

RSA No.3852 of 2015 (O&M) and
RSA No.3964 of 2015

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

RSA No.3852 of 2015 (O&M)
Date of Decision: November 20, 2015

Punjab State & others

...Appellants

Versus

Gopal Singh

...Respondent

(2)

RSA No.3964 of 2015
Date of Decision: November 20, 2015

Gopal Singh

...Appellant

Versus

Punjab State & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Neeraj Sharma, AAG, Punjab
for the appellant in RSA No.3852 of 2015 and
for the respondents in RSA No.3964 of 2015.

Mr. Baljit Singh, Advocate
for the respondent in RSA No.3852 of 2015 and
for the appellant in RSA No.3964 of 2015.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.9456-C of 2015 in
RSA No.3852 of 2015

Prayer in this application is for condonation of delay of 52
days in filing the appeal.

Notice of the application.

Mr. Baljit Singh, Advocate, accepts notice on behalf of the

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caveator-respondent.

On considering the submissions made by the counsel for the parties, delay of 52 days in filing the appeal stands condoned.

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Notice of motion in both the appeals.

Mr. Baljit Singh, Advocate, accepts notice on behalf of the respondent in RSA No.3852 of 2015. Caveat discharged. Mr. Neeraj Sharma, AAG, Punjab, accepts notice on behalf of the respondents in RSA No.3964 of 2015.

By this order, I propose to decide two Regular Second Appeals i.e. RSA No.3852 of 2015, titled as 'Punjab State & others Vs. Gopal Singh' and RSA No.3964 of 2015, titled as 'Gopal Singh Vs. Punjab State & others', as they arise from a common judgment passed by the Additional District Judge, Amritsar, dated 18.03.2015, allowing the appeal of plaintiff-Gopal Singh, wherein, he had prayed for setting aside the judgment and decree dated 26.03.2012 passed by the Civil Judge (Junior Division), Amritsar, dismissing his suit for declaration to the effect that the order dated 15.12.2004 passed by the defendants-State withdrawing the benefit of military service granted to him as per the provisions contained under the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services), Rules, 1968 (hereinafter referred to as '1968 Rules') and the consequential orders which have

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been passed, reducing his pension, order of recovery and reduction in rank etc. apart from the prayer for declaration that he has joined the military service during Emergency and therefore, was entitled to and deemed to be in service of the State Government-respondent-Irrigation Department with effect from 21.02.1963. Declaration to the effect that he was entitled to one additional increment under the Assured Career Progression Scheme, on completion of 16 years of service in the cadre of Superintendent Grade-II on 01.02.1998 and the pay for the month of August, 2000 which was illegally withheld despite his leave having been sanctioned and the local travel allowance bill of ₹1248/- which has been withheld by the defendants has also been sought. Interest was also claimed by the plaintiff-Gopal Singh. In the appeal which has been allowed of the plaintiff, the benefit of interest and the consequential benefit of release of arrears of re-fixation of his pay have been denied, although, interest at the rate of 6% per annum has been granted in case, arrears are not released for the period of 38 months prior to the date of filing of the plaint from the date the amount became due till the actual payment is not paid within three months from the date of judgment. Because of passing of the impugned judgment and decree dated 18.03.2015 by the Additional District Judge, Amritsar, these two appeals have been filed by the parties.

3. It is the contention of the learned counsel for the State that the judgment and decree passed by the Lower Appellate Court

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dated 18.03.2015 cannot sustain as the same has not been passed after proper appreciation of the pleadings and the evidence which has been led by the parties. He contends that the plaintiff, at the time of joining the service, had more than two years of gap from the date of his discharge from military services till he assumed the office with the Government. He was relieved from military on 28.02.1969, whereas, he joined the service with Government on 01.03.1971. He, therefore, contends that the benefit of 1968 Rules cannot be granted to him. His further assertion is that the benefit of the proficiency step-up on completion of 16 years of service on the post of Senior Assistant also cannot be granted to him as he was promoted to the post of Senior Assistant on 01.01.1991 and retired on 31.05.2003, therefore, he had not completed the period of 16 years on the post of Senior Assistant which would entitle him to the benefit as has been granted to him by the Lower Appellate Court. He, thus, contends that the impugned judgment and decree cannot sustain and deserves to be set aside.

4. On the other hand, counsel for the plaintiff-Gopal Singh has asserted that the learned Lower Appellate Court has rightly granted the benefit on consideration of the correct facts. He asserts that the period between 28.02.1969 to 28.02.1971 has been regularized by the defendant-respondents and in support of this contention, he has placed reliance upon the order dated 20.05.1998

(Ex.P-2) passed by the Chief Engineer/Planning, Irrigation Works,

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Punjab, according to which, the benefit has been granted to the plaintiff by regularization of his services and since that period has been regularized, the contention of the counsel for the State that there was a gap of more than two years from the date of discharge from military to the joining of service with the State cannot be accepted. His further contention is that it is an admitted fact that during the period of 2 years, 5 months and 18 days, plaintiff was not doing any service and, therefore, the period has been rightly regularized in exercise of powers conferred upon the respondents. Assertion has also been made that as per Rule 5 of the 1968 Rules, the benefit of seniority with effect from 21.02.1963, the date when the plaintiff joined the military service during the Emergency, has rightly been granted.

5. As regards the grant of proficiency step up on the post of Senior Assistant is concerned, he contends that it is a pleaded and admitted fact that the plaintiff was promoted on the post of Senior Assistant on 01.02.1989 when he was granted the benefit of seniority as per the 1968 Rules and was also held entitled to the determination of his pay and other service benefits from his initial date of appointment in the military i.e. 21.02.1963 and thus, the same has been rightly granted to him. He, thus, contends that the appeal of the State deserves dismissal. Further, he contends that once the benefit of Rule 5 of the 1968 Rules has been granted to the plaintiff by the Additional District Judge, Amritsar, vide judgment dated

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18.03.2015, it would entitle the plaintiff to the declaration to the effect that the orders dated 15.12.2004, 16.08.2003 and 29.09.2004 could not be sustained and therefore, deserve to be set aside which would entitle him to all consequential benefits including setting aside the recovery order and for grant of the interest as amount has been withheld by the respondents including that of gratuity for effecting recovery. He, thus, contends that the appeal filed by the plaintiff-Gopal Singh (RSA No.3964 of 2015) deserves to be allowed.

6. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the impugned judgment dated 18.03.2015.

7. Dealing with the contention of the learned counsel for the State first, suffice it to say that with the regularization of period of gap in service of 2 years 5 months and 18 days as per the instructions of the Government of Punjab and the Chief Engineer/Planning, Irrigation Works, Punjab, dated 20.05.1998, there could be said to be no break/gap in service between the period the plaintiff was discharged from military service to the date of joining of the service with the State of Punjab. That part, it has been admitted that there was no post available on which the plaintiff could be appointed during the said period. It is also not in dispute that he had joined military service on 21.02.1963 during Emergency and thus, as per Rule 5 of the 1968 Rules, he was entitled to the benefit of seniority and fixation of pay from the said date which has been rightly granted by the

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learned Additional District Judge, Amritsar, as per his judgment dated 18.03.2015.

8. The contention of the learned counsel for the State that the plaintiff was not entitled to the proficiency step up benefit, suffice it to say that as the initial date of appointment of the plaintiff as per the 1968 Rules is to be treated as 21.02.1963, he was rightly promoted to the post of Senior Assistant with effect from 01.02.1982, thus, entitling him to the proficiency step up benefit with effect from 01.02.1998 when he completed 16 years of service of Senior Assistant and thus cannot be said to be illegal. In view of the above, appeal preferred by the State of Punjab deserves dismissal.

9. As regards the claim of the plaintiff-Gopal Singh in his appeal i.e RSA No. 3964 of 2015 with regard to the declaration to the effect that the orders dated 15.12.2004, 16.08.2003 and 29.09.2004 are to be set aside in the light of the finding returned by the Additional District Judge, Amritsar, granting him the benefit of seniority with effect from 21.02.1963 treating him to be in service from the said date, the said prayer is fully justified as it is an admitted case of the parties that the plaintiff was granted the said benefit but the same was withdrawn on an objection raised by the Audit Party. The effect thereof is that the impugned orders referred to above cannot be sustained and are hereby set aside. As a consequence thereof, plaintiff-Gopal Singh is held entitled to all consequential benefits including arrears from the date it became due. The claim of

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the plaintiff-Gopal Singh with regard to the grant of interest is also justified and he is held entitled to interest at the rate of 6% per annum from the date of entitlement till the date of disbursement. As regards the claim of interest on delayed payment of gratuity, if that be so, he would be entitled to the interest as per the instructions applicable to the Government of Punjab on delayed payment of gratuity.

10. In view of the above, RSA No.3852 of 2015 preferred by the State stands dismissed and RSA No.3964 of 2015 preferred by the plaintiff-Gopal Singh stands allowed.

CM No.9457-C of 2015 in
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In view of the order passed in the main appeal, the present application for staying the operation of the impugned judgment and decree dated 18.03.2015, has become infructuous.

Disposed of as such.

November 20, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE