

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

RSA No.1455 of 2013 (O&M)

Date of decision : 18.10.2016

Gurmail Singh

...Appellant

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ravi Kamal Gupta, Advocate for the appellant.

Mr. Amit Chaudhary, Addl. A.G. Punjab.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the dismissal of the suit vide judgment and decree under challenge.

Mr. Ravi Kamal Gupta, learned counsel appearing on behalf of appellant-plaintiff submits that suit for mandatory injunction was filed and averments was made that the appellant was disabled/handicapped person as had been drawing pension from the defendants at the rate of ₹200/- per month for the last seven years under the scheme thus in vague. The appellant was examined and declared physically handicapped and certificate in this context was issued on 04.04.2005 but was flabbergasted while seeing the letter dated 19.04.2005, whereby, disability pension was discontinued.

He further submits that alleged arbitrary action of discontinuance was on the

basis of the Notification dated 24.06.1996, whereby person suffering 50% of the disability was held entitled to disability pension. He submits that Notification did not envisage its applicability from the retrospective effect, thus, therefore considered prospectively. Both the Courts below have heavily relied upon the statements of PWs whereas cross-examination has totally been ignored and feigned ignorance regarding its contents etc., thus, there is illegality and perversity.

Per Contra, Mr. Amit Chaudhary, learned counsel appearing on behalf of State submits that there is no illegality and perversity in the findings rendered by both the Courts below. Judgments are based on the appreciation of the oral and documentary evidence. No ground for interference is made out. Since, the appellant-plaintiff is not suffering 50% disability ailment, therefore, he is not entitled to the disability pension, accordingly it was discontinued and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit in the submission of Mr. Ravi Kamal Gupta, for, Notification as noticed above do not envisage the applicability from retrospective effect. It is settled law that where Notification do not indicate, it would have retrospective effect, would apply prospectively. It is conceded position on record that appellant has been receiving disability pension at the rate of ₹200/- per month, therefore, the alleged action of the respondent in my view is ex facie illegal, erroneous and arbitrary and cannot be accepted. The persons who are drawing the benefit of the scheme cannot be made to suffer owing to the promulgation

of the subsequent Notification which does not have retrospective effect in the absence of the applicability.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 – 29]”*

“27. Even the reference to Article 254 of the Constitution

was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned. For the reasons aforementioned, impugned judgment and decree of both the Courts below are hereby set aside.

Suit of the appellant-plaintiff is hereby decreed.

Resultantly, appeal stands allowed.

Decree sheet is ordered to be prepared.

18.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No