

RSA-341-2014(O&M)

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In the High Court of Punjab and Haryana at Chandigarh.

RSA-341-2014(O&M)

Date of Decision:22.01.2016

Haryana State Agricultural Marketing Board and another

...Petitioners

Versus

Ram Avtar and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Udey Vir Singh, Advocate for
Mr. Partap Singh, Advocate,
for the appellants.

Mr. N.C. Kinra, Advocate and
Mr. Harsh Kinra, Advocate,
for the respondent No1.

SABINA, J.

Respondent had filed suit for declaration
challenging the order dated 02.11.2007.

Case of the respondent, in brief, was that he was
working as Mandi Supervisor-cum-Fee Collector with the
Market Committee. The respondent was physically
handicapped. Respondent was born on 06.03.1948 and in
normal course, as per Rules, he was to retire in March 2006.
Respondent was got medically examined and as per the report
of the District Medical Board dated 25.01.2006, respondent
was suffering from physical disability to the extent of 70%.

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Hence, the respondent was allowed to continue in service till he was to attain the age of 60 years vide order dated 30.03.2006. Defendant No.1, abruptly vide order dated 02.11.2007 withdrew the order dated 30.03.2006. Hence, the suit filed by the respondent.

Defendant No.1 in its written statement averred that the order dated 30.03.2006 was withdrawn on receipt of opinion of the Government on Medical Certificate that the respondent was not entitled to continue in service upto the age of 60 years as he lacked 70% total physical disability.

Defendants No.2 and 3 adopted the written statement filed by defendant No.1.

On the pleadings of the parties, following issues were framed by the trial Court.:-

“1. Whether the order dated 02.11.07 passed by defendant No. 1 is null and void and not binding on the plaintiff and plaintiff is entitled to be deemed to have continued in service up to 31.3.08 the extended date of his retirement and plaintiff is lawfully entitled to the arrears of salary and allowances for the period from 3.11.07 to 31.3.08 on the grounds as alleged? OPP

2. Whether the plaintiff is entitled for pensionary benefits and on the basis of the basic pay of Rs. 5900/- which he would

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have drawn on 31.3.08 on the ground alleged? OPP

3. Whether the plaintiff is entitled for interest? If yes, at what rate? OPP

4. Whether the civil court has no jurisdiction to try and file the present suit in its present form? OPD

5. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 03.09.2012 dismissed the suit of the respondent. In an appeal filed by the respondent, the First Appellate Court vide judgment/decreed dated 03.09.2013 decreed the suit of the respondent. Hence, the present appeal by the applicants-defendants.

Learned counsel for the appellants has submitted that respondent did not full-fill the criteria of total physical disability to the extent of 70%, and he could not be permitted to continue in service beyond the age of 58 years.

Learned counsel for the respondent No.1, on the other hand, has submitted that as per the medical certificate Exhibit P5/DW1/2, respondent was having total physical disability to the extent of 70%. Hence, the respondent was liable to be continue in service till he attained the age of 60 years. Learned counsel has further submitted that

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respondent had worked for 19 months out of 24 months of extension granted to him.

Admittedly, as per the circular issued by the State, the employees were entitled for extension of their service from 58 years to 60 years if they possessed minimum degree of physical disability of 70% or more. Respondent was examined by the disability Medical Board headed by Civil Surgeon, Narnaul. As per Exhibit P-5/DW1/2, the total physical disability suffered by the respondent was 70%. Basing reliance on certificate Exhibit P-5/DW1/2. Order dated 30.03.2006 Exhibit P-11 was passed and respondent was allowed to continue in service till he attained the age of 60 years. As per Exhibit P-10, it was opined by the PGIMS, Rohtak that the physical disability certificate was liable to be issued by the Civil Surgeon. Since, the respondent was suffering total disability to the extent of 70% as per Exhibit P-5, the extension in service granted to the respondent vide order dated 30.03.2006 was liable to be upheld.

The defendants fell in error while withdrawing the order dated 30.03.2006 vide order dated 02.11.2007. Order Exhibit P-15 dated 02.11.2007 was passed without affording any opportunity of hearing to the respondent and consequently resulted in miscarriage of justice. Order dated 02.11.2007 was passed placing reliance on clarification dated

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18.09.2007 received from the Government. As per letter dated 18.09.2007, Exhibit DW1/5, it was intimated that handicap was not a mathematical equation. As such percentage of 30% disability and 40% ailment shown in the medical certificate submitted by Lakhvinder Singh, Accountant could not be clubbed. As per the above letter, the percentage of disability of 30% and 40% on the ailment could not be clubbed, whereas, in the present case respondent had not clubbed the disability qua his eye and left gluteal region. As per Exhibit P-5, respondent had 30% left eye disability and 60% left gluteal region. The Medical Board itself had calculated the total percentage of disability suffered by the respondent which came to 70%. Therefore, the disability assessed by the Medical Board was liable to prevail and Medical Board had not mathematically added up the disability qua left eye and left gluteal region to assess the overall disability suffered by the respondent vide Exhibit P-5.

Thus, the learned First Appellate Court rightly decreed the suit of the respondent. No substantial question of law arises in this case, warranting interference by this court.

Dismissed.

January 22, 2016
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(SABINA)
JUDGE