

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

RSA No.505 of 2014(O&M)

Date of Decision:20.07.2015

Om Parkash

.....Appellant

Versus

State of Haryana & Ors

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- None for the appellant.

RITU BAHRI, J.

CM No.1232-C of 2014

For the reasons mentioned in the application, same is allowed and delay of 50 days in re-filing of the appeal is condoned.

RSA No.505 of 2014

Plaintiff-appellant has preferred the present second appeal against the judgment dated 22.04.2013 passed by the District Judge, Narnaul, dismissing the appeals filed by the plaintiff-appellant as well as defendants-respondents against the judgment and decree dated 17.12.2010 passed by the Civil Judge (Junior Division), Mohindergarh, whereby suit filed by the plaintiff for declaration seeking fixation of his pay at the rate of Rs.2,000/- in the pay scale of Rs.1640-2900 on 17.1994 and Rs.6550/- in the pay scale of Rs.5500-900 on 01.01.1996 and all other monetary benefits in the shape of Special Increment on account of family planning, Transfer

Allowance (TA) and house rent allowance due to him along with interest at the rate of 18% per annum, has been partly decreed.

Facts necessary for disposal of the present second appeal are that the plaintiff-appellant was initially appointed as temporary Stock Assistant in the Department of Animal Husbandry in the year 1971 and joined his duties on 25.11.1971 on the recommendations of Subordinate Services Selection Board, Haryana. Pursuant to the order passed by the Director, Animal Husbandry, Haryana vide Endst no.26313-632/E-2/142X-B dated 22.08.1972, his services were regularized. In the said order, it was mentioned that seniority amongst Stock Assistants in that department would be fixed according to the merit assigned to them by SSB, Haryana irrespective of the date on which they had joined. The plaintiff was placed in the senior list at Sr. No.115 and one Surender Kumar son of Mohan Singh, Stock Assistant, was placed at Sr. No.289. The post of Stock Assistant was re-designated as VLDA, post. Plaintiff-appellant had served the department w.e.f. 25.11.1971 to 30.04.2006 by performing his duties honestly and sincerely and had rendered 34 years, 05 months and 05 days regular services in addition to his adhoc service w.e.f. 25.11.1971 to 01.08.1972. He had earned more than 33 years of maximum qualifying service for the purpose of pension, commutation, gratuity etc. At the time of superannuation, all formalities for getting retiral benefits were completed. No departmental enquiry or case was pending against him, therefore, he was entitled to receive all his retiral benefits. As per plaintiff, he had not been given the benefits regarding fixation of pay, special increment on account of family planning, Transfer Allowance, House Rent Allowance and other Pensionary/Retiral benefits, as detailed in the judgments passed by the

Courts below, which were admissible to him.

Upon notice respondents-defendants had contested the suit by filing joint written statement. The facts regarding appointment, regularization of appellant-plaintiff and re-designation of post of Stock Assistant to VLDA were admitted. It was stated that plaintiff-appellant was getting basic pay scale @ Rs.1140/- whereas his junior Surender was wrongly taking the pay scale of Rs.2,000/-, regarding which department was proceeding against said Surender to recover the excess amount paid to him. It was further submitted that plaintiff had not submitted his TA bills before concerned authority, thus, as per letter No.764 dated 30.03.2007 of defendant No.5, he was not paid the allowance as per rules. He was not entitled to house rent allowance because Deputy Director Animal Husbandry, Narnaul, District Mohindergarh had paid the whole amount to the plaintiff. Finally, it was submitted that as per A.G. Haryana, Chandigarh (defendant No.3) letter No.PenCC/8/0-1035/06-07/2262-68 dated 05.02.2007, the department had already paid all the retiral benefits to the plaintiff-appellant, therefore, nothing was due to be paid to him.

From the pleadings of the parties following issues were framed:-

1. *Whether plaintiff is entitled to fixation of his pay equivalent to his juniors on 01.07.1994 of Rs.2,000/- and on 01.01.1996 Rs.6,550/- and revised pay scale as alleged in the plaint with all consequential benefits?OPP.*
2. *Whether plaintiff is entitled to revise pension and other retiral benefits as alleged in the plaint?OPP.*
3. *Whether the plaintiff is entitled to interest on the delayed payment of retiral benefits as alleged in the plaint?OPP.*
4. *Whether the plaintiff is entitled to special increment of*

family planning at the rate of Rs.30/-, therefore, T.A., and house rent allowance with interest as alleged in the plaint?OPP.

5. *Whether the suit is not maintainable?OPD.*
6. *Whether the plaintiff has no locus standi to file the suit?OPD.*
7. *Relief.*

Trial Court, after going through the evidence led by the parties, partly decreed the suit. On appeal, lower appellate Court affirmed the findings of the trial Court. Hence, this appeal.

Plaintiff-appellant is claiming parity with the pay scale of his juniors namely Surender Kumar, Rameshwar Dayal and Ram Singh. As per document, Ex.PW2/D, pay scale of the plaintiff had been revised vide Haryana Government F.D. No.GSR/Court/Art.309/98 dated 07.01.1998, whereas pay scales of Surender Kumar, Rameshwar Dayal and Ram Singh had been fixed vide Haryana Government Circular No.10/108/9404PF (FD) dated 29.12.1995. As per deposition of Dr. Daman Singh, SDO (DW-1), Surender Kumar had been wrongly drawing pay scale of Rs.2000/-and the department had initiated proceedings for recovery of excess amount of pension paid to him (Surender Kumar). Since the basic pay of employees, junior to the plaintiff had been fixed wrongly and the department was taking steps to recover the same, no case for granting the same pay scale to the plaintiff-appellant was made out. He had no right to get the pay, which was wrongly given to his juniors.

Another ground for dismissing the claim of the plaintiff-appellant was that the present suit had been filed on 01.12.2006, whereas the plaintiff-appellant had retired on 30.04.2006. Hence, the claim of the plaintiff-appellant for transfer allowance pertaining to the year, 1985 and

house rent allowance for the period from July, 1975 to May 1980 were barred by limitation. After retirement of the plaintiff-appellant, his retiral benefits had been paid on 15.02.2007 and the trial Court had granted interest at the rate of 12% from the date of his retirement till 15.02.2007. This part of the judgment of trial Court was upheld by the lower appellate Court. However, his claim with regard to fixation salary at par with his juniors has been dismissed.

After going through the impugned judgment passed by the lower appellate Court, this Court is of the view that since the pay of employees, junior to the plaintiff-appellant, had been fixed wrongly, therefore, he could not claim parity with them. Accordingly, no illegality, much less perversity has been found in the impugned judgment warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

July 20, 2015
ajp