

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

LPA No.562 of 2016 (O&M)

Date of decision: 29.07.2016

S.K. Jain

.....Appellant

Versus

The Punjab Agro Industries Corporation Ltd.

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. K.L. Arora, Advocate for appellant.

DARSHAN SINGH J.

CM No.1185-LPA of 2016

This application has been moved under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 for condonation of delay of 10 days in filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the same is allowed and the delay of 10 days in filing the present appeal is hereby condoned.

LPA No.562 of 2016

The present appeal has been preferred against the order dated 01.02.2016 whereby the Civil Writ Petition No.12361 of 1994 filed by the appellant has been dismissed by the learned Single Judge.

2. The appellant has filed the writ petition for giving direction to the respondent-corporation to give salary to the petitioner with effect from 16.04.1991 with continuity of service along with interest.

3. The appellant joined the service of respondent-corporation as an Accountant in the year 1975. He submitted his resignation on 03.08.1983. The said resignation was withdrawn by him on 26.06.1984 and requested the respondent-corporation to allow him to join the duties, which was not allowed. He raised the industrial dispute, which was referred to the Labour Court, Union Territory, Chandigarh. The Labour Court, UT, Chandigarh vide award dated 11.09.1987 ordered his reinstatement with continuity of service without back wages. He filed the writ petition No.7154 of 1987 for grant of full back wages as there was no reason to deny him the back wages. This Court vide order dated 07.04.1989 left the matter to be decided by the Labour Court the claim of the petitioner with respect to back wages under Section 33 of the Industrial Dispute Act, 1947. The petitioner moved the application under Section 33-C(2) of the Industrial Dispute Act before the Labour Court, UT Chandigarh. The Labour Court vide order dated 05.02.1991 held the applicant-appellant entitled to the back wages right from 26.06.1984. He was also held entitled to interest at the rate of 12% on the due amount. The respondent-corporation challenged the said order of the Labour Court by filing the writ petition No.4906 of 1991. He

was allowed to join the duties as an Accountant from 16.04.1991. But he was not paid the salary with continuity of service. So, he moved the Civil Miscellaneous application No.3902 of 1994 in Civil Writ Petition No.4906 of 1991, which was dismissed by this Court being not maintainable on 01.08.1994. On 18.03.1994, the respondent-corporation fixed the salary of the petitioner but on the lower side. His juniors were getting more salary. He was also not awarded the interest. Hence, the petition.

4. The respondent-corporation contested the petition on the grounds *inter alia* that the appellant has refused to accept the posting order and deliberately did not join the duties at Gurdaspur for sufficient long period. In Writ Petition No.4906 of 1991 filed by the respondent-corporation the operation of the order dated 05.02.1991 of the Labour Court was stayed. As per the observation of this Court at the motion hearing of the said writ petition, the petitioner joined the duties at Gurdaspur. Except the disputed period, which is the subject matter of the Writ Petition No.4906 of 1991 the benefits were given to the petitioner and he was drawing the basic salary of Rs.1950/- plus allowances as on 01.04.1994. Next increment was due from 01.04.1995. His pay was rightly fixed as the benefit for disputed period cannot be given during the pendency of Writ Petition No.4906 of 1991. With these pleas, the respondent pleaded for dismissal of the writ petition.

5. The learned Single Judge, on appreciating the material on record and contentions raised by the parties, dismissed the writ petition vide the impugned judgment/order dated 01.02.2016. Hence, this appeal.

6. We have heard learned counsel for the appellant and have

meticulously examined the record of the case.

7. Learned counsel for the appellant contended that the learned Single Judge has not awarded the interest due to the appellant for the entire relevant period. He contended that even in reply to the Civil Miscellaneous application No.3902 of 1994 the respondent-corporation has admitted that disputed period was from 26.06.1984 to 15.04.1991 but the learned Single Judge has granted the interest only for the period with effect from 26.06.1984 to 15.09.1987. He further contended that the order dated 05.02.1991 passed by the Labour Court has attained finality but even that order has been erroneously modified by the learned Single Judge. Thus, he contended that the appellant is entitled to interest for the entire period during which his arrears of salary remained unpaid.

8. We have duly considered the aforesaid contentions.

9. On appreciation of the entire material placed before the learned Single Judge the appellant was held entitled to interest for the disputed period with effect from 26.6.1984 to 15.09.1987 at the rate of 12% as awarded by the Labour Court. It is not disputed that the appellant has even moved the Civil Miscellaneous application No.2578 of 2016 for correction of clerical error/mistake in the impugned judgment dated 01.02.2016. The same was also dismissed by the learned Single Judge vide order dated 04.03.2016 holding that no clarification of the order was required.

10. The writ court is not the executing court. The dispute regarding calculation of the interest in view of the controversial factual position was possibly not the function of the writ court. Even then the

learned Single Judge has granted the relief of interest to the appellant for the period from 26.06.1984 to 15.09.1987 while exercising the discretion in favour of the appellant. If the appellant was so interested in meticulous calculation of interest due and the period of entitlement, he could have sought the legal remedy of the execution of the order of the Labour Court in accordance with law. But he has lost that opportunity. Thus, no fault can be found with the discretion exercised by the learned Single Judge and there is nothing to interfere with the impugned judgment.

11. Resultantly, the present appeal being devoid of merits, is hereby dismissed.

(SURYA KANT)
JUDGE

(DARSHAN SINGH)
JUDGE

29.07.2016

sunil yadav

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No