

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2397 of 2014

Date of Decision:- 3.5.2016.

Shakuntla Devi

.....Appellant

Versus

State of Haryana and others

.....Respondents

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

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?

Present: Mr. Sandeep Singal, Advocate for the appellant.

Mr. R.K. Makkad, DAG, Haryana.

P.B. BAJANTHRI, J.

1.) In the present appeal, the appellant has questioned the validity of the impugned judgments and decrees passed by the learned Courts below dated 27.3.2012 and 23.1.2014.

2.) The appellant's husband was appointed as a Conductor on 13.10.1971. On the allegation of misappropriation of ₹ 22.50, he was chargesheeted on 29.6.1989. Pursuant to the inquiry proceedings, his services were terminated on 25.9.1990. It is learned that he raised an industrial dispute before the Labour Court, Rohtak. On 4.9.2008, the Industrial Tribunal-cum-Labour Court, Rohtak set aside the order of termination dated 25.9.1990 and order

dated 14.7.1997 of State Transport Commissioner, Haryana, Chandigarh. The appellant will get 50% back wages from the date of demand notice i.e. from 15.9.1997 till the death of the deceased Satinder Singh i.e. 7.5.2002.

3.) Deceased Satinder Singh died on 7.5.2002 during pendency of the Reference No.70/1999. The State Government reference dated 17.6.1999 is to the extent that *“Whether termination of services of Sh. Satinder Singh is justified and if not, to what relief he is entitled to?”* Scope of reference before the Labour Court has been decided by the Labour Court after taking into consideration that Sh. Satinder Singh died on 7.5.2002 and only 50% back wages has been awarded while setting aside the termination order.

4.) On 7.5.2002, the date on which Satinder Singh died, Reference No.70 of 1999 was not decided by the Labour Court. It was decided only on 4.9.2008. The question for consideration before the Labour Court was only to the extent of validity of the termination order and not the consequential benefits after the death of Satinder Singh. The LR's – appellants have cause of action in respect of pensionary benefits and other benefits arose only as and when the order of termination is set aside by the Labour Court. Till then, the LR's – appellants did not have cause of action, therefore, they have rightly approached the trial Court seeking for relief like DCRG, gratuity, leave encashment, GPF Pension etc. along with 18 % interest per annum.

5.) The trial Court as well as Appellate Court erred in holding that there is a *res judicata* for the reasons that the appellants are LR's of late Sh. Satinder Singh and are entitled for retiral benefits after setting aside the order of termination only. The learned trial Court as well as Appellate Court failed to take note of the dates and events and the cause of action accrued to the appellants.

6.) The learned counsel for the appellants relied on decision of the Hon'ble Supreme Court reported in **1979 AIR (SC) 1356** **(Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and another)**. The Hon'ble Supreme Court laid down the principle what is the scope of reference to be decided in an industrial dispute before the Industrial Tribunal. It is evident that a reference made in the present case is only to the extent that whether the termination of deceased Satinder Singh was justified and if not, to what relief he is entitled to? Due to the death of Sh. Satinder Singh on 7.5.2002 during pendency of the reference before the Labour Court, the Labour Court restricted relief only to the back wages of 50%. Once the order of termination is set aside by the Labour Court on 4.9.2008, LR's have cause of action to seek consequential benefits which were due to Late Sh. Satinder Singh. In view of these facts and circumstances, the trial Court as well as Appellate Court have erred in holding that claim of the appellant falls under *res judicata* principle. The decision of the trial Court as well as Appellate Court are set aside. The official respondents are directed to examine the claim

made before Trial Court and to disburse the same along with 9% interest within a period of three months from today.

7.) The appeal stands disposed of.

(P.B. BAJANTHRI)
JUDGE

May 3, 2016.

sandeep sethi