

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

Date of Decision: 14.12.2015

1. **RSA No.5290 of 2012 (O&M)**

Haryana State Coop. Lab. & Const.

.....Appellant

Versus

Maha Singh and others

... Respondents

2. **RSA No.4392 of 2013 (O&M)**

Haryana State Agricultural Marketing Board

.....Appellant

Versus

Maha Singh and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Satyawan Ahlawat, Advocate
for the appellant in RSA No.5290 of 2012 and
Advocate for respondent No.2
in RSA No.4392 of 2013

Mr. Parveen Chauhan, Advocate for
Mr. Gagandeep S.Wasu, Advocate
for the appellant in RSA No.4392 of 2013 and
Advocate for respondent No.2.
In RSA No.5290 of 2012.

Mr. Gobind Dhanda, Advocate
for respondent No.1.

Mr. Siddharth Sanwaria, DAG, Haryana
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Plaintiff Maha Singh filed a suit for declaration against the defendants-appellants for declaration to the effect that he is entitled to revised scale of Rs.1640-2900 w.e.f 01.01.1986 instead of 01.01.1992 and for his placement in 1st ACP scale of Rs.6500-9900 w.e.f 01.01.1996 instead of 01.07.2002. He also sought grant of second ACP scale of Rs.6500-10500 w.e.f 01.01.2004 along with consequential benefits and interest at the rate of 18% per annum.

[2]. Plaintiff alleged that he was appointed as Junior Engineer in the pay scale of Rs.600-1100 in the office of defendant No.3 and he joined the post on 23.12.1983. Pay scale of Junior Engineer was revised w.e.f 01.01.1986 and 50% of the Senior Engineers were placed in the scale of Rs.1640-2900 while remaining were placed in the scale of Rs.1400-2300. Both the scales were further upgraded and Seniors were allowed the scale of Rs.2000-3200 who had completed 15 years of satisfactory service and were not promoted to the next higher post. Junior Engineers were allowed the scale of Rs. 1640-2900 w.e.f 01.01.1992 in view of Haryana Government's decision dated 27.01.1992. Claim of the plaintiff is that the enhanced scale was required to be given to the plaintiff w.e.f 01.01.1986 instead of 01.01.1992 as per precedents of the Court. Plaintiff and some other Junior Engineers were declared surplus by defendant No.3 in the meeting held on 06.11.1990 and their names were

recommended to the surplus cell of Haryana Bureau of Public Enterprises, Chandigarh on 27.12.1990. Name of the plaintiff along with others was considered by defendant No.3 for absorption in defendant No.1. Instead of absorption, defendant No.1 appointed the plaintiff on deputation basis vide order dated 27.04.1992 and the plaintiff was relieved from defendant No.3-Federation on 06.05.1992. He joined the service of defendant No.1 on 07.05.1992. Plaintiff and others were permanently absorbed in the services of defendant No.1 vide order dated 06.03.1996 from the date of their initial joining. The pay of the plaintiff was protected by defendant No.1. Plaintiff submitted representation to defendant No.3 for grant of First ACP w.e.f 01.01.1996 but his request was turned down on 16.04.2001. Plaintiff filed appeal before the Board of Directors of the Federation, the same was also rejected on 30.04.2002 on the ground that services of plaintiff already stood absorbed in defendant No.1 since 1992. Another representation was submitted to defendants No.1 and 3 for grant of pay scale of Rs.1640-2900 w.e.f. 01.01.1986 and First ACP of Rs.6500-9900 w.e.f 01.01.1996. Defendant No.1 advised the plaintiff to approach the Federation for the claim so made. First ACP scale of Rs. 6500-9900 was granted by defendant No.1 to the plaintiff w.e.f 01.07.2002 instead of 01.01.1996 vide order dated 08.07.2003. Plaintiff filed appeal before defendant No.2 for grant of First ACP w.e.f 01.01.1996 instead of 01.07.2002 which was not decided. With this background, the suit came to be filed.

[3]. Defendants No.1 and 3 contested the claim of the plaintiff. Defendant No.2 did not file any written statement. Defendant No.1 contested the claim of the plaintiff on the ground that representation of the plaintiff was referred to the Member Secretary of Haryana Bureau Public Enterprises on 20.05.2004 for clarification and the same is pending. The appeal filed by the plaintiff against the order dated 30.04.2002 was pending before defendant No.2. In this way the claim of the plaintiff was statedly premature. The deputation and joining thereof remained admitted facts. The appointment of the plaintiff was stated to be fresh appointment and benefit of past service was not to be given. The appointment was accepted by the plaintiff without any objection, therefore, it was pleaded that the plaintiff cannot wriggle out of the terms and conditions of the appointment letter. It was advised to the plaintiff that he should place his grievance before defendant No.3 being parent Department. First ACP was granted w.e.f 01.07.2002 after completion of 10 years of service in Marketing Board as per office order dated 06.03.1996. The plaintiff was absorbed being retrenched employee of defendant No.3 and defendant No.1 has no liability for the past service of the plaintiff before his absorption in the defendant No.1. Other objections regarding limitation, maintainability were also taken by the defendants. Defendant No.3 also contested the suit on the ground that as per Government instructions, Government servants were to exercise the option as per Section 6 of the Pay Fixation Rules, 1998.

Plaintiff and other Junior Engineers were declared surplus, still the matter was sympathetically considered by the Government for adjustment in other departments. The plaintiff was accordingly sent to defendant No.1. Plaintiff was absorbed by defendant No.1.

[4] After filing replication, following issues were framed:-

“1. Whether the plaintiff is entitled for revised scale of Rs.1640-2900 w.e.f 01.01.1986 instead of 01.01.1992 and for future placement in the 1st ACP scale of Rs.6500-9900 w.e.f 01.01.1996 instead of 01.07.2002 and 2nd ACP scale of Rs.6500-10500 w.e.f 01.01.2004 with consequential benefits. OPP

2. Whether the plaintiff is entitled to interest on arrears of pay and allowances @ 18% p.a. from date of accrual till date of payment as prayed for? OPP

3. Whether defence of the defendants is liable to be struck down for filing of the written statements in the statutory period? OPP

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Whether no cause of action has been accrued to the plaintiff to file the present suit? OPD

6. Whether the plaintiff has no locus standi to file the present suit? OPD

7. Whether the plaintiff is estopped from filing the present suit from his own act and conduct? OPD

8. Whether the plaintiff has concealed the true and material facts from this Court? OPD

9. Whether the Civil Courts has got no jurisdiction to entertain and try the present suit? OPD

10. Relief.”

[5]. Both the parties led their respective evidence on the aforesaid issues. Issues No.1 and 2 being interlinked were discussed by the trial Court together and on the basis of evidence on record, it was held that the plaintiff is entitled for the revised pay scale i.e. 1640-2900 w.e.f 01.01.1986 instead of 01.01.1992 and is also entitled to be placed in First ACP scale of 6500-9900 w.e.f 01.01.1996 instead of 01.07.2002 and Second ACP scale of 6500-10500 w.e.f 01.01.2004 along with consequential benefits and interest. It was also held that defendants cannot be permitted to harass plaintiff on the basis of undecided revision and appeal till date. The legal dues of the plaintiff were held not to be bounty in the hands of the defendants, however, so far as interest is concerned on the consequential benefits, the plaintiff was not entitled for the same straightaway and defendant No.3 was asked to pay consequential benefits and in the event of their failure, the plaintiff was held entitled to interest @ 10% per annum. Findings of issues No.1 and 2 facilitate the Court to decree the suit on the aforesaid manner vide judgment and decree dated 10.11.2010 passed by Additional Civil Judge (Sr. Division), Panchkula.

[6]. Against the judgment and decree passed by the trial Court, three appeals were filed before the lower Appellate Court. One appeal was filed by plaintiff-appellant. Second appeal was filed by defendant No.1 and third appeal was filed by defendant No.3. Lower Appellate Court dismissed all the appeals and upheld the judgment and decree passed by the trial Court vide its judgment and decree dated 15.06.2012. In this way, two appeals came to be filed. RSA No.5290 of 2012 has been filed by defendant No.3 and RSA No.4392 of 2013 has been filed by defendant No.1. Both have been clubbed and now both the appeals are being decided by the common judgment.

[7]. Learned counsel for the appellant contends that qua first relief, revision of pay scale of Rs.1640-2900 w.e.f 01.01.1986 instead of 01.01.1992 was claimed against defendant No.3. Learned counsel for the appellant further contends that pay scale has already been granted vide office order dated 27.03.2014. So far as arrears on account of revision of pay is concerned, the plaintiff-respondent No.1 has already filed an undertaking before the Federation-defendant No.3, that he will not claim any arrears and interest thereupon. Judgments and decrees passed by the Courts below are silent about the aforesaid fact, nor the same could have been possibly recited therein because the needful has been done by defendant No.3 on 27.03.2014 and anything tendered or obtained by the plaintiff or by defendant No.3 could not have been made subject

matter of judgments and decrees under challenge. Judgments and decrees passed by the Courts below do not cover such an aspect.

[8]. The decree of the trial Court was to the effect that if the needful was not done within a period of 3 months, defendants shall make the payment of consequential benefits along with interest @ 10% per annum from the date of accrual of these benefits till payment thereof. The said direction cannot be curtailed by any subsequent act of the parties, nor the same is subject matter of challenge herein, because the needful has already been done by Department/defendant No.3 on 27.03.2014. That date squarely falls beyond the time period given by the Courts below in judgments and decrees. Secondly, the relief in respect of First ACP scale of Rs. 6500-9900 w.e.f 01.01.1996 instead of 01.07.2002 was to be granted by defendant No.1 and so as third relief regarding second ACP scale w.e.f 01.01.2004.

[9]. Learned counsel appearing on behalf of defendant No.1 contends that earlier there was no base of these reliefs because plaintiff was shown to be fresh appointee, having no such benefit in terms of recital of appointment relating to past service. Now as per instructions in the year 2010, benefit of ACP scales has been made available to the employees of Boards and Corporations, but the name of defendant No.3 was not shown in those instructions. Name of the Federation was only added in the year 2012 and therefore, needful in terms of first ACP and second ACP has been done on

24.02.2012. In this way, defendant No.1 claims that it is not liable to pay interest to the plaintiff. On the same analogy the judgments and decrees passed by the Courts below cannot be interfered with on the basis of subsequent events. Apparently, as per instructions of the Government in the year 2010, benefit of ACP scales has already been made available to the employees of Boards and Corporations. It is the flaw at departmental level that the name of the federation-defendant No.3 was shown only in the year 2012 and thereafter, the benefit of first ACP and second ACP was made available to plaintiff. Since the plaintiff has nothing to do with the departmental happenings after the year 2010. The relief given to the plaintiff in terms of judgments and decrees cannot be made subject matter of any interpretation in post decretal era. Plaintiff has been held entitled to the relief concurrently by the Courts below. Defendant No.3 has been directed to pay the consequential benefits to the plaintiff within a period of 3 months. If defendant fails to make the payment of consequential benefits within 3 months, then the plaintiff was held entitled for the interest @ 10 % per annum from the date of accrual of those benefits till payment thereof.

[10] In considered opinion of this Court, judgments and decrees passed by the Courts below are not to be interfered with on the basis of subsequent events intended to be shown by learned counsel for the appellant.

[11]. Having considered the submissions of learned counsel for

the parties, this Court is of the opinion that no law point worth consideration is involved. The law points as pleaded in para 11 of the grounds of appeal are not the questions of law much less substantial questions of law. The findings recorded by the Courts below cannot be termed to be the result of misreading of evidence and having suffered with any perversity. Questions No.1 and 2 do not arise at all.

[12]. Having considered the entire controversy, this Court does not feel like to interfere in the impugned judgments and decrees passed by the Courts below. Resultantly, both the appeals are dismissed.

[13]. Since the main appeals are dismissed on merit, therefore no order is required to be passed in the applications for condonation of delay.

14.12.2015
Prince

(RAJ MOHAN SINGH)
JUDGE