

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203

**RSA No.3876 of 2010 (O&M)
Date of Decision : 06.11.2017**

Sukhdev Ram

..... Appellant

Versus

The Bathinda District Co. Op. Milk
Producers Union Limited, Bathinda and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Deepak Sharma, Advocate
for the appellant.

Mr. D.S.Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate
for respondents No.1 to 3.

Mr. H.S.Sitta, AAG, Punjab
for respondent No.4.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the Lower Appellate Court rejecting the prayer of the appellant for counting the period from December, 2004 to June, 2006 for the purpose of gratuity, leave encashment etc. and for granting him interest for that amount of his retiral benefits which were wrongly retained by the respondents because they had paid him salary for this period.

The admitted facts are that the appellant was born on 01.12.1946 and was working with the respondents and in the normal course was due to retire on 30.11.2004. Despite the fact that he had indicated his correct date of birth, by some mistake his date of birth was entered as

01.07.1948 in his service record. It is further pleaded that the appellant came under the impression that the date of retirement had been increased to 60 years and consequently did not point out to the respondents that he had attained the age of 58 years as on 30.11.2004. The respondents also permitted him to work (as per the date of birth which was reflected in their record). However, in June, 2006 the respondents realized their mistake and retired him. They deducted the total amount of salary which he had received from 01.12.2004 till 07.06.2006 from his retiral dues and that is what prompted him to file the instant suit. Both the Courts below held that there was no mis-statement by the appellant at any time and held the respondents liable for having allowed him to work. The trial Court partly decreed the suit of plaintiff and set aside the show cause notice dated 07.06.2006 and order dated 08.06.2006. The trial Court further held that though the order retiring the appellant w.e.f. 08.06.2006 was correct yet went on to hold him entitled for the salary for the period he had worked and awarded him 9% interest for the deductions which had been made by the respondents from his retiral benefits on account of the salary paid. The respondent-department filed an appeal claiming that the suit of the appellant should be rejected. However, the appellate Court only partly allowed the appeal of the respondent-department and while holding the appellant entitled to salary for the period he was allowed to work yet went on to hold that he would not be entitled to the interest and hence the present appeal.

Learned counsel for the appellant has argued that once the entire fault for the wrong retention of the appellant in service was at the door of the respondents he could not have been denied the interest.

Learned senior counsel for the respondents No.1 to 3 has, however, argued that even though there was a fault on the part of the respondents in having permitted the appellant to continue beyond his date of retirement yet the appellant can not be completely exculpated because even he knew that he was to retire at the age of 58 and on atleast on two occasions he had signed documents on which his wrong date of birth was mentioned and he never took any steps to correct the same.

I am in agreement with the arguments of the learned senior counsel for the respondents No.1 to 3 and I feel that the appellate Court has passed the correct order after balancing all the equities.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

06.11.2017
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No