

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-361-2004 (O&M)

Date of Decision:- 21.12.2017

State of Punjab and others

.....Appellants

Versus

Jangir Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Amit Mehta, Sr. DAG, Punjab,
for the appellants.

Mr. Ashish Grover, Advocate,
for the respondent.

MAHABIR SINGH SINDHU, J. (Oral)

State of Punjab and its officers have filed the present Regular Second Appeal against the impugned judgment and decree dated 01.09.2003, passed by learned District Judge, Bathinda, vide which their first appeal has been dismissed and the judgment and decree dated 10.01.2003, rendered by learned Senior Civil Judge (Sr. Division), Bathinda, thereby decreeing a declaratory suit filed by the plaintiff-respondent and holding him entitled for fixation of his pay @ ₹1800 per month w.e.f. 11.06.1990 i.e. date of joining on the post of constable along with benefit of arrears of pay and pension to the extent of 38 months before the filing of the suit, has been upheld.

2. Brief facts of the case are that the plaintiff-respondent filed a suit for declaration to the effect that he is entitled for counting of his

military service rendered during emergency as per the Punjab Government National Emergency (Concession) Rules, 1965 (for short "Rules of 1965") for fixation of his pay under Rule 7.20 of the Punjab Civil Services Rules, Volume-II, Part-II, (for short "CSR") at ₹1800/- (Rupees Eighteen Hundred) per month, w.e.f. his joining as constable in Punjab Police i.e. 11.06.1990, instead of ₹1000/- p.m., arrears of pay and revised pensionary benefits along with interest @ 24% per annum and all consequential service benefits.

The plaintiff pleaded that he was appointed as constable on 11.06.1990 as Bomb Disposal Special Duty (Explosive Expert) at Bathinda and prior thereto he had rendered service during the emergency in Indian Army w.e.f. 26.10.1962 to 17.12.1977 (11 years and 4 months), but no benefit has been granted to him towards fixation of pay, increments and seniority at the time of joining on the post of constable in Punjab Police. It is further pleaded that when plaintiff was discharged from Army, he was getting the basic pay of ₹1800/- per month and at the time of joining the post of constable on 11.06.1990, his basic pay was fixed at ₹1000/- per month; but in view of the provisions of Rule 7.20 of CSR, he was entitled to get his basic pay fixed @ ₹1800/- instead of ₹1000/- as on 11.06.1990; further revised pay, pension and gratuity etc. It is also pleaded that the plaintiff retired from Punjab Police on 28.02.2001 after attaining the age of superannuation, but till date he has not received his GPF amounting to ₹1,18,658/- up to 1999-2000 and further from 01.04.2000 to 01.09.2000 of ₹12,000/- along with interest and including

the benefit of his eight years' service towards increments (proficiency step up). It is also pleaded that the plaintiff-respondent also served a legal notice under Section 80 of the Code of Civil Procedure upon the defendants-appellants on 07.09.2001, but despite that, no action was taken. Hence, that necessitated to filing of the present suit.

In paragraph 7 of the plaint it is pleaded that cause of action for filing of the suit arose on 28.02.2001, when the plaintiff retired from police service and the same is still recurring.

3. Defendants-appellants filed their written statement and raised preliminary objections to the effect that the suit is time barred and thus deserves to be dismissed. It was also raised in preliminary objection No.3 that the plaintiff is estopped from filing the present suit as he joined his service as constable in Punjab Police on 11.06.1990 and retired on 28.02.2001 and during all this period he had been accepting the pay, which was legally admissible to him and he cannot be allowed to raise the plea of fixation of pay at this stage.

On merits, it has been submitted that the plaintiff-respondent was granted the benefit of five annual increments, vide office order No.2256 dated 15.11.2000 and he accepted the same. So far as joining of the police department on the post of constable on 11.06.1990 is concerned, the same is admitted and the pay scale to the post of constable at that time of his joining is stated to be 950-1800 and basic pay of the plaintiff-respondent was fixed at ₹1000/-. It has also been submitted that Rules 7.19 and 7.20 of CSR, have already been omitted w.e.f. 06.12.1992, vide gazette notification dated 18.09.1993, hence, he is not

entitled to get any benefit of the same. It is also submitted that bill No.1022 dated 25.12.2001 for an amount of ₹1,49,741/- towards GPF was duly paid to the plaintiff-respondent by way of demand draft on 08.02.2002. As far as entitlement of eight years' service benefit for increment is concerned, the same has been denied on account of the fact that he could not pass the next promotion course and according to new amendment, vide letter No.7/52/2000-5PP1/18355 dated 07.12.2001, the benefit of eight years service for increment of the plaintiff-respondent was stated to be under process and the payment was to be made in due course.

No replication has been filed by the plaintiff-respondent.

4. On the basis of the pleadings of the parties, learned trial Court framed seven issues, which read as under: -

- “1. Whether plaintiff is entitled for military service benefits for the service rendered during emergency? OPP
2. Whether plaintiff is entitled for protection of his pay? OPP
3. Whether suit is within limitation? OPP
4. Whether the suit is not maintainable? OPD
5. Whether plaintiff is estopped by his act and conduct? OPD
6. Whether plaintiff is entitled for declaration and consequential relief as prayed for? OPP
7. Relief.”

In order to prove his case, plaintiff-respondent himself appeared as PW1 and brought on record the documentary evidence as

Exhibits P-1 to P-17 and which are as under: -

- “Ex.P1 Last Pay Certificate.
- Ex.P2 Discharge certificate dated 31.12.1987 (premature retirement at his own request, after 25 years, 7 months and 7 days).
- Ex.P3 Memo No.573 dated 17.12.2001 regarding payment of GP Fund.
- Ex.P4 Legal Notice dated 10.01.2002.
- Ex.P5 Documents produced by the Department
- Ex.P6 Compensatory allowance amount of ₹1,49,741.
- Ex.P7 Circular letter dated 17.12.2001 for implementation of 4th Punjab Pay Commission under ACP Scheme.
- Ex.P8 Communication/letter dated 12.10.2000.
- Ex.P9 Order dated 14.11.2000.
- Ex.P10 Letter No.1583/SPLA dated 28.07.2001.
- Ex.P11 Letter No.8486 dated 23.08.2001.
- Ex.P12 Character and Service Roll dated 11.06.1990.
- Ex.P13 Service record
- Ex.P14 Details of retiral benefits dated 10.07.2002.
- Ex.P15 Compensatory allowance- Bill No.1022 dated 25.12.2001 for an amount of ₹1,49,741/- towards GP fund.
- Ex.P16 Compensatory allowance - Bill No.229 dated 24.05.2001 for an amount of ₹37,843/-.
- Ex.P17 Compensatory allowance - Bill No.xxx dated 14.03.2001 for an amount of ₹34,792/-.”

On the other hand, the defendants-appellants examined ASI Jaspal Singh as DW-1.

5. After hearing both the sides and taking into consideration the material available on record, learned trial Court decided issues No.1 and

2 in favour of the plaintiff-respondent and came to the conclusion that although the Rule 7.20 of CSR, has been omitted in the year 1993, but the plaintiff-respondent joined his services on 11.06.1990, therefore, he is entitled for the benefit of said rule for counting of military service benefits. Learned trial Court has also come to the conclusion that at the time of retirement of the plaintiff-respondent from Indian Army, his basic pay was ₹1800 per month and thus, he is entitled for protection of his basic pay and decided issues No.1 and 2 in favour of the plaintiff-respondent. While deciding issue No.3, learned trial Court came to the conclusion that cause of action regarding pay and pensionary benefits is a recurring cause of action and the plaintiff-respondent is entitled for the same every month. Issues No.4 to 6 were also decided in favour of the plaintiff-respondent and ultimately while deciding issue No.7, pertaining to relief, the suit was decreed by learned trial Court vide judgment and decree dated 10.01.2003 and held that the plaintiff-respondent is entitled for fixation of his pay @ ₹1800/- per month w.e.f. 11.06.1990 when he joined on the post of constable, but his arrears of pay and pension were restricted to 38 months prior to the date of filing of the suit.

6. Aggrieved against the judgment and decree passed by learned trial Court, the defendants-appellants preferred an appeal and it was submitted before the learned first Appellate Court that the plaintiff-respondent rendered military service during emergency period w.e.f. 26.10.1962 to 10.01.1968 i.e. 5 years, 9 months and 15 days and as such he was entitled only for five annual increments at the initial stage of his entry in the Punjab Police as constable and there is no rule existing

according to which he is entitled for protection of his last pay drawn in the Indian Army. It had also been submitted that five advance increments were already granted to the plaintiff-respondent and Rule 7.20 of CSR, had been omitted w.e.f. 6.12.1992, vide notification dated 18.09.1993, therefore, he was not entitled for the benefit of the same. Learned first appellate Court while passing the impugned judgment and decree came to the conclusion that the defendants-appellants cannot take the benefit of the fact that Rule 7.20 of CSR, had been omitted in the year 1993, as the plaintiff-respondent joined his services on the post of constable on 11.06.1990 and at that time the rule was very much in force. Learned first appellate Court also came to the conclusion that the defendants-appellants have failed to show any rule or provision(s) of law according to which the plaintiff-respondent was entitled to only five annual increments at the initial entry in Punjab Police on the post of constable and ultimately dismissed the appeal with costs.

7. Hence, the present Regular Second Appeal.

8. Learned counsel for the defendants-appellants has made the submissions: - (i) that the plaintiff-respondent has already been granted the benefits of five annual increments right from the time of his initial entry into service as constable in Punjab Police i.e. 16.06.1990 and he has duly accepted the same and never challenged; and (ii) that Rule 7.20 of CSR already stood omitted w.e.f. 06.12.1992 by way of a gazette notification dated 18.09.1993 and the plaintiff-appellant has retired from Punjab Police after attaining the age of superannuation w.e.f. 28.02.2001, but the present suit has been filed on 03.01.2002; therefore, both the

learned Courts below have committed a grave error of law while decreeing the suit, hence the appeal deserves to be accepted.

On the other hand, learned counsel for the plaintiff-respondent submitted that there is no merits in the contentions of the learned counsel for the defendants-appellants and the impugned judgments and decrees passed by both the Courts below are perfectly legal and valid and do not require any interference by this Court while entertaining the present Regular Second Appeal.

9. Heard learned counsel for both the parties and perused the record carefully. For deciding the present matter in controversy, the point for determination as a substantial question of law is as under: -

“(1) Whether the impugned judgments and decrees passed by both the learned Courts below while granting the benefit of military service to the plaintiff-respondent and ordering for fixation of his pay @ ₹1800 per month on the date of his entry into service on the post of constable in Punjab Police w.e.f. 11.06.1990 is legally sustainable or not?”

10. The plaintiff-respondent appeared as PW-1 and stated that he joined on the post of constable in Punjab Police on 11.06.1990 after rendering military service from 25.05.1962 to 31.12.1987 i.e. 25 years, 7 months and six days and his basic pay was fixed as ₹1000/- on 11.06.1990, but when he retired from the Indian Army, his basic pay was Rs.1800/- (Rupees Eighteen Thousand) per month. He has brought on record his last pay certificate (Ex.P1) and discharge certificate (Ex.P2) respectively. He has also brought on record the copy of order dated

17.12.2001 (Ex.P3) to show that the payment of GPF was made to him on 14.02.2002. He has further deposed that he was not paid arrears of proficiency step-up, but the same has been released during pendency of the suit and arrears were paid to him up to 31.12.2000 and retired from the post of constable on 28.02.2001. In his cross-examination, plaintiff-respondent (PW1) stated that pay scale for the post of constable on 11.06.1990 was 950-1800 and at the time of joining as constable, his basic pay was fixed at ₹1000/-. He has admitted that the amount of ₹1,49,741/- was received by him towards GPF, vide demand draft dated 08.06.2002.

11. DW-1 ASI Jaspal Singh, In-charge Civil Suit Branch, Office of Senior Superintendent of Police, Bathinda, deposed that the plaintiff-respondent has already been given the benefit of five annual increments towards his military service. This witness has also stated that the plaintiff has been given the benefit of eight years service increment, which was previously under consideration. DW-1 has stated that the plaintiff-respondent rendered military service w.e.f. 26.10.1962 to 17.12.1977.

12. Before proceeding with the matter, it is necessary to reproduce Rule 7.20 of CSR prior to its omission by way of gazette notification 18.09.1993 and the same reads as under: -

“(a) When a Commissioned Officer formerly in military service obtains employment in Civil Department after having been granted military pension, he shall continue to draw his military pension. His pay on re-employment shall be fixed at the minimum of the time scale of the Civil post in which he is re-employed. He shall be allowed to draw usual annual increment till the pay in the civil post plus pension and pension equivalent of

other retirement benefits taken together minus fifty rupees do not exceed the maximum of the scale of the Civil post in which he is re-employed.

(b) When a junior Commissioned Officer or other rank formerly in military service obtain employment in Civil Department, after having been granted military pension, he shall continue to draw his military pension. His pay in the Civil post shall be fixed at a stage in the time scale of the Civil post which is equal to the basic pay exclusive of allowances of any kind drawn at the time of retirement or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference to be absorbed in to next increment, subject to the condition that it shall not in any case be below the minimum or above the maximum of the time scale of the Civil post in which he is re-employed. He will be allowed to draw usual annual increments in the time-scale of the Civil Post.”

13. There is no dispute that the plaintiff-respondent was appointed on the post of Constable in Punjab Police on 11.06.1990 and at that time Rule 7.20 of CSR as reproduced hereinabove was in the statute book and the same has been omitted only in the year 1993, vide notification dated 18.09.1993 w.e.f. 06.12.1992. This is also an admitted fact that the plaintiff-respondent retired from the post of constable on attaining the age of superannuation w.e.f. 28.02.2001 and the present suit was filed on 03.01.2002 and during his service career he never raised any objection regarding the fixation of his pay as per Rule 7.20 of CSR. It has also come on record that the plaintiff-respondent was granted the benefits of five increments on account of his military service towards the fixation of pay etc. w.e.f. 11.06.1990, vide office order No.2256 dated 15.11.2000 and the same was duly accepted by him and that fact is not disputed by the plaintiff-respondent and which is not challenged till date. Neither in

the legal notice; nor in the plaint it has been mentioned that the plaintiff-respondent has been granted the benefit of five increments in lieu of his military service for fixation of his pay w.e.f. 11.06.1990 on the post of constable in Punjab Police and therefore, that amounts to an active concealment of a vital fact by the plaintiff-respondent.

As per the provisions of sub-rule (b) of Rule 7.20 of the CSR when a military personnel obtains employment in civil department after having been granted military pension, his pay in the civil post is to be fixed at a stage in the time scale of the civil post which is equal to the basic pay exclusive of allowances of any kind drawn at the time of retirement or if there is no such stage, the stage next below that pay plus personal pay equal to the difference to be absorbed into next increment subject to the condition that it shall not in any case be above the maximum of time scale of civil post in which he is re-employed. No doubt as per the material available on record, the pay scale of the post of constable in Punjab Police as on 11.06.1990 was Rs.950-1800, but there is no pleadings as to how much allowances the plaintiff-respondent was getting on account of his discharge from military service and what was the component of financial benefits granted to him while fixing his pay on account of five increments w.e.f. 11.06.1990 in lieu of his military service benefits as constable in Punjab Police, vide order dated 15.11.2000. Thus, without examining the applicability of sub-rule (b) of Rule 7.20 of the CSR from that angle, both the learned Courts below have straight way granted the benefit of fixation of pay of the plaintiff-respondent @ 1800/- per month by taking into consideration the factum

of his last pay drawn in military service with effect from 11.06.1990 on the post of constable in Punjab Police and as such committed a grave error of law.

It is one thing to say that the plaintiff-respondent has not at all been granted the benefit of military service and it is another thing to say that he has been granted the inadequate or less benefits in the form of five increments towards military service. As a matter of fact if the contents of plaint are read as a whole, even then it no where reveals that the plaintiff-respondent has been granted the inadequate benefit by way of five increments towards his military service benefits. Thus, the claim of plaintiff-respondent is not sustainable.

14. Even otherwise as discussed above, the plaintiff-respondent joined as constable in Punjab Police on 11.06.1990, the present suit was filed on 03.01.2002 and the Rule 7.20 of the CSR stood omitted, vide notification dated 18.09.1993. Thus, the suit is hopelessly time barred in view of Article 58 of the Limitation Act,1963 and which reads as under: -

“Part III – Suits Relating To Declarations

	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration.	Three years	When the right to sue first accrues”

The right to sue, first accrued in favour of the plaintiff-respondent when his initial pay was fixed and thereafter at the best when the notification dated 18.09.1993 omitting Rule 7.20 of CSR was issued.

As such, both the learned Courts below have committed a grave error of law while entertaining a declaratory suit and on that count also the judgments and decrees passed by both the learned Courts below are not legally sustainable.

15. In view of the above, the present Regular Second Appeal is allowed and the impugned judgments and decrees passed by both the learned Courts below are set aside. Resultantly, the civil suit filed by the plaintiff-respondent stands dismissed.

16. It is made clear that if the plaintiff-respondent has already received any financial benefits in pursuance to the impugned judgments and decrees passed by both the learned Courts below, the same shall not be recovered from him by the defendants-appellants.

Disposed off in the above terms.

December 21, 2017
naresh.k

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes