

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

RSA-4148-2014 (O&M)

Date of decision: 24.9.2015

Darshana Rani

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.RS Dhull, Advocate for the appellant

SNEH PRASHAR, J.

CM-9616-C-2014

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 136 days in refiling the appeal.

For the reasons enumerated in the application, the same is allowed. Delay of 136 days in refiling the appeal is hereby condoned subject to all just exceptions.

RSA-4148-2014

The instant regular second appeal had been filed assailing the judgment and decree dated 04.10.2013 passed by learned District Judge, Jind vide which the judgment and decree dated 23.4.2012 passed by learned Civil Judge (Jr.Divn) was set

aside.

Precisely the facts which led the initiation of the instant appeal are that plaintiff-appellant Darshana Rani filed a suit for mandatory injunction seeking direction to the respondents- State of Haryana and others to count her service from the year 1992 and to also provide her all service benefits including regularisation of service since the said year i.e. 1992. The husband of the plaintiff namely Mohal Lal was posted as Multi Purpose Health Worker in the office of District Malaria Officer, Jind- defendant No.4 and he died issueless on 20.9.1992. The appellant applied before the defendants-respondents for service benefits of her deceased husband including Ex-gratia benefits for which, she was directed to obtain a succession certificate in her name from the competent authority. Accordingly, she filed a petition No.86 /SC dated 29.10.1992 and on 19.3.1999 a succession certificate was issued in her favour by Civil Judge (Senior Division), Jind. Resultantly, the service benefits of her deceased husband were disbursed to her and she was also given employment under Ex-gratia Scheme in the year 2000.

The appellant submitted that as per information taken by her under the Right to Information Act, 2005, at the time of granting benefits of Ex-gratia, there was no requirement for submitting a succession certificate. She has also learnt that after the year 2006,

Haryana Government had banned the Ex-gratia Scheme and no service is being provided to the surviving legal heirs of the deceased employee. Immediately after the death of her husband in the year 1992, she had applied to the Government for service but was given the said benefit in the year 2000 on production of the succession certificate, which in fact was not required for taking the benefits. It was only because of misguidance of the respondents that she was granted the service benefits so late i.e. in the year 2000. Therefore, they are now bound to count her service and regularise the same since the year 1992 and to also provide her necessary benefits including promotion etc. alongwith interest from that year.

Defendants-respondents contested the suit raising numerous legal and factual objections. They admitted that the husband of the appellant was posted as MPHWS in the Health Department, Haryana, when he died in the year 1992. According to them, the appellant had filed a Civil Writ Petition No.1974 of 1997 and under the direction of this Court, the Director General, Health Services, Haryana decided the representation of the appellant vide order dated 08.05.1997 and she was asked to furnish the succession certificate for being granted the benefits under the Ex-gratia Scheme. Since there was a dispute between the family members of the appellant therefore, to avoid any legal complication, submission

of the succession certificate became necessary. As soon as she submitted the certificate, the benefit of Ex-gratia Scheme was granted to her without any delay. As such, the delay, if any, was on part of the appellant herself and the respondents-defendants could not be held responsible for the same.

On the pleadings of the parties, the following issues were settled by learned trial Court:-

- “1. Whether the plaintiff is entitled to be continued in service since 1992 and consequential service benefits? OPP*
- 2. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD*
- 3. Whether the suit is time barred? OPD*
- 4. Relief.*

Both the parties adduced documentary as well as ocular evidence in support of their rival contentions.

Learned trial Court vide judgment and decree dated 23.4.2012 decreed the suit of the appellant with costs and directed the defendants-respondents to count the service of the appellant from the year 1992 or after three months from the date of death of her husband Mohan Lal whichever is later and to provide her all service benefits including regularisation of service etc. since the year 1992.

Aggrieved of the judgment and decree passed by learned

trial Court, defendants-respondents preferred an appeal, which was allowed by learned District Judge vide judgment and decree dated 4.10.2013 and as a consequence to the same, the suit of the plaintiff was dismissed with costs.

Feeling aggrieved, the plaintiff-appellant preferred the present regular second appeal.

The submissions made by learned counsel for the appellant have been heard.

Before going to the contentious issue, it is relevant to note the admitted facts. Late Mohan Lal husband of the appellant was employed as MPHW in the Health Department, Haryana and he died on 20.9.1992. After his death, the appellant applied for the service benefits including employment for herself under Ex-gratia Scheme as there was a Policy of the Government offering employment to the legal heirs of the deceased employee on compassionate ground. The extending the benefit of ex-gratia appointment on compassionate ground, submission of a succession certificate was not required. However, in the case of the appellant, as there was a dispute among the legal heirs of deceased Mohan Lal, who were having conflicting claims, the appellant was asked to submit a succession certificate.

The appellant approached this Court by way of CWP

No. 1974 of 1997, which was disposed of with the following observations as quoted in para No.16 of the judgment passed by learned first Appellate Court:-

“Without going to the merits of the case, at this stage we consider it appropriate at this stage that the representation of petitioner, Annexure P-6 dated 21.12.1994, be decided first. The Director of Health Services, Haryana is directed to deal with the representation of the petitioner, Annexure P-6 and dispose of the same as expeditiously as possible preferably within three months. Before we part the judgment, we may mention here that counsel appearing for the petitioner states that directions contained in Annexure P-10 that the petitioner was required to submit succession certificate, has since been complied with.

In compliance of the order of this Court, the Director General, Health Services, Haryana decided the representation of the appellant vide order dated 8.5.1997 and held that the appellant would not be entitled to get any benefit including service on account of death of her husband Mohan Lal till she submits a succession certificate. The said order was not assailed by the appellant before any higher authority. Rather she filed a petition for issuance of succession certificate on 29.10.1992 against General Public and Sona Devi, mother of deceased Mohan Lal. The case was strenuously contested by Sona Devi but ultimately was decided on

19.3.1999 in favour of the appellant.

Another suit filed by Sona Devi mother of deceased Mohan Lal claiming pensionary benefits to the extent of 1/2 share against the appellant was decided on 2.6.2010 rejecting her claim.

On submission of the succession certificate issued in the name of the appellant on 19.3.1999, the respondents-Government gave employment to the appellant on compassionate ground without any loss of time. It was rightly held by learned First Appellate Court that two orders Ex.D2 dated 19.3.1999 and Ex.D3 dated 2.6.2010 make it crystal clear that the claim for issuance of succession certificate as well as pensionary benefits were hotly contested by two legal heirs, the appellant wife and Smt. Sona Devi mother of deceased Mohan Lal and in the given circumstances, if the respondent demanded the succession certificate, to avoid any further legal complication, there was nothing illegal in the same.

Admittedly, the appellant was provided job on compassionate ground in the year 2000. She was not in service during the period from 20.9.1992 to 2000. In fact her right to get employment itself was subjudice during the said period. No inaction or fault on part of the respondents could be demonstrated by learned counsel for the appellant, which caused delay in giving employment to the appellant. Needless to say that during the period

when the appellant was not in service and she never worked for the respondents, she could not be paid salary and could also not be given any other service benefit.

From the judgment of learned First Appellate Court, it also needs to be noted that a CWP No.13521 of 2000 was filed by the appellant before this Court, which was decided vide order dated 20.11.2008. The order as reproduced in the judgment reads as under:-

“The prayer of the counsel for the petitioner is accepted. Permission is granted to the petitioner to withdraw this writ petition with liberty to file a detailed representation which may be supported by the judgment of this Court. A direction is issued to the respondents to consider the representation of the petitioner and any judgments which are attached therewith, within a period of two months from the date of receipt of copy of this order alongwith representation. The respondents shall pass a speaking order. In case, the claim of the petitioner is accepted, the consequential benefits flowing therefrom should be granted to her within a period of three months thereafter.”

Admittedly, no representation to the respondents as per the directions of this Court was given by the appellant. Instead of the same, she opted to file the instant suit for declaration that she was entitled to be held in service since 1992, the date of her

eligibility, but as already observed above, she is not entitled to claim service benefits for the period when she was not in service.

In the above premises, there is no illegality or perversity warranting intervention in the impugned judgment and decree passed by learned First Appellate Court and as such, the present appeal being devoid of merit is dismissed.

24.9.2015
gsv

(SNEH PRASHAR)
JUDGE

Note: Whether to be referred to the Reporter ? Yes/No