

In the High Court of Punjab and Haryana at Chandigarh

RSA-3819-2008 (O&M)

Date of Pronouncement: 2.11.2017.

State of Haryana and others

..... Appellants

vs.

Jagdish Chander

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Argued by: Mr. Pawan Kumar, AAG, Haryana,
for the appellants.

Mr. Balbir Kumar Saini, Advocate for
Mr. Ram Niwas Sharma, Advocate
for the respondent.

MAHABIR SINGH SINDHU, J.

Present Regular Second Appeal for short 'second appeal' has been filed by State of Haryana and its officers, "hereinafter referred as defendants-appellants" under Section 100 of the Code of Civil Procedure, 1908 for short "CPC" against the impugned judgment and decree dated 11.06.2007, passed by learned Additional District Judge, Bhiwani, hereinafter referred as 'First Appellate Court', vide which the Civil Appeal No. 385 of 2005 filed by the defendants-appellants was dismissed whereas the Civil Appeal No. 381 of 2005 filed by plaintiff-respondent had been partly allowed against the common judgment & decree dated 10.09.2005 passed by learned Civil Judge (Sr. Division), Bhiwani, hereinafter referred as trial Court by holding that the plaintiff-respondent shall be entitled to arrears of pension and pensionary benefits w.e.f. 30.04.2001 instead 30.04.2004 alongwith interest @ 7% per annum.

2. Brief facts of the case are that plaintiff-respondent filed a suit

for declaration to the effect that he is entitled to get pension, gratuity and enhancement of earned leave with effect from (w.e.f.) 17.04.1976 alongwith interest @ 18% per annum; with further relief of mandatory injunction directing the defendants-appellants to release the pension within two months from passing of the decree.

It is the pleaded case of the plaintiff-respondent that initially he joined his services on the post of Clerk in the office of the then Deputy Commissioner, Hisar (now Bhiwani after bifurcation) in the year 1958 and after rendering more than 18 years regular satisfactory service, he resigned from service on 16.04.1976 due to his domestic circumstances. It is an admitted fact that his resignation was accepted by Deputy Commissioner, Bhiwani, vide office memo dated 29.04.1976. It is further pleaded that although there was neither any complaint; nor any inquiry pending at the time of submitting his resignation, but despite that he had not been granted any pension and other retiral benefits. He has also pleaded that minimum qualifying service for entitlement of pension was 10 years and thus he is entitled for the same and a reference in this regard has been made to the case of one Madan Pal Clerk, office of Deputy Commissioner, Bhiwani, who also resigned from service on 01.11.1984, after rendering only 11 years, 05 months and 15 days and ultimately said Madan Pal succeeded in a Court case and after attaining finality in Regular Second Appeal which was dismissed by this Court on 22.08.2002, he was granted the pension by defendant-appellant No.2 itself. It is also pleaded by the plaintiff-respondent that he has submitted many representations to defendant-appellant No.2, but no action was taken and, thereafter, even a legal notice under Section 80 CPC. was also served through his counsel on 25.02.2004,

but of no result and that led to filing of the civil suit.

3. Deputy Commissioner, Bhiwani, filed reply on behalf of defendants-appellants and raised preliminary objections *inter alia* that resignation of the plaintiff-respondent was accepted, vide order dated 29.04.1976 after rendering 17 years, 11 months and 28 days of service and, thereafter, the final payment of General Provident Fund (for short 'GPF') amount was made to him. It is further submitted that the plaintiff-respondent while working as Ahlmad-cum-Steno in the Court of Sh. R.S.Jindal, the then Assistant Collector, 1st Grade, Sirsa for short "AC, 1st Grade" and during that period, a case file titled as "**Chet Singh Vs. Jagjit Singh**" was received from Joint Registrar of this Court but the same was misplaced by him. Later on, this file was again requisitioned by this Court and despite several letters and reminders, the file could not be traced out till the date of resignation of the plaintiff-respondent. The plaintiff-respondent was asked many time to trace the file failing which it was made clear that department proceedings as well as an FIR will be registered against him. Therefore, afraid from the department proceedings as well as the police case, the plaintiff-respondent submitted his resignation and which was duly accepted. It is further submitted that according to Rule 4.19 of the Punjab Civil Services Rules, Volume-II for short "CSR, Vol-II", the plaintiff-respondent is not entitled for any pensionary benefits, except GPF and which has already been paid to him without any objection.

Defendants-appellants also raised the plea of limitation as a suit for declaration could be filed only within three years from the cause of action, but the present case has been filed after a period of more than 28 years of the acceptance of resignation of the plaintiff-respondent on

29.04.1976 and as such, the same is hopelessly time barred. It is further submitted that as per Record Retention Schedule issued by Government of Haryana, personal file of an official, character role, ACRs and service book are to be retained for a period of one year to five years, after resignation and in the present case only personal file of the plaintiff-respondent is available in the office of defendant-appellant No.2 and his service book is not available as per report received from the office of Additional Deputy Commissioner, DRDA, Bhiwani, where he remained on deputation till his resignation. The assertion of the plaintiff-respondent that he made representations for claiming the pensionary benefits prior to legal notice dated 25.02.2004 is specifically denied.

4. On merits, the stand taken in the preliminary objections is repeated and it is further submitted that case of Madan Pal, ex-Clerk is different from the case of plaintiff-respondent. It is also submitted that in the gradation list of Clerk/Steno-typist as on 01.01.1976, the date of joining of the plaintiff-respondent is shown as 01.05.1958, but no record with regard to his joining in the office of Deputy Commissioner, Bhiwani, is available after a period of more than 28 years of his resignation. No replication was filed by the plaintiff-respondent and on the basis of pleadings of the parties, learned trial Court framed five issues which read as under:-

“1- Whether the plaintiff is entitled to get pension, gratuity and encashment of earned leave w.e.f.17.4.1976 along with interest at the rate of 18% per annum, as alleged?OPP.

2- Whether the suit is not maintainable in the present form?OPD.

3- Whether the plaintiff has no cause of action and

no locus standi to file the present suit?OPD.

4-Whether the suit is hopelessly time barred?OPD.

5- Relief.”

5. In order to prove the case of the plaintiff-respondent, he himself appeared as PW1 and filed affidavit Ex.PA and brought on record the following documents:-

1. Ex.P1-Judgment and decree of learned trial Court in case of Madan Pal Ahlawat Vs. Haryana State.
2. Ex.P2-Legal notice dated 25.02.2004.

On the other hand, defendants-appellants examined Rajbir Singh, Assistant, Office of Deputy Commissioner, Bhiwani, as DW1 and filed his affidavit Ex.DW1/A and brought on record the following documents:-

1. *Ex.D1- request for resignation dated 16.04.1976.*
2. *Ex.D2-Acceptance of resignation dated 26/29.04.1976*
3. *Ex.D3-Office order regarding leave by plaintiff*
4. *Ex.D4-Office order dated 17.10.1975 regarding leave by plaintiff.*
5. *Ex.D5-Letter dated 19.03.1974 from Joint Registrar of this Court, regarding case titled “Chet Singh Vs. Jagjit Singh.”*
6. *Ex.D6-Copy of letter dated 02.05.1974 in RFA No. 62 of 1964 titled “Chet Singh Vs. Jagjit Singh.”*
7. *Ex.D7-Letter dated 19.02.1975 regarding tracing of Court case file titled “Chet Singh Vs. Jagjit Singh.”*
8. *Ex.D8- Letter dated 27.02.1975 regarding summoning of record in case titled “Chet Singh Vs. Jagjit Singh.*
9. *Ex.D9-Letter/reminder dated 28.05.1975 by D.C., Bhiwani to plaintiff regarding case titled “Chet Singh Vs. Jagjit Singh.”*
10. *Ex.D10-Letter dated 07.08.1975 regarding summoning of*

record regarding case titled “Chet Singh Vs. Jagjit Singh.”

*11.Ex.D11-Letter dated 11.09.1975 regarding case titled
“Chet Singh Vs. Jagjit Singh.*

12.Ex.D12-Application for leave without pay by plaintiff.

6. Learned trial Court after taking into consideration the material on record and after hearing the parties, decreed the suit of the plaintiff-respondent while deciding issue No.1 in his favour. Issues No.2 and 3 were decided against the defendants-appellants and in favour of the plaintiff-respondent by observing that there is a recurring cause of action in pensionary matters and, ultimately, suit of the plaintiff-respondent was decreed to the effect that he will be entitled to get pension and other pensionary benefits from the date of filing of the suit within 2 months and, thereafter, the plaintiff-respondent shall be paid an interest @ 10% per annum till realization of the amount, vide judgment and decree dated 10.09.2005.

7. Aggrieved against the judgment and decree passed by learned trial Court, the plaintiff-respondent filed Civil Appeal No. 381 of 2005 for claiming the benefits w.e.f. 17.04.1976, instead of 30.04.2004 i.e. filing of the suit and the defendants-appellants filed Civil Appeal No. 385 of 2005 challenging the same being contrary to the provisions of “CSR, Vol-II.”

8. Learned First Appellate Court decided both the appeals by way of the common impugned judgment and decree dated 11.06.2007 and dismissed the appeal filed by the defendants-appellants whereas partly allowed the appeal of the plaintiff-respondent while modifying the judgment and decree of learned trial Court that he will be entitled for recovery of arrears of pension w.e.f. 30.04.2001 instead of 30.04.2004 alongwith benefit of interest @ 7% per annum on the arrears.

9. Hence, the present second appeal.

10. The record of the case reveals that appeal was admitted by this Court on 20.08.2009 and execution of the impugned decree was stayed and the matter was ordered to be heard after the decision of Larger Bench in case of **State of Haryana Vs. Dr.(Mrs.) Sudha Seth (RSA No. 13 of 2009)** and the substantial question of law framed by this Court at the time of admission in the following terms:-

“Whether the plaintiff is entitled to pensionary benefit having submitted resignation before completion of 20 years of service?”

11. It has been argued by learned State counsel that the matter in case of **Dr.(Mrs.) Sudha Seth (supra)** has already been decided by a Larger Bench of this Court on 18.09.2009 and is reported as 2010 (2) I.L.R., Punjab, 989. It is further argued that the present case is squarely covered by the judgment of Larger Bench in favour of the appellants and thus, the impugned judgments and decrees passed by both the learned Courts below are liable to set aside.

On the other hand, learned counsel for the plaintiff-respondent submitted that in view of the provision of Rule 6.16 (2) of the CSR, Vol-II, Part-I, if an employee has resigned from service on completion of qualifying service of more than 10 years shall be entitled for the pensionary benefits and a reference is made to Para 4 of this very judgment; but that is mis-placed. The provisions of Rule 6.16 (2) are attracted only in case of an employee who retires on superannuation or invalid and compassionate grounds and not in case of resignation. Reference in this regard can be made to Paragraph 5 of the Larger Bench judgment which reads as under:-

“In our considered view, the benefit of Rule 6.16(2)

certainly cannot be available to an individual who had severed his relationship with his/her employer by way of resignation. The aforesaid rule is applicable only to an individual who has retired from service. The benefit of Rule 6.16(2) aforementioned can, therefore, be availed of only by a person who retires on superannuation or invalid and compassionate grounds.”

12. Admittedly and undisputedly in the present case, the plaintiff-respondent submitted his resignation vide application dated 16.04.1976 (Ex.D1) and the same was duly accepted by defendant-appellant No.2 being the competent authority, vide order dated 26.04.1976 and the same was sent to the plaintiff-respondent vide endorsement dated 29.04.1976.

13. In view of the above factual position, the plaintiff-respondent voluntarily severed his relationship from his employer i.e. defendant-appellant No.2 way-back on 26/29.04.1976 consequent upon acceptance of his resignation and he received his dues on account of GPF without any protest to save his skill from the disciplinary proceedings as well as any criminal action in view of the fact that he mis-placed the file pertaining to Court case titled 'Chet Singh Vs. Jagjit Singh’ and numerous letter/reminders (Ex.D5 to Ex.D11) prove the same. The plaintiff-respondent has woken up from the deep slumber after the grant of benefit to his co-employee, namely, Madan Pal, after dismissal of RSA by this Court on 22.08.2002 and filed the present suit for declaration after expiry of period of more than a quarter of century on 30.04.2004. Thus, in view of the above factual position, the plaintiff-respondent is not entitled for the benefit of Rule 6.16 (2) of the CSR, Vol-II, Part-I.

14. Just for the sake of clarity, it is necessary to mention here that in case of Dr.(Mrs.) Sudha Seth (supra), the question of law framed was

identical to the present one and the same reads as under:-

“Whether a Government employee on resignation forfeits his past service for purposes of pensionary benefits?”

There is no dispute that Dr.(Mrs.) Sudha Seth case also pertains to an employee against the State of Haryana and after taking into consideration the provisions of Rules 3.17A (d), 4.19 (1), 5.32 A (a) and 6.16 (2) of CSR, Vol-II, it was held that “the entire service rendered by an employee who has severed his relationship with his employer by virtue of his resignation, stands completely forfeited and as such, cannot be made the basis of claiming pensionary benefits”. In view of the discussion made hereinabove, it is apparent clear that the law point canvassed in the present case is squarely covered by the judgment of Larger Bench rendered in Dr. (Mrs.) Sudha Seth's case (supra).

15. The learned counsel for the plaintiff-respondent has neither argued any other point; nor cited any contrary judgment to the judgment of Dr.(Mrs.) Sudha Seth's case.

16. Consequently, the present second appeal is accepted and judgments and decrees passed by both the learned Courts below are, hereby, set aside and as a result thereof the civil suit filed by the plaintiff-respondent stands dismissed.

17. Both the parties shall bear their own costs.

(MAHABIR SINGH SINDHU)
JUDGE

02.11.2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No