

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5881 of 2014 (O&M)

Date of Decision:- 23.5.2016.

The Punjab State Electricity Board and others

.....Appellants

Versus

Rajinder

.....Respondent

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: Ms. Geeta Sharma, Advocate for the appellants.

Mr. P.K. Goklaney, Advocate for the respondent.

P.B. BAJANTHRI, J.

1.) In the instant appeal, the appellant has questioned the validity of the order dated 4.10.2013 of the Additional District Judge, Fazilka in the Civil Appeal RBT No. 04 of 20.11.2012/06.09.2013.

2.) The respondent was appointed as Meter Reader in the year 1965. He was re-designated as Lower Division Clerk (LDC) on 18.8.1965. Further he was promoted to the post of Upper Division Clerk (UDC) on 01.11.1981. He took voluntary retirement on 31.1.2003. The respondent's claim for time bound benefit of promotional increment(s) on completion of 23 years of service w.e.f.

1.1.1996 it is stated that the said scheme was introduced on 23.4.1990 and the respondent has retired from service on 31.1.2003. Therefore, cause of action accrued to the respondent in the year 1990. The respondent filed a suit for declaration that he is entitled for benefit under time bound benefit of promotional increment(s) on completion of 23 years of service w.e.f.1.1.1996. The Trial Court rejected claim of the respondent on the sole ground of delay/limitation. Feeling aggrieved by the order of Trial Court, the respondent preferred Civil Appeal before the Appellate Court which was decided on 4.10.2013. The Appellate Court considered the grievance of the respondent while dealing the question of limitation/delay in filing suit. Benefit of 23 years of service promotional increment would be a recurring cause of action. Therefore, there is no delay in approaching the Court. However, taking into consideration the delay factor, the Appellate Court restricted arrears of pension and pensionary benefits only to the extent of 38 months prior to 30.5.2008 along with 12% interest per annum from the date of accrual till its realization.

3.) The appellants' counsel submitted that there is inordinate delay on the part of the respondent in seeking benefit of 23 years of service promotional increment which was due to him in the year 1996 with reference to the Scheme introduced in the year 1990. In other words, the respondent should have filed a suit in the year 1993. He had approached the Trial Court in the year 2008. Therefore, there is

delay. The same has not been taken into consideration by the Appellate Court. On this ground alone, the Appellate Court's order dated 4.10.2013 is liable to be set aside. It was further submitted by the appellants' counsel that respondent has taken voluntary retirement on 31.1.2003. All his retiral benefits have been settled in the year 2003 itself. Therefore, nothing is due from the appellants. If the order of the Appellate Court dated 4.10.2013 is to be implemented at this juncture, it would be very hard to set right the records for refixation of pay and pension of the respondent.

4.) Heard learned counsel for the parties.

5.) The crux of the matter is whether the respondent is entitled for 23 years of service promotional increment w.e.f. the date on which he completed 23 years of service (in the year 1996) or not. As and when the scheme was introduced in the year 1990, it was bounden duty of the appellants to extend the benefit of 23 years of service promotional increment to each and every staff on the record of the Department. Therefore, there is a lapse on the part of the appellants also. At the same time, the respondent also did not claim the benefit in the year 1990, the date on which the scheme was introduced. He slept over the matter for nearly 18 years and thereafter he has approached Trial Court by filing a suit.

6.) Delay in claiming benefit of promotional increment may not be a hurdle to the respondent for the reason that no third party right would be affected. Supreme Court in the case of **M.R. Gupta**

Vs. Union of India and others 1995 SCC (5) 628 wherein it is held that increment and pay fixation is recurring cause of action. There is no embargo for granting 23 years of service promotional increment to an employee who has not passed the departmental exam. In this regard, this Court in **RSA No.2726 of 2008** decided on 9.9.2008 **(Punjab State Elect. Board, Patiala and others Vs. Jiwan Singh)** held that no examination is required. Therefore, the respondent is entitled for promotional increment as and when it was due to him. Having regard to the fact that the respondent has approached the Court belatedly, as such, the Appellate Court has granted the benefit only to the extent of 38 months prior to the filing of suit along with the interest @ 12% per annum from the date of accrual till its realization. It is made clear that respondent is not entitled to interest due to delay in claiming the relief. The appellants are directed to set right the fixation of pay, pension and release the difference of pay and pension within a period of two months. If the arrears of pay and pension has not been released within two months thereafter, the respondent is entitled for interest @ 12% per annum.

7.) Appeal stands disposed of.

(P.B. BAJANTHRI)
JUDGE

May 23, 2016.

sandeep sethi