their own records and allowed for continuance and extracted work out of the plaintiff during the period, he could not be denied the salary which he was entitled to.

3. It is an issue of intention and how the continuance in employment had come about. The plaintiff who knew that his date of birth was only 5.4.1942 that was entered also in the official records, if he had disclosed an information regarding his date of birth differently at a subsequent point of time, he was surely trying to take the advantage of such a mistake and it will be naïve on the part of the plaintiff to

contend that the bank need not have acted on the entry found in the assignment appraisal. The plaintiff came by a benefit only by his own mis-statement and an undeserved conduct of the plaintiff in continuing in the employment by deceit. The bank was entitled to take action for recoveries. If there was not even an error in the procedure or violation of any of the regulations, the only point that will have to be considered was whether there is any amount due to the plaintiff in excess of what he had done during his extended undeserved service. The counsel says that there is an amount of ₹ 1,99,056/- which is still due and payable as leave salary and that issue has not been considered.

4. The suit is only for recoveries to be made for the excess salary drawn by him. I will find no error in the judgments of the Courts below for interference. If the plaintiff's leave salary has not been deducted, the plaintiff is entitled to make such a claim and seek for independent action for recovery with reference to the unpaid leave salary. With this liberty granted to the plaintiff, I will find no scope for interference with the judgments passed by the Courts below.

5. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 31, 2015
Pankaj*