

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1187 of 1991

Date of Decision:- 17.08.2016.

State of Haryana and others

.....Appellants

Versus

Raj Kumar Beniwal

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Anil Mehta, DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) In the present case, the appellants have assailed the order of the Appellate Court dated 5.1.1991. The respondent Raj Kumar Beniwal was appointed as a Agriculture Inspector on 1.8.1977. The post of Agriculture Inspector was re-designated as Agriculture Development Officer. While he was working as Agricultural Development Officer, on 7.9.1979, his services were terminated. The respondent submitted a representation seeking fresh appointment. The same was considered by the appellants and he was freshly appointed and as such joined service on 28.7.1981. As on the date of his termination, his pay was ₹ 760/-. The same was continued during the period from 1981 to 1985. In the year 1985, appellant Department noticed the anomaly of pay fixation in respect of respondent herein that his pay should have been ₹ 640/- instead of ₹ 760/-. Consequently, re-fixation was ordered. The respondent feeling aggrieved by the re-fixation of pay from

₹ 760/- to ₹ 640/-, he filed a civil suit before the Trial Court. The Trial Court dismissed the suit on 6.6.1990. Thereafter, he preferred an appeal before the Appellate Court. The Appellate Court allowed the appeal declaring that the respondent is entitled for pay of ₹ 760/- on the ground that there were no objections during the period from 1981 to 1985 and further audit report was not placed on record. The learned counsel for the appellant submitted that pursuant to the audit report only the re-fixation of pay has been ordered from ₹ 760/- to ₹ 640/. Since he was appointed afresh to the post of Agriculture Development Officer on 28.7.1981 after due consideration of his representation, therefore, he is entitled to pay attached to the post of Agriculture Development Officer. The Appellate Court erred in holding that the respondent is entitled for pay of ₹ 760/- while counting the intervening period from 7.9.1979, the date on which respondent was terminated and 28.7.1981, the date on which he joined service afresh.

2.) None appears for the respondent. Matter called twice.

3.) Perusal of the records, it is admitted that respondent's services were terminated on 7.9.1979. The same has attained finality since the respondent has not challenged his termination order dated 7.9.1979 before the appropriate forum. The respondent submitted representation for reinstatement to the post of Agriculture Development Officer. The same was considered by the appellant Department. While considering representation, he was given appointment afresh in the month of July, 1981. He joined afresh on 28.7.1981. In view of the above facts and circumstances that the respondent's appointment on 28.7.1981 is a fresh appointment, the past service cannot be taken into consideration for the

which his services were terminated i.e. ₹ 760/-. Inadvertently, the appellants have permitted the respondent to draw pay at ₹ 760/- instead of ₹ 640/- for the period from 28.7.1981 to 17.10.1985. Due to error committed by the appellants, difference of pay, if any, shall not be recovered. However, the fixation of pay of ₹ 640/- from 17.10.1985 is upheld. The Appellate Court order dated 5.1.1991 is set aside.

4.) Appeal stands disposed of.

(P.B. BAJANTHRI)
JUDGE

August 17, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.