IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3422 of 2007
Date of Decision: 12.07.2016

Darshan Lal Bhalla ....Appellant

Vs

Haryana State and another .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. K.L. Dhingra, Advocate
for the appellant.

Mr. Ashok Muthreja, DAG, Haryana.

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1. Whether Reporters of local papers 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?

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in second appeal against concurrent judgments and decrees passed by the Courts below, dismissing his claim regarding fixation of his pay in the higher standard pay scale of Rs.1600-2660/- w.e.f. 01.01.1994 and then in the modified scale of Rs.1640-2900/- w.e.f. 01.04.1995, for the release of annual increments to the post of Assistant Treasury Officer from 01.04.1999 to 01.04.2000, revision of pay and other pensionary benefits, amount of Rs.2544/- as T.A. Bill and

balance of Rs.703.55 paise CCC/HRA along with interest @ 24% from the date of accrual till the date of actual payment.

[2]. Brief facts as gathered from the record are that plaintiff alleged that he was appointed as Clerk on 20.05.1965. He was promoted to the post of Assistant on 01.04.1976 and thereafter to the post of Assistant Superintendent on 11.11.1995. On 05.06.1997 he was further promoted to the post of Assistant Treasury Officer along with several other Assistant Superintendents. After the promotion, all the promotees qualified Accountancy Test. Plaintiff asserted that after serving 28 years of regular satisfactory service as on 31.12.1993, he was entitled to higher standard pay scale of Rs.1600-2660/- on 01.04.1994 and thereafter modified/revised pay scale of Rs.1640-2990/- w.e.f. 01.04.1995 on the basis of 10/20 years of regular satisfactory service. Plaintiff completed more than 20 years of service on 31.12.1993 and as such he was entitled for higher standard pay scale w.e.f. 01.04.1994 and modified pay scale w.e.f. 01.04.1995. Plaintiff was drawing basic pay of Rs.2000/- on 31.12.1993 in the pay scale of Rs.1400-2600/- and his pay was fixed at Rs.2050/- w.e.f. 01.01.1994 and Rs.2180/- w.e.f. 01.04.1995. The pay of plaintiff was fixed at Rs.2120/- instead of Rs.2180/- in the modified scale, therefore, plaintiff was drawing less pay than his juniors and, therefore, the first

relief was oriented on this ground.

[3]. Plaintiff further alleged that his work and conduct were adjudged good throughout his service tenure and he was drawing annual increments regularly. He was transferred from Karnal to Tauru (Gurgaon) and submitted his transfer bill of Rs.2544/- to the Treasury Officer on 25.09.1993, but till date nothing was paid to him. Plaintiff remained on medical leave from 08.10.1992 to 08.03.1993 at Karnal and thereafter he joined duty on 09.03.1993, therefore, he was entitled to HRA and CCA at the rate which was being given to him at Karnal, but instead of paying the full amount, he was paid only a sum of Rs.476/- on 25.09.2001 at the rate which was applicable at Tauru (Gurgaon), whereas rate prevailing at Karnal was to be given to the plaintiff. Plaintiff further alleged that he was not granted annual increments from 01.04.1999 to 01.04.2000 while working on the post of Assistant Treasury Officer at Kurukshetra. After serving notice under Section 80 CPC on the defendants, suit came to be filed.

[4]. Defendants contested the suit and alleged that as per government instructions dated 09.05.1985, 70% service record in the last ten years was required to be good for promotion and for grant of higher standard scale. Defendants further alleged that the service record of the plaintiff was not 70% good as on

01.01.1994. Plaintiff was not granted the said scale on 01.01.1991, rather was granted the said scale on 31.03.1995 when his service record became upto the mark and was allowed first modified higher standard scale of Rs.1640-2900/. The junior to the plaintiff were granted higher pay scale as they were found entitled for the same as on 01.01.1994.

[5]. Defendant also contested the suit by alleging that the plaintiff was paid the increments for the post of Assistant Treasury Officer for two years and thereafter his increment was stopped as he failed to clear the departmental examination within the period of probation. Plaintiff was suspended vide order dated 28.08.1992 and his head quarter was fixed at Kurukshetra. Inadvertently, the plaintiff was relieved on 08.10.1992, but later on he was re-instated on 27.10.1992 and was posted at Tauru (Gurgaon) where he joined the post on 09.03.1993. Plaintiff was entitled for the HRA payable to him at Tauru. So far as the claim regarding medical leave was concerned, it was alleged that he got his medical leave sanctioned from Treasury Officer, Gurgaon on 25.07.1993 whereas the said Authority was not competent to sanction the leave during the suspension period. The TA Bill for posting at Tauru (Gurgaon) was not paid to the plaintiff because he did not file any affidavit as per the Rules.

[6]. After filing replication, both the parties went to trial on the following issues:-

> *"1. Whether the plaintiff is entitled to fixation of his pay in the higher secondary scale as well as in the modified scale of Rs.1600-2660/- w.e.f. 1.1.1994? OPP.*
>
> *2. Whether plaintiff is entitled to release the annual increment on the post of ATO from 1.1.1999 to 1.4.2000 and other pensionary benefits of Rs.2544/- and balance amount of CCA/HRA of Rs.703.55 Paise alongwith interest at the rate of 24% p.a.? OPP.*
>
> *3. Whether the plaintiff has no cause of action to file the present suit? OPD.*
>
> *4. Whether the civil court has no jurisdiction to try and maintain the present suit? OPD.*
>
> *5. Relief."*

[7]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[8]. After appraisal of the evidence trial Court dismissed the suit vide judgment and decree date 08.06.2006. Plaintiff remained unsuccessful in his First Appeal. The District Jugge, Karnal vide judgment and decree dated 28.02.2007 dismissed the appeal of the plaintiff with costs thereby affirmed the

judgment and decree of the trial Court. However it was made clear that, if, plaintiff furnishes the affidavit to the Controlling Authority and on finding the claim of the plaintiff regarding TA bill to be genuine, the Controlling Authority was obligated to make good the payment. That is how, the present appeal came to be filed before this Court.

[9]. I have heard learned counsel for the parties at some length.

[10]. Though no substantial question of law has been framed by the appellant, however still this Court proceeded to frame the following substantial questions of law:-

> "1. Whether average Annual Confidential Report (for short 'the ACR')not communicated to the delinquent/plaintiff can be adjudged as adverse report for the purpose of granting higher standard pay scale?
>
> 2. Whether benefit of increments from 01.04.1999 to 01.04.2000 can be denied to the plaintiff simply because the alleged wrong in granting such a benefit to other employees after waiving requirement of passing departmental examination was not allowed to be perpetuated

in the case of plaintiff?

[11]. During course of arguments, plaintiff-appellant confined his arguments only *qua* to the claims regarding higher standard scale and annual increments from 01.04.1999 to 01.04.2000. Plaintiff has already retired on attaining age of superannuation. Date of birth of the plaintiff was 12.07.1942. The ACRs of the plaintiff as noticed by the lower Appellate Court can be summed up in the following manner:-

Period	***Post held***	***Over All Assessment***
1983-84	Asstt.	V. Good
1984-85	Asstt.	Average(Remarks Conveyed)
1985-86	Asstt.	Below Average (Remarks Conveyed)
1986-87	Asstt.	Good (Remarks Conveyed)
1987-88	Asstt.	Good
1988-89 (1.1.88 to 30.11.88) and (1.12.1988 to 31.3.1989)	Asstt.	Average/good (Remarks Conveyed)
1989-90	Asstt.	V. Good
1990-91	Asstt.	Average (Remarks Conveyed)
1991-92 (1.1.1991 to 5.8.1991) and (1.8.1991 to 31.3.1992)	Asstt.	Average (Remarks Conveyed) V.Good
1992-93	Asstt.	Good
1993-94	Asstt.	V.Good
1994-95	Asstt.	V.Good

[12]. Perusal of the aforesaid summary would reveal that ACR for the relevant periods were Very Good, Good, Average

and Below Average. The ACR for the period from 01.04.1988 to 30.11.1988 was Average and remarks were conveyed, but subsequently for the period 01.12.1988 to 31.03.1989, the ACR was Very Good. Similarly for the period from 01.04.1991 to 05.08.1991, the over all assessment of the report was recorded as Average and remarks were conveyed. However for the period from 01.08.1991 to 31.03.1992, the report was Very Good. The controversy with regard to the first claim of the plaintiff was in respect of ACR for the period of 1988-89 and 1991-92. As per aforesaid details, the report was Average/Good and Average respectively.

[13]. According to learned counsel for the appellant, plaintiff had seven Good ACRs out of ten for the period from 1983-84 to 1992-93. Learned counsel emphasized that the report of one year as a whole has to be considered and the same could not have been bifurcated into two parts. In view of Government instructions dated 09.05.1985 (Ex.D-3), the Department had decided and considered all the officers eligible for promotion, who had obtained at least 70% or more Good or better reports during the last ten years.

[14]. As against the aforesaid, defendants/respondents objected that all the employees, who had completed regular satisfactory service of 10/20 years were made eligible for first

and second higher standard pay scale provided that they render regular satisfactory service for preceding years. Plaintiff was not given higher standard scale from 01.04.1994 because his service record for the relevant period was not good. As soon as he came eligible, he was given the said scale of Rs.1640-2900/- w.e.f. 01.04.1995. So far as the second claim of the plaintiff was concerned the respondents took up the stand that the plaintiff could not qualify the department examination within the period of probation under Rule 12 of Civil Services Rules. Grant of such relief to the juniors, who also could not clear the test were granted exemption by the department could not be claimed as a ground for relief as the wrong even if, committed by the department could not have been allowed to be perpetuated by the department anymore. The plaintiff could not claim exemption as a mater of right, according to defendants/respondents the plaintiff as per letter Ex.D-3 had only six Good ACRs as on 01.01.1994 which were treated to be below 70%. On 01.04.1995, he was found entitled for the relief and, therefore, his basic pay was fixed as Rs.2120/- per month.

[15]. From the perusal of the record it was found that ACRs from 01.04.1988 to 30.11.1988 was Average, but ACR from 01.12.1988 to 31.03.1989 was Good. Again from 01.04.1991 to 05.08.1991, the ACR was Average, however from 01.08.1991 to

31.03.1992, the report was Very Good. In the same year, the ACRs were upgraded in the later period of the year. It was also found from the record that Average report for the year 1990-91 was only conveyed on 21.12.1994 and, therefore, the plaintiff was having 70% good record as on 01.01.1994. The aforesaid Average remarks communicated for the year 1990-91 could not be treated to be adverse as on 01.01.1994 as the remarks were only conveyed to the plaintiff on 21.12.1994.

[16]. The position of law as emerged from ***Brij Mohan Singh Chopra vs. State of Punjab, AIR 1987 SC 1201*** and ***K.K. Vaid vs. State of Haryana, 1990(1) RSJ 193*** was in the context of 70% good ACRs during the last ten years as per the criteria laid down in Government instruction dated 13.03.1987 was struck down in case of pre-mature retirement of the employee under Rule 3.26(a) of Punjab Civil Services Rules. Though no such direct proposition is involved in the present case, however the learned counsel for the respondents tried to extract some help from ***Surender Singh vs. State of Haryana, 1997(5) SLR 697*** on the ground that regular satisfactory service cannot include period of *ad hoc* services. No such proposition is involved in the present case as the said controversy was rested on the interpretation given by the Full Bench of this Court in ***Rakesh Kumar Singla vs. State of Haryana, 1995(3) PLR 411***. There

cannot be any consideration of *ad hoc* service in the present case for treating the same to be regular satisfactory service for the purpose of grant of higher standard pay scale to the plaintiff.

[17]. Regular satisfactory service as on 01.01.1994 in the context of 70% service record for the last 10 preceding years if computed by ignoring the over all report for the year 1990-91 would bring the case of the plaintiff within the zone of consideration for the purpose of grant of higher standard pay scale. Secondly the grant of Good report for the whole year of 1988-89 and Very Good for the whole year of 1989-90 would demonstrate that even if, Average report in the period from 01.04.1988 to 30.11.1988 was conveyed the same was upgraded in the same year as Good for the period of 01.12.1988 to 31.03.1989. The over all assessment for the year 1988-89 has to be taken as Good for the purpose of aforesaid relief. Similarly the report was Average for the period 01.04.1991 to 05.08.1991, but the same was upgraded to Very Good for the remaining period from 01.08.1991 to 31.03.1992. The Average report which was for earlier period in the same year was upgraded Very Good and, therefore, for the purpose of higher standard pay scale, the report of the entire period i.e. Very Good has to be considered. On the strength of these two facts, the first claim of the plaintiff has to be accepted and he

was entitled to the higher standard pay scale of Rs.1600-2660/- w.e.f. 01.01.1994 to then in the modified scale of Rs.1640-2900/- w.e.f. 01.04.1995. Therefore, the first question as framed by this Court is answered in favour of the plaintiff.

[18]. So far as second claim of the plaintiff was concerned, it was found that the plaintiff attained age of 55 years in the year 1997 as his date of birth was 12.07.1942. Plaintiff was promoted to the post of Assistant Treasury Officer on 05.06.1997 along with several other Assistant Superintendents. Similarly constituted junior employees, who were also promoted to the post of Assistant Treasury Officers were granted exemption from the departmental examination. The persons namely Har Sarup, Tara Singh, Veer Bhan and Sadhu Ram were granted increments though they did not pass departmental examination and they were granted exemption from passing the said test. The case of the plaintiff was ignored for the reasons best known to the defendants/respondents on the ground that he was not automatically entitled for the said relief of exemption even if, the same was granted in favour of his juniors. The wrong committed while granting relief to immediate juniors to the plaintiff was not allowed to be perpetuated in the case of plaintiff.

[19]. During course of arguments, this Court vide order dated 27.02.2016 pointed out the contents of the letter dated

09.07.1997 issued by the Financial Commissioner, Finance Department, Haryana in the context of policy decision on the subject of waiving requirement of passing departmental examination after the age of 55 years. The said policy came during existence of probation period of the plaintiff. In the cases of Har Sarup and others exemption was granted before the year 1997. Certainly the promotion in the case of plaintiff was prior to the policy decision dated 09.07.1997 and, therefore, the existing policy prior to 09.07.1997 authorising the competent authority to grant exemption from appearing in the departmental examination was in offing. It appears that the plaintiff completed 55 years of age on 12.07.1997 and at that time only letter dated 09.07.1997 passed by the Financial Commissioner, Finance Department, Haryana was in existence whereby Director Treasury and Accounts, Haryana was intimated that policy regarding exemption from passing the departmental examination be changed because most of the officers were not appearing in the departmental examination and they had been waiting upto the age of 55 years so that they could get exemption from passing departmental examination and this led to the inefficiency of the officers. It was also directed that concerned officer be intimated that they should pass the departmental examination in accordance with Rules.

[20]. All the aforestated junior employees of the plaintiff were granted exemption from passing departmental examination before 09.07.1997 as they might have attained age of 55 years (not clearly demonstrated on record) however in case of plaintiff the relief was not granted as the letter dated 09.07.1997 came into being by that time when he attained the age of 55 years as on 12.07.1997.

[21]. On 27.02.2016, learned State counsel was specifically asked in the context of letter dated 09.07.1997 issued by the Financial Commissioner, Finance Department, Haryana as to whether the needful was done in compliance thereto by the office of Director, Treasury and Accounts prior to 12.07.1997, the date on which the plaintiff attained age of 55 years. In addition to that the service record of the plaintiff was also examined. The office noting appearing on the service record of the plaintiff would show that his case regarding exemption was also considered by the competent authority from time to time. It would reveal that the case of plaintiff regarding exemption from departmental examination was considered as per office noting dated 07.05.1999. No intimation could be furnished by the respondents with regard to the compliance of the letter dated 09.07.1997 issued by the Financial Commissioner, Finance Department, Haryana in the context of stopping exemption from

passing departmental examination prior to 12.07.1997 the date on which plaintiff completed 55 years of age.

[22]. In view of aforesaid the case of the plaintiff should have been considered in terms of instructions prevailing prior to his date of completing 55 years of age, particularly when the said relief had already been given to K.C. Arya, Jagdish Lal, Har Sarup, Tara Singh, Veer Bhan and Sadhu Ram, who were juniors to the plaintiff and had completed 55 years of age prior to issuance of letter dated 09.07.1997.

[23]. In the light of aforesaid, requirement at the instance of the defendant/respondents the case of the plaintiff/appellant on second claim has to be treated at par with the case of juniors, who were granted the relief of exemption from appearing in the departmental examination. Even, it is found from the record that the case of the plaintiff was also considered for exemption from appearing in the departmental examination as per office noting dated 07.05.1999.

[24]. Looked from any angle, the case of the plaintiff on both the counts deserves to be accepted. Consequently, the second substantial question of law as formulated by this Court has to be answered in affirmative and plaintiff is entitled to the said relief as well.

[25]. In view of above discussion, the impugned judgments and decrees passed by both the Courts below are hereby set aside. Appeal is allowed, decreeing the suit of the plaintiff. However parties are left to bear other own costs.

July 12, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**