

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

**Regular Second Appeal No.808 of 2012 (O&M)
Date of decision: 28.05.2015**

Vijay Kumar

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. V.S. Punia, Advocate,
for the appellant.

None for the respondents.

Ritu Bahri, J.

CM No.2173-C of 2012

In view of the averments mentioned in the application, delay of 169 days in re-filing the appeal is condoned.

RSA No.808 of 2012

Plaintiff-appellant has come up in regular second appeal against the judgment dated 28.03.2011 passed by the Additional District Judge-V, Bhiwani, dismissing his appeal against the judgment and decree dated 30.09.2010 passed by the Civil Judge (Junior Division), Siwani, Camp at Bhiwani, whereby his suit for declaration with consequential relief of mandatory injunction has been dismissed.

Vijay Kumar-plaintiff (appellant herein) had retired on the post of Tehsil Revenue Accountant, Loharu on 31.05.2006. Earlier, he had submitted an application on 05.08.2005 seeking retirement on medical

ground and for appointment of his son-Abhishek on ex-gratia basis, which

was forwarded to defendant No.3 vide letter dated 05.10.2005. A medical certificate dated 21.10.2004 issued by the Chief Medical Officer, PGI MS, Rohtak, showing that he was 100% orthopedically handicapped was also submitted. On the basis of certificate dated 03.05.2006 issued by the Medical Board, the plaintiff was retired w.e.f. 31.05.2006. However, his claim for appointment of his son on the basis of ex-gratia was rejected vide letter dated 25.02.2008. Consequently, the plaintiff-appellant file the present suit.

Upon notice, the defendant-respondents filed written statement admitting that the plaintiff was retired on medical ground. It was submitted that the defendant-department had issued instructions dated 23.01.1992, according to which, one of the dependents of those government employees who became disabled during service was eligible for ex-gratia employment. Later on, those instructions were withdrawn by the Government vide letter dated 20.03.2006. Thus, the claim of the plaintiff-appellant was rejected.

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

1. Whether the plaintiff is entitled to declaration as prayed for?
OPP
2. Whether this Court had jurisdiction to entertain and try the present suit? OPP
3. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
4. Whether the suit is not maintainable in its present form? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties,

dismissed the suit. The lower appellate Court affirmed the findings of the

trial Court and dismissed the appeal.

The plaintiff had retired from service on medical ground w.e.f. 31.05.2006. Since before his retirement, the relevant provision to provide service to dependent on ex-gratia, had been withdrawn vide letter dated 20.03.2006 i.e. before his retirement, therefore, no benefit could be extended to his son for appointment on ex-gratia on the basis of earlier instructions dated 23.01.1992.

The Hon'ble Supreme Court in **Food Corporation of India and another Vs. Nizamuddin and another**, 2010 (4) SCC 546 has held that request for voluntary retirement on medical ground and ex-gratia appointment of dependent of such employee could not be inter-linked. Both the requests operate separately and have to be considered on its own merits with reference to the Rules and Scheme applicable at that time. The benefit of compassionate appointment to dependants of the employees was made available when the employee had sought voluntary retirement within the age of 55 years and had not crossed the prescribed age of 55 years. In that case before the Hon'ble Supreme Court, the employee had sought voluntary retirement after crossing the age of 55 years. In para No.7 of the judgment, the Hon'ble Supreme Court had observed as under:-

“7. In this case the offer of voluntary appointment in the application was neither conditional nor interlinked. The words used are “I therefore request that the management may kindly retire me on medical grounds and at the same time give appointment to my son.” It merely contains two requests (that is permission to retire voluntarily on medical grounds and request for appointment for his son), without any interlinking. Nor was the voluntary retirement conditional upon giving employment to his son. Therefore, Ramkesh Yadav will not apply. Each request had to be considered on its own merits with reference to the rules/scheme applicable. When so done it is clear that the first respondent will not be entitled to compassionate appointment.”

In the present case, being 100% orthopedically handicapped, as per report/certificate of the Medical Board, the plaintiff-appellant was retired on 31.05.2006. The application made by the plaintiff-appellant for appointment of his son on compassionate ground, as per scheme/instructions dated 23.01.1992, was rejected as the said instructions had been withdrawn vide letter dated 20.03.2006. After withdrawal of the aforesaid scheme, there was no occasion to appoint the son of plaintiff-appellant on compassionate ground.

After going through the impugned judgments passed by the Courts below, this Court is of the view that suit of the plaintiff-appellant has been rightly dismissed as the relevant instructions dated 23.11.1992 had already been withdrawn vide subsequent letter/instructions dated 20.03.2006. Moreover, the plaintiff-appellant was retired on 31.05.2006. Therefore, he was not entitled to the relief claimed. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

28.05.2015
ajp

(RITU BAHRI)
JUDGE