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

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**RSA No. 360 of 2013 (O&M)**
Date of decision : April 28, 2015

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Ved Parkash

...........Appellant

Versus

State of Haryana and others

...........Respondents

**RSA No. 393 of 2013 (O&M)**

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Joginder Singh

...........Appellant

Versus

State of Haryana and others

...........Respondents

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**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

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Present: Mr. Sat Narain Yadav, Advocate for the appellant.

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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?*

**<u>RITU BAHRI, J</u>**

**<u>C.M No. 1000-C of 2013</u>**

For the reasons mentioned in the application, delay of 5 days in filing the appeal is condoned.

C.M is allowed.

**<u>RSA No. 360 of 2013</u>**

By way of this common judgment, two regular second appeals bearing RSA No. 360 of 2013 and RSA No. 393 of 2013 shall be decided. For the sake of convenience facts are being taken from RSA No. 360 of 2013.

Present regular second appeal has been filed against the judgment dated 23.8.2012 passed by the District Judge, Rewari whereby the appeal against the judgment and decree dated 20.10.2011 passed by the Civil Judge (Sr. Divn.) Rewari was allowed and the suit of the plaintiff was dismissed. Vide the trial Court judgment, suit of the plaintiff for declaration and mandatory injunction with all consequential relief was decreed.

The plaintiff was appointed on the post of Driver with Haryana Roadways on 31.12.1985. During the course of his employment, his eye sight got adversely affected and became weak. As per the report No. 143 dated 12.7.2007 of the Civil Surgeon, he was declared unfit for driving heavy vehicles during day and night because of the weak eye sight and thereafter, he was compulsorily retired and his pension case was prepared and sent to the Accountant General. At the time of retirement, he had served the Department w.e.f 31.12.1985 to 13.5.2008 i.e. total 21 years 11 months and 6 days. He was allowed pension vide order dated 17.9.2008 by the Accountant General. In the suit, the plaintiff has challenged the action of the defendant allowing him basic pension of Rs. 2400/-. He was seeking refixation of his pension as per his eligibility and according to the rules and guidelines provided under the law. Either he should have been given alternate light job up to the date of his superannuation/retirement or in the alternative he should have been allowed full pension or at least 50% of the last pay drawn by him i.e. Basic pay Rs. 6800/- + allowances.

The defendant in the written statement admitted that the plaintiff was appointed as driver on 31.12.1985. On an application made on 20.6.2007 given by the plaintiff a letter was written to Civil Surgeon, Rewari on 2.7.2007 for his medical examination. As per report dated 12.7.2007 of the Civil Surgeon, the plaintiff was found unfit for driving heavy vehicles/buses. Considering his request, he was given alternate job in the yard on 18.7.2007. His date of birth being 10.4.1953 on attaining the age of 55 years, his case was considered for extension. Thereafter he gave an application and requested for retirement on medical grounds and demanded compensation on account of his remaining service. The plaintiff was allowed to retire from service vide order dated 13.5.2008 with immediate effect. As per the instructions of Transport Department, Rs.89,216/- was paid to him as compensation for the period 14.5.2008 to 30.4.2011. The claim of the plaintiff that he is entitled to 50% of his total pay i.e Rs.5100/- per month as pension was refuted. It was submitted that the Accountant General, Haryana had sanctioned Rs. 3400/- as basic pension vide order dated 17.9.2008 as per the pension rules. Referring to Rule 6.16(2) of the Punjab Civil Services Rules Vol.II (hereinafter referred to as `the PCSR

Vol.II) it was submitted that the plaintiff was not entitled to 50% of the last pay drawn or of the corresponding scale as pension because he had not completed 33 years regular satisfactory service.

The trial Court framed the following issues:

1. Whether the plaintiff is entitled to the declaration by way of mandatory injunction? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has concealed the true and material facts from the Court? OPD
4. Whether the plaintiff has got no locus standi and cause of action to file the present suit? OPD

The trial Court after going through the evidence led by the plaintiff and the defendants held that on an application made by the plaintiff he was medically examined and was found unfit for driving heavy vehicles and was given "yard duty" by the Department. He sought retirement on medical grounds. He made a request vide Ex. DW1/7 to retire him on medical grounds. This request was accepted and he was allowed to retire w.e.f 13.5.2008. On the date of retirement, he had served 21 years 11 months 6 days. He accepted the compensation of Rs. 89,216/- for the period 14.5.2008 to 30.4.2011 as was applicable in the case of seeking retirement on medical grounds.

The next question which the trial Court considered was whether his pension was rightly fixed as per the PCSR Vol.II. The plaintiff was claiming the benefit of notification dated 18.1.2000 issued by the Haryana Government and a further clarification issued by the Haryana Government vide notification dated 7.1.2002. The instructions dated 18.1.2000 were brought on record by the defendant as Ex. DW1/11. These instructions were meant for government employees who had retired or died in service during the period between 1.1.1986 to 31.12.1995 and the clarification issued by the Haryana Government on 7.1.2002 related to those pensions who were affected by the notification dated 18.1.2000. The Fifth pay commission was implemented w.e.f. 1.1.1996 and the notifications dated 18.1.2000 Ex. DW1/11 was issued by the Govt. of Haryana stating the floor and upper ceiling of pension of such pensioners. It was mentioned that the basic pension already consolidated w.e.f 1.1.1996 in terms of para no. 5 of Finance Department Notification (Part-I) of even number, dated 9.3.1998 shall not be less than 50% of the minimum of the pay scale introduced w.e.f 1.1.1996 for the post last held by the pensioner. The clarification issued by the State of Haryana was to be made applicable in the case of the pensioners who died or retired between 1.1.1986 to 31.12.1995. The plaintiff had retired on 2008 and hence was not entitled for the benefit of these instructions. Further the trial Court referred to Rule 6.16(2) of the PCSR Vol.II which deals with family pension of a government employee and as per the said rule, the pension of the plaintiff had been rightly fixed and said rule is reproduced as under:

> "In the case of a Government employees retiring on or

after the Ist April, 1979, in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years or more, the amount of superannuation, retiring, invalid and compassionate pensions shall be 50% of average emoluments as defined in Rule 6.19-c of these rules subject to a maximum of (Rs.3800) per mensem. However, in the case of government employee who at the time of retirement has rendered qualifying service of ten years or more but less than thirty-three years, the amount of pension shall be such proportion of the maximum admissible pension as the qualifying service rendered by him bears to the maximum qualifying service of thirty-three years, subject to minimum of (Rs. 375/-) per mensem."

As per the above said rule, an employee who has not completed 33 years of service would not be entitled to receive 50% of the pension from the last pay drawn. A perusal of the rule shows that the plaintiff was not entitled to 50% of the pension on last pay drawn as he had only completed 22 years of service. The plaintiff retired on 30.5.2008 and the Sixth pay Commission was implemented on 1.1.2006. Hence the notification Ex. DW1/11 could not be applied in the case of present appellant-plaintiff for fixation of his pension. These notifications as discussed above were applicable in the case of the employees who had died and retired between 1985-1996. Hence the lower Appellate Court set aside the judgment of the trial Court rightly and held that the pension of the plaintiff has been rightly fixed by invoking the provisions of Rule 6.16(2) of the PCSR Vol-II by taking in account his total service of 22 years. The claim of the plaintiff that his pension should be fixed at 50% of the basic pay was rightly rejected by the appellate Court since the plaintiff had not worked for 33 years and hence as per Rules, his pension cannot be fixed at 50% of his basic pay.

The judgments of the lower appellate Court does not suffer from any illegality or infirmity. In view of all that has been discussed above, the present regular second appeals are dismissed.

April 28, 2015 **( RITU BAHRI )**
***ritu*** **JUDGE**