

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3492 of 2014 (O&M)
Date of Decision.05.11.2015

Inderjit Singh and othersAppellants
Versus
State of PunjabRespondent

Present: Mr. Kamal Singh, Advocate for
Mr. S.K. Sharma, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J.

1. Delay of 57 days in refiling the appeal is condoned.
2. The plaintiffs who claimed themselves as legal representatives of the deceased Government employee, who was the plaintiff, are the appellants before this Court. The suit was filed by the deceased employee during his life time on a plea that he must be deemed to have been in service upto 11.09.1972 and that he should be paid the monetary benefits including the pension payable as a Government employee. His contention was that he had joined the State service prior to partition in October 1943 and he came after the partition from the place now in Pakistan to the place now in India and he had been in active service till he applied for leave on 31.05.1968. He contended that he had been applying for leave periodically and he was entitled to be treated in service till he had actually applied for being relieved from duty on 11.09.1972. The defendant originally contended

that the plaintiff was not a Government servant at all but later filed an

amendment to the written statement conceding to the fact that the plaintiff had joined the State service in October 1943 but stated that he had been on leave on half pay from 01.02.1967 to 31.05.1967 and without salary from 01.06.1967 to 31.05.1968. He had never sent any application for leave nor was any leave sanctioned after 31.05.1968. The Rules provided for termination of service without any enquiry for a person who remained out of service and who had not reported for duty without applying for leave under Rule 3.25 of the Punjab Civil Service Rules. The contention was that he had not completed 25 years of qualifying service in order to become eligible for pension. The Punjab Civil Service Rules that incorporated new Pension Rules were applicable only in respect of person who had joined service after 10.06.1961 and since the plaintiff claimed that he had joined the service before the said period, it was essential that he had 25 years of service. The contention by the State was also that the plaintiff had been terminated taking note of Rule 3.25 that allowed for automatic termination of service if the person was in unauthorized absence for more than five years. The documents revealed that the plaintiff did not complete 25 years of service to be eligible for pension. The suit was dismissed holding that the suit claim was barred by limitation and having approached the Court for relief after nearly 10 years after he claimed that he was superannuated and that further since Government employee had himself died and his wife had also died, the legal representatives could claim family pension only if they had proved themselves to be the dependents of the deceased employee. Since there was no proof available about their own dependence on the deceased plaintiff, the prosecution of the

suit at the instance of the legal representatives has also failed.

3. I will not go as far as to state that the legal representatives will require to prove their dependence on the father in order to claim family pension. The suit was not for a claim for family pension but was for the grant of pension by treating his own service as continuing till he applied for being relieved on 11.09.1972. Pension is a recurring cause of action and if the plaintiff could prove his entitlement to pension, such of those accruals which had taken place during his life time would also survive to legal representatives. While the plaintiffs' own claim as representatives of the deceased could be restricted to what the deceased employee was entitled, the fundamental point would be whether there was any proof available for such entitlement. If on the own showing of the plaintiff that he had served only till 01.02.1967 and later he applied for leave and he had got only leave on half pay upto 31.05.1967 and that he served without salary upto 31.05.1968, the plaintiff would be lacking in qualifying number of years of service. The denial of pension to him was, under the circumstances, justified and there was no scope for the legal representatives to claim any pension if the deceased employee himself was not entitled to any pension.

3. The Courts below have considered the plaintiffs' claim with reference to Rules and have come to the correct conclusion. I do not think that there is any error for interference in second appeal. The second appeal is dismissed as devoid of merits.

(K. KANNAN)
JUDGE

November 05, 2015
Pankaj*