

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 1885 of 2013 (O&M)
Date of decision:- 24.07.2015

Kamla Pathak

...Appellant

Versus

Secy PWD (B&R) Punjab & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Malkeet Singh Baliwanwali, Advocate
for the appellant.

Mr. Vaibhav Sharma, DAG, Punjab

RITU BAHRI J.

Plaintiff-Appellant (for short 'the appellant') is in regular second appeal against the concurrent finding of fact recorded by both the Courts below whereby the suit of plaintiff/appellant was dismissed.

The case of appellant before both the Courts below was that the husband of the appellant i.e late Sh. Ashok Kumar Pathak was working as J.E in the P.W.D (B&R) Construction Division, Muktsar and he died on 15.07.2006 and thus the appellant being his legal heir, was entitled to receive the benefits of the service of her husband. The amount of proficiency step i.e 8-18-24-32 and annual increments upto date was due in favour of her husband, which the respondents have not paid despite oral and written requests. Further the respondents have illegally

deducted the amount of Rs.34,250/- in D.C.R.G and have also not paid the D.L.I.S amount and thus, the appellant is entitled to claim interest @ 18% per annum due to the delayed payment of proficiency step up i.e 8-18-24-32. A notice under Section 80 CPC was also sent by the appellant to the respondent on 10.09.2009.

Upon notice, respondent Nos. 1, 2, 4 and 5 filed a joint written statement and on merits, admitted the case of the appellant to the extent that the husband of the appellant i.e late Sh. Ashok Kumar Pathak was working as J.E in the P.W.D (B&R) Construction Division, Muktsar and he died on 15.07.2006 and his P.F Account No. was PWD/Engr./369. Further they admitted that the appellant is a widow of Ashok Kumar Pathak. The case of the husband of the appellant for grant of proficiency step up was considered by the competent authority i.e Supdt. Engineer, Construction Circle, P.W.D (B&R) Branch, Faridkot and he was found unsuitable as per the provisions of the rules for grant of proficiency step up (copy of order dated 10.12.2010 issued by Supdt. Engineer, Construction Circle, P.W.D (B&R) Branch, Faridkot). Respondent No. 4 has already admitted the claim of D.C.R.G amounting to Rs.34,250/- and GP Punjab, Chandigarh released the amount vide letter dated 23.11.2000. This amount is payable by the District Treasury Officer, Sri Muktsar Sahib. Payment of D.L.I.S amounting to

Rs.10,000/- has already been made vide cheque No. 321515 dated 24.12.2009.

Respondent No. 3 in its written statement taken a preliminary objection with regard to the cause of action and non service of notice under Section 80 CPC. However, they admitted that amount of Rs.34,250/- was recovered from D.C.R.G, in view of the letter dated 01.12.2006 and on receipt of instructions from respondent No. 4, the withheld amount of Rs.34,250/- had already been received, vide letter dated 15.01.2011.

During the pendency of the suit, order dated 10.12.2010 has been passed by Supdt. Engineer, Construction Circle, P.W.D (B&R) Branch, Faridkot wherein the claim of the husband of the appellant was considered in detail and the husband of the appellant was found unsuitable for the grant of benefits as per instructions of the Punjab. A copy of this order was placed on record as Ex D-1.

Learned counsel for the appellant has shown this order in the Court today and as per this letter, the case of the husband of the appellant was considered as per circular letter dated 01.12.1988. The suitability for this purpose shall be determined after taking into consideration of the ACRs of the employee upto 31st March of the preceding year. The confidential reports of Ashok Kumar Pathak were taken into account and it was found that there is only single good ACR

for the period of 6 months during the year 1972-73 and remaining 90 month ACRs were average and 25 month ACR were below average during the period 26.09.1972 to 31.03.1985 and the several remarks were conveyed to this Junior Engineer. Thus, he was found unsuitable for grant of proficiency step up on a particular date i.e 01.01.1986. His case was thus reviewed for the grant of benefits under these instructions on year to year basis wherein overall positions of ACRs of this Junior Engineer shows that there were good ACR for 36 months only in comparison to average ACRs for 152 months and below average for 25 months during the period 26.09.1972 to 31.03.1995 and Ashok Kumar Pathak did not earn even a single Very Good ACR but earned good ACR for 30 months only in comparison to average ACRs for 62 months during the year 1985-86 to 31.03.1995. Under the above referred instructions of the Punjab, non grant of proficiency step ups on account of unsuitability shall not be considered as punishment under the Punjab Civil Services (Punishment and Appeal) Rule, 1970. Whereas in accordance with the Punjab Government letter dated 27.06.2000, Ashok Kumar Pathak was due for grant of next higher scale of 6400-10640 after a service of 8 years in the same cadre and after a service of 16 years, grant of next higher scale i.e Rs.7220-11320 with Class II Gazetted Status and granting designation of Assistant Engineer with the condition that the

placement in the higher scale only to those employee whose overall service record during the span of satisfactory service is adjudged as Good and the employee is otherwise suitable for promotion. Good record shall mean that more than 50% ACR are good and out of last three years available reports at least two good for all the remaining years, the benchmark may be "Average". Ashok Kumar Pathak was thus found unsuitable for the grant of next higher scale and Class II Gazetted Status after a service of 8 years and 16 years respectively.

Ashok Kumar Pathak was also not found suitable for grant of 02 proficiency step up after completion of 24 years of service w.e.f 26.09.1996 and higher scale on completion of 32 years of service 26.09.2004, in accordance with instructions dated 25.09.1998, as Ashok Kumar Pathak earned very good ACRs for 12 months only and Good ACR for 66 months in comparison to Average ACRs for 164 months and below average ACRs for 25 months.

The order dated 10.12.2010 was placed on record when the suit was pending before the trial Court and the appellant has not made an attempt to challenge this order before the Competent Authority and hence the suit of the appellant was dismissed by both the Courts below.

The judgments passed by both the Courts, does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

July 24, 2015
G Arora

(RITU BAHRI)
JUDGE