

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No. 795 of 2015 (O&M)
Date of decision: 29.3.2016

Satinder Pal

.. Appellant

v.

The Punjab Mandi Board and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. R. K. Arora, Advocate for the appellant.
Mr. Sanjeev Sharma, Advocate for the respondents.

...

Rajesh Bindal J.

Aggrieved against the order passed by the learned Single Judge dismissing the writ petition filed by the appellant claiming gratuity, leave encashment and pensionary benefits on account of death of her husband way back in the year 1985, the appellant has filed the present intra-court appeal. Along with the appeal, an application seeking condonation of delay of 204 days in filing thereof has also been filed.

Learned counsel for the appellant submitted that late husband of the appellant was appointed as Auction Recorder in Market Committee, Chogawan, Tehsil Ajnala, District Amritsar for 89 days on 13.5.1980. Thereafter, he was arbitrarily not allowed to work from 1.9.1980. He raised an industrial dispute. Though the Labour Court declined any relief, however, this court directed that late husband of the appellant be deemed to be in service from 9.8.1980 till 30.9.1985, as he died on 1.10.1985. He was granted back wages for that period treating him to be in deemed service.

The writ petition was disposed of on 21.9.1987. The present petition, which was dismissed by the learned Single Judge, was filed seeking release of gratuity, leave encashment and family pension along with interest. It was submitted that once the late husband of the appellant was treated to be in deemed service, she was entitled for those benefits. The learned Single Judge has wrongly declined to grant that relief.

On the other hand, learned counsel for the respondents submitted that the late husband of the appellant not being in regular service was not entitled to either the pension or gratuity. He actually worked only for 109 days. Rest are the wages granted to him by treating him in deemed service upto the date of his death.

After hearing learned counsel for the parties, we do not find any reason to interfere in the order passed by the learned Single Judge. It is not in dispute that late husband of the appellant was appointed for 89 days on 13.5.1980. His period of engagement expired on 1.9.1980, however, he was allowed to continue till 30.8.1980, as the resolution passed by the Market Committee to extend his period of engagement was later on cancelled on 1.9.1980. An industrial dispute was raised. The Labour Court did not grant any relief to the workman, however, this court in CWP No. 2652 of 1986 filed by the appellant treated her husband to be in deemed service upto 30.9.1985, as he died on 1.10.1985, and directed for payment of wages for that period. Meaning thereby the actual period for which the late husband of the appellant worked was 109 days. Rest is the period for which he was deemed to be in service. There is no order passed regarding regularisation of services of the late husband of the appellant entitling him pension, which is admissible to a regular employee. A work charged employee has not been held entitled to the pensionary benefits, unless his/her services are regularised. For the purpose, reference can be made to the judgment of Full Bench of this court in CWP No. 7072 of 1994—Lakha Singh v. State of Punjab and others, decided on 21.10.2015.

In terms of the Punjab State Agricultural Marketing Board and Market Committees Employees Provident Fund and Gratuity Rules, 1965, for an employee to be entitled to receive provident fund and gratuity, 10%

deduction has to be made from his salary. Where a temporary employee is subsequently made permanent, the arrears of subscription due for the previous period before his regular appointment is to be recovered in instalments. In the case in hand, since husband of the appellant was never a regular employee, no contribution was deducted from his salary towards provident fund and gratuity, hence, he would not be entitled to even that relief. Even otherwise, the writ petition challenging the award of the Labour Court was allowed by this court on 21.9.1987 directing payment of salary treating the husband of the appellant to be in deemed service. The writ petition seeking gratuity, leave encashment, pensionary benefits etc. was filed more than 7 years thereafter.

For the reasons mentioned above, we do not find any merit in the present appeal. Accordingly, the same is dismissed. Consequently, the application for condonation of delay in filing the appeal is also dismissed.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

29.3.2016
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(Refer to Reporter)