

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

**Regular Second Appeal No.874 of 2015 (O&M)
Date of decision:12.03.2015**

Haryana State Electronics Development Corporation Ltd. & another

.....Appellants

Versus

Narain Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Pankaj Gupta, Advocate,
for the appellants.

Ritu Bahri, J.

Haryana State Electronics Development Corporation Ltd-defendant has come up in regular second appeal against the judgment of reversal dated 06.01.2015 passed by the Additional District Judge, Ambala, whereby appeal filed by the plaintiff-respondent against the judgment and decree dated 30.08.2014 passed by the Civil Judge (JD), Ambala, has been accepted and his suit has been decreed with costs directing the defendants-appellants to count entire service period while computing amount of leave encashment and gratuity and disburse the entire arrears within one month.

Narain Singh-plaintiff was appointed as driver in the defendant-department and he joined his duty on 07.05.1985. However, on account of causing an accident of official vehicle, he was suspended on 20.08.1986. On completion of inquiry, he was terminated from service on 11.11.1986. He challenged the termination order before the Labour Court. Vide Award dated 18.08.1999 passed by the Presiding Officer, Labour Court, Ambala, the termination order dated 11.11.1986 was substituted by imposing

stoppage of three increments with cumulative effect. The plaintiff-respondent was held entitled for reinstatement with continuity of service without back wages. The aforesaid Award of the Labour Court was challenged by the appellant-department by filing CWP No.5206 of 2000, which was dismissed by this Court on 15.02.2008. After passing of the Award, the plaintiff-respondent was permitted to join his duty on 10.07.2000 and thereafter, he remained in service till his superannuation i.e. 28.02.2007. After dismissal of the aforesaid writ petition, the Award passed by the Labour Court was to be implemented. Thereafter, the defendants-appellants fixed the pay of the plaintiff on 16.01.2012 and made the following payments:-

- I. Arrears of pay and allowances from 01.12.2003 to 28.02.2007 paid vide cheque No.393126 dated 03.04.2012 of the State Bank of India for a sum of Rs.1,82,278.
- II. Payment of arrears by the Ambala Office of the Corporation made under cheque of the State Bank of India.
 - a. Cheque No.180061 dated 21.03.2012 of Rs.50,000/-.
 - b. Cheque No.180062 dated 21.03.2012 of Rs.6885/-.
 - c. Cheque No.180060 dated 21.03.2012 of Rs.50,000/-.

As per the plaintiff-respondent, the defendants-appellants were responsible for causing delay in implementation of the Award dated 18.08.1999. Therefore, he filed the present suit on 28.08.2012 against the defendants-appellants for mandatory injunction to the effect that he is entitled to payment of leave encashment, Group Insurance and pension from the defendants.

Upon notice, the defendants-appellants filed written statement and controverted the allegations levelled by the plaintiff.

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

the trial Court:-

1. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has concealed true and material facts from the Court? OPD
4. Whether Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Whether suit is time barred? OPD
7. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD
8. Relief.

The trial Court, after going through the evidence led by the parties, dismissed the suit vide judgment and decree dated 30.08.2014.

On appeal, the lower appellate Court set aside the findings of the trial Court that the suit was barred by limitation. It was observed that the writ petition (CWP No.5206 of 2000) preferred by the defendants-appellants against the Award dated 18.08.1999, was dismissed on 15.02.2008. In spite of dismissal of the said writ petition, the defendants-appellants did not give any payment to the plaintiff-respondent. Some payment was given in March, 2012 and thereafter, the present suit was filed on 28.08.2012 as the entire payment had not been released. In a case of non fixation of payment, it being a continuing wrong, the question of limitation would not arise.

Reference was made to the judgments delivered in **M.R. Gupta Vs. Union of India and others**, AIR 1996 SC 669, **Kundan Lal Vs. The Punjab State and others**, 2000 (2) RSJ 593 and **Union of India & others Vs. Shantiranjan Sarkar**, 2009 (2) SCT 44, wherein it was held that the Government cannot take benefit of its own wrong.

Vide Award dated 18.08.1999, Ex.P1, the workman-plaintiff was held entitled for reinstatement with continuity, meaning thereby, his period of service w.e.f. 07.01.1985 till the date of his retirement on 28.02.2007 was to be counted while computing pensionary benefits as required under Rules. The plaintiff-respondent was paid arrears of revised pay scale as per documents, Ex.DW1/C and Ex.DW1/D. His gratuity and leave encashment were computed as per document, Ex.DW1/E, which reads as under:

Date of joining and exit : 07.05.1985 to 11.11.1986 (01 year six months and four days).

10.07.2000 to 28.02.2007 (Six years seven months and eighteen days).

Last Drawn Pay : Rs.10430+2400+770+300=13,900/-.

Payable gratuity : 13,900 x 8=1,11,200/-.

Already paid : Rs.53,072/-

Net Gratuity Payable : Rs.1,11,200-53,072/-=58,128/-.

On the basis of the above details, the lower appellate Court returned a finding that the entire period was not taken into consideration while computing the amount of gratuity from the date of appointment till his retirement. As per document, Ex.DW1/F, amount of Rs.1,82,279/- has been paid as arrears on account of revised salary for the period from 01.12.2003 to 28.02.2007. The lower appellate Court referred to the judgments passed by the Hon'ble Supreme Court in **Parvinder Singh Vs. The Pepsu Road Transport Corporation and another**, 2013 (2) SCT 698 and **Ex.-Constable**

that as per the Award dated 18.08.1999, Ex.P1, passed by the Labour Court, the plaintiff-respondent was reinstated with continuity in service. For all intents and purpose, entire period from the date of appointment till his retirement was to be considered by the defendants-appellants for computing gratuity and leave encashment. However, at the time of payment of amount of gratuity, period from 11.11.1986 till 10.07.2000 had not been taken into consideration as per document, Ex.DW1/E. Ultimately, the appeal of the plaintiff-respondent was accepted and his suit was decreed.

After going through the impugned judgment, this Court is of the view that the lower appellate Court has rightly held the plaintiff-respondent entitled for counting his entire service period while computing amount of leave encashment and gratuity. No illegality, much less perversity has been found in the impugned judgment, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

12.03.2015
ajp

(RITU BAHRI)
JUDGE