IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 1335 of 2014 (O&M)
Date of decision:- 29.04.2015

Punjab State Power Corpn. Ltd & anr. Appellants

Versus

Natha Singh ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sapan Dhir, Advocate
for the appellants.

Mr. Saravpreet Gurna, Advocate
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

The present regular second appeal is directed against the judgment dated 13.11.2013 passed by Addl. District Judge, Bathinda whereby the appeal filed by the plaintiff/respondent (for short 'respondent') against the judgment dated 12.12.2012 passed by learned Civil Judge (Sr. Divn.) Bathinda was allowed and the suit of the respondent was decreed to the effect that he is entitled to the pay at the rate of Rs.6500/- per month w.e.f 01.02.1996 equal to Sh.Yash Paul LDC (now UDC), an employee of the plaintiffs/appellants (for short 'appellants') who is junior to the respondent in all respect and further fixation of his pay on all subsequent dates equal to his junior along with consequential relief of arrears of pay as well as all pensionary benefits and arrears thereof along with interest @ 18 % per annum.

The respondent had retired in the year 2007 and filed a suit on 28.09.2010 claiming the pensionary benefits after fixation of his pay w.e.f 01.02.1996, equal to Sh.Yash Paul LDC (now UDC), an employee of the appellants. The trial Court dismissed the suit of the respondent being time barred. However, the lower Appellate Court decreed the suit, in view of the judgment of Hon'ble the Supreme Court in a case M.R. Gupta v. Union of India and others 1996 (1) SCT Page 8 (SC) wherein it was held that the suit was maintainable as it was wrong fixation of pay and it was a recurring cause of action.

Reference at this stage can be made to a Division Bench judgment passed by this Court in a case of ***Gujjar Singh and others v. Chairman, Pepsu Road Transport Corpn and another, 2005(4) SCT 67*** wherein this Court while examining a case of revision of pay scale wherein the delay was caused by the petitioners, the actual benefit was restricted to a period of 03 years and 02 months prior to the date of submission of representation. In para 8 of the judgment, it has been held as under:

> "8. We have considered the submission made by the learned counsel very anxiously. It is a matter

of record that the pay scales of the employees of PRTC were revised keeping in view the revision of pay scales of the employees of State of Punjab and also Punjab Roadways. It is also a matter of record that the pay scales admissible to the employees of PRTC were identical to the pay scales, which were enjoyed by the same category in Punjab Roadways. It is also a matter of record that the employees of Punjab Roadways have been granted arrears of the revised scales with effect from 03.11.1989, although the pay scales were initially revised w.e.f 01.01.1986. The factual position has been noticed by the Division Bench in the case of Papinder Vir Singh (supra) and following the judgment of the earlier Division Bench of this Court in Ram Murti's case (supra), the petitioners therein were granted revised pay scales w.e.f 01.01.1986 in stead of 03.11.1989. This relief has already been granted to the petitioners. However, in view of the judgment in Ram Murti's case (supra), the petitioners would be entitled to the arrears of the difference between the revised and unrevised pay scales w.e.f 03.11.1989 till 31.10.1998. However, keeping in view the delay caused by the petitioners in

> approaching the respondents, the actual benefits shall be restricted to a period of 03 years and two months prior to the date of submission of representation by the petitioners to the Corporation."

Learned counsel for the appellant has argued that the rate of interest @ 18% as awarded by the Lower Appellate Court is on the higher side in view of the judgment of Hon'ble the Supreme Court in a case of Megh Varan Sharma vs. State of U.P and others, 2015 (1) S.C.T 12 wherein retiral benefits were released after eight years despite the fact that none of the issues, on the basis of which benefits withheld has been resolved. Action of withholding the same was found to be unjustified. The appellant was held entitled to the highest of maximum rate, at the scheduled banks are currently paying interest on fixed deposits. In para 11, 12 and 13, it has been observed as under:-

> "11. The aforesaid determination rendered by this Court was reiterated in ***R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and another, 1995(1) S.C.T. 233 : (1994)6 SCC 589***. It is accordingly the contention of the learned counsel for the appellant, that the appellant is entitled to penalty on account of delayed payment of retiral benefits, ascertainable on the basis of payment of interest at the current market rate, till actual payment. We are of the view that the aforesaid determination rendered by this Court is in consonance with the provisions of Interest

Act, 1978. Section 3 thereof is being extracted hereunder :

"3. Power of court to allow interest. - (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings :

Provided that where the amount of the debt or damages has bean repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

(2) Where, in any such proceedings as are mentioned in sub-section (1), -

(a) judgment, order or award is given for a sum which, apart from interest on damages, exceeds four thousand rupees, and

(b) the sum represents or includes damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death,

then, the power conferred by that sub-section shall be exercised so as to include in that sum interest on those damages or on such part of them as the court considers appropriate for the whole or part of the period from the date mentioned in the notice to the date of institution of the proceedings, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.

(3) Nothing in this section, -

(a) shall apply in relation to -

(i) any debt or damages upon which interest is payable as of right, by virtue of any agreement; or

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement;

(b) shall affect -

(i) the compensation recoverable for the dishonour of a bill of exchange, promissory note or cheque, as defined in the Negotiable Instruments Act, 1881 (26 of 1881); or

(ii) the provisions of Rule 2 of Order II of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908);

(c) shall empower the court to award interest upon interest."

12. The term' current rate of interest', referred to in Section 3, has been defined in Section 2(b) of the Interest Act, 1978. The same is also being extracted hereunder :

"2(b)"current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

Explanation. - In this clause," scheduled bank," means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949)."

On a cumulative interpretation of Section 3 read with Section 2(b) of the Interest Act, 1978, leaves us with a clear understanding, that interest would be payable at the highest of maximum rate at which interest is payable on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions).

13. In the above view of the matter, we are satisfied that while assessing the penalty payable by the respondent-Corporation on account of delayed payment of retiral benefits, the appellant would be entitled to the highest of the maximum rate, at which Scheduled Banks are currently paying interest on fixed deposits. We, accordingly,

> direct the respondent-Corporation to calculate and pay the above interest to the appellant, within two months from the date of receipt of a copy of this order.

In the present case, the respondent has given representation on 06.03.2006 for re-fixation of his salary. In view of Gujjar Singh's case (supra), the arrears shall be restricted to 38 months from the date of filing of the representation i.e 06.03.2006 and the rate of interest, in view of Megh Varan Sharma's case (supra) is to be modified from 18 percent to 9 percent

Applying the ratio of the above mentioned judgments, the appeal stands disposed of and the actual benefits shall be restricted to a period of 38 months prior to the date of submission of representation i.e 06.03.2006 by the respondent to the appellants with interest @ 9 per cent on the arrears so calculated and revision of pay scale equivalent to Sh.Yash Paul LDC (now UDC), an employee of the Corporation. The appellants are directed to calculate the amount due to the respondent and make the necessary payment to the respondent, within a period of 02 months from the date of passing of this order.

April 29, 2015 (RITU BAHRI)
G Arora JUDGE