

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

**Regular Second Appeal No.622 of 2015 (O&M)
Date of decision:20.04.2015**

State of Punjab and others

.....Appellants

Versus

Amarjit Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab,
for the appellant.

Ritu Bahri, J.

Defendants-appellants have come up in regular second appeal against the judgment of reversal dated 08.05.2012 passed by the District Judge, Mansa, partly accepting the appeal filed by the plaintiff-respondent No.1 and setting aside the judgment and decree dated 21.03.2011 passed by the Civil Judge (Junior Division), Mansa.

Amarjit Kaur-plaintiff (respondent No.1 herein) filed a suit for declaration and mandatory injunction, stating therein that she was appointed as social studies mistress at Khalsa High School, Mansa on 08.09.1971. Deduction of General Provident Fund (GPF) started w.e.f. 01.01.1973. Due to domestic circumstances, she got voluntary retirement w.e.f. 31.05.2003. As per the plaintiff, she was entitled to pensionary benefits for her full service w.e.f. 08.01.1971 to 30.05.2003. However, the said benefit has been given from the date of deduction of GPF i.e. 01.01.1973 and services rendered by her from 08.09.1971 to 31.12.1972 had not been reckoned for

pensionary benefits. Plaintiff-respondent No.1 further claimed that she

remained present in the school w.e.f. 01.04.1997 to 14.09.1998 and this service was reckonable for pension. She was also entitled to ex-gratia allowance for having retired voluntarily after more than 27 years of service. She was also entitled to grade and higher pay of head mistress on having worked as I/C Head Mistress. However, the absence period from 01.04.1997 to 14.09.1998 had been excluded from the qualified period of pensionary benefits. Therefore, she filed the present suit claiming that she was entitled to get pensionary benefits for entire service from 08.09.1971 to 31.05.2003, except leave without pay (1year, 4 months and 11 days) along with payment of ex-gratia allowance upon voluntary retirement with consequential benefits and interest @ 17% per annum.

Upon notice, defendants-appellants filed written statement and controverted the allegations levelled by the plaintiff. It was submitted that vide order dated 20.01.2004, defendant No.2 had granted retiral benefits to the plaintiff as per Punjab Privately Managed Recognized Aided School Retirement Benefit Scheme, 1992, which came into force w.e.f. 05.02.1987. As per provisions 6 (2) of the said scheme, the period of leave without pay and break in service shall not be reckoned as qualifying service. As per provision 6 (6) of the Pension Scheme, the qualifying service will be taken into account w.e.f. the date the employer started to contribute towards the contributory provident fund. The plaintiff-respondent No.1 started to contribute towards C.P.C. w.e.f. 01.01.1973 and she remained on leave without pay for 1 year, 4 months and 11 days. Therefore, she was not entitled to get counted the unqualified period of service towards her retiral benefits.

From the pleadings of the parties, following issues were framed by

the trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for?
OPP
2. Whether the plaintiff is entitled to mandatory injunction as
prayed for? OPP
3. Whether the suit of the plaintiff is bad for mis-joinder of the
parties? OPD
4. Whether the suit is not maintainable? OPD
5. Relief.

Trial Court, after going through the evidence on record, dismissed the suit. The lower appellate Court set aside the judgment and decree passed by the trial Court and partly decreed the suit of the plaintiff-respondent No.1 with costs to the extent that she was entitled to the pensionary benefits for the service rendered by her from 08.09.1971 to 31.05.2003, excluding the period from 01.04.1997 to 14.09.1998 during which she remained on leave without pay, with interest at the rate of 9% per annum from 01.06.2003 till the date of actual payment. She was further held entitled to the incentive of five years w.e.f. 31.05.2003 when she retired from service voluntarily along with payment for the work done by her on higher post.

Learned State counsel has argued that directions given by the lower appellate Court for payment of work done by her on higher post without approval of the Government, is liable to be modified.

This argument is rejected as the plaintiff had worked on higher post even though, she was not formally promoted to that post. It was not a case of the defendants-appellants that the plaintiff-respondent NO.1 did not

work as head mistress of the school when other eligible teacher was not available. She was temporarily working on higher post and her appointment on higher post had not been approved by the Government. Since the plaintiff-respondent No.1 had worked on the higher post, she was entitled to the salary of that post. Therefore, the judgment passed by the lower appellate Court does not require any interference.

Furthermore, the present appeal has been filed after a delay of 926 days. No plausible explanation has been given for such a long delay. Therefore, no ground is made out for condonation of delay in filing the present appeal.

In view of the above discussion, the present appeal is dismissed on account of delay as well as on merits, as no substantial question of law arises for consideration.

20.04.2015
ajp

(RITU BAHRI)
JUDGE