

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 5291 of 2014 (O&M)

Date of decision : 12.05.2015

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V.N Gaur

.....Appellant

Versus

Haryana State and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Dinesh Kumar, Advocate for the appellant.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

Present regular second appeal has been filed against the judgment dated 21.4.2014 passed by the District Judge, Karnal, whereby an appeal against the judgment and decree dated 9.5.2012 passed by the Additional Civil Judge (Senior Division), Karnal was dismissed being devoid of any merit. Vide the trial Court judgment suit of the plaintiff was decreed but pendente lite and future interest was awarded at the rate of 9% per annum whereas the plaintiff who retired from the services on 31.10.2009 from the office of Construction Sub-Division, Pehowa sought the declaration that he is entitled to payment of leave encashment and GIS along with penal interest at the rate of 24% per annum and also 24% interest on the

delayed payment mentioned in para no.7 of the plaint.

Brief facts of the plaintiff's case are that he superannuated on 31.10.2009 as Sub Divisional Engineer from the Office of Construction Sub Division, Pehowa under the Provisional Division No. 3 (NH), PWD (B&R). His work and conduct remained good through out and no adverse remarks were ever conveyed to him. Though he submitted his pension papers well in time; however his leave encashment and benefit under Group Insurance Scheme was not released in time and payment of gratuity, commuted pension and LTC etc. were paid to him after a considerable delay on 6.8.2010.

The suit was contested by the defendants and on merits, it was submitted that earlier CWP No. 9999 of 2010 was filed by the plaintiff which was disposed of by this Court in terms of order dated 14.7.2010, whereby the State Government was directed to decide plaintiff's legal notice within a period of three months. The said legal notice was considered by the competent authority and was rejected by passing a speaking order on 18.1.2011.

After going through the evidence led by the parties, the trial Court decreed the suit of the plaintiff and the defendant was directed to pay interest @ 9% per annum on the delayed payment w.e.f the retirement of the plaintiff till actual payment within two months from the date of passing of that order.

Plaintiff filed an appeal by pleading that the trial Court erred in granting the interest at the lower rate of 9% per annum on the retiral benefit.

After hearing counsel for the parties and going through the evidence, appellate court dismissed the appeal while observing that to grant the interest at a particular rate is the discretion of the trial Court and the awarding of 9% interest per annum is absolutely justified in the present case.

Counsel for the appellant has referred to the judgment of the Full Bench in the case of **R.S Randhawa vs. State of Punjab and others 1997 (3) RSJ 318** to contend that generally on delay payment of pensionary benefits rate of interest 12% should be awarded unless the circumstances warrant payment of higher rates which may extend to even 18%.

In the facts of the present case, the plaintiff superannuated on 31.10.2009. However, he received his gratuity after a delay of about 9 months. The Pension Pay order dated 25.11.2009/11.12.2009 was wrongly addressed by the department to EIC, who redirected the same to the plaintiff.

Another fact which the lower appellate Court had taken into consideration is that the plaintiff filed a Civil Writ Petition No. 9999 of 2010 titled as "V.N Gaur vs. State of Haryana and others" which was decided vide order dated 14.7.2010. Vide this order direction was given to the defendants (respondents in that case) to decide the legal notice served by the plaintiff (petitioner in that case)

within a period of three months. Vide order dated 18.1.2011, the claim of the plaintiff in the said legal notice was rejected by passing a speaking order by the competent authority.

The payment of the plaintiff has been made during the pendency of the suit hence the grant of 9% per annum from the date of retirement of the plaintiff till actual payment is reasonable and therefore, does not require any interference. At this stage, reference can be made to a judgment of Hon'ble the Supreme Court in **Megh Varan Sharma vs. State of U.P and others 2015 (1) SCT 12**, *wherein the retiral benefits were released after eight years despite the fact that none of the issues on the basis of which benefits were withheld had been resolved. It was held that the action of withholding the same was unjustified. Appellant was held entitled to the highest of the maximum rate at which scheduled Banks at that time were paying interest on fixed deposits.*

In view of all that has been discussed above, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

12.05.2015
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(RITU BAHRI)
JUDGE