

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.516 of 2011 (O&M)

Date of Decision: 25.04.2017

Bhajan Singh

... Appellant

Versus

The Municipal Council, Kotkapura
and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. G.S. Sandhu, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

CM No.5021-C of 2017

For the reasons stated in the application, the same is allowed and the delay of 1980 days in filing the application for restoration of the appeal is allowed.

CM No.5022-C of 2017

For the reasons stated in the application, the same is allowed and the appeal is restored to its original number.

Main Case

1. Heard the learned counsel for the applicant-appellant on the merits of the appeal. Since I propose to dismiss the appeal there is no necessity to hear the opposite party.

2. The case in short is that the appellant-Bhajan Singh was an Ex-Serviceman. He served in the Indian Army during the First Emergency from 1963 till the end of the Emergency and thereafter till September 30, 1972

continuously till he was discharged from Military Service. He came to civil service in the office of the Municipal Council, Kotkapura and worked in the municipality as a driver. He retired from service in the year 2002. He brought the suit after retirement claiming that the period spent in military service and his ad hoc service in civil service before permanency be clubbed towards his qualifying period for pension and pension enhanced accordingly.

3. Both the Courts below have dealt with and considered this issue and have opined that Municipal service was not pensionable and on the other hand was based on the Contributory Provident Fund Scheme. The plaintiff claimed benefit of his Army service w.e.f. July 27, 1963 to September 30, 1972 and his ad hoc service from December 08, 1976 to December 08, 1978 to be considered for calculating qualifying service for grant of pension but during this period neither any contribution was made by the plaintiff to the CPF nor any contribution was deducted by his employer.

4. Therefore, the benefit of military service and ad hoc service could be counted as qualifying service for grant of service pension to the plaintiff although for other benefits the military service was admissible as per rules.

5. The learned District Judge, Faridkot in his judgment dated May 11, 2010 has found no illegality or perversity in the findings of the learned lower Court in its judgment and decree and has upheld the same assigning more elaborate reasons. The reasoning adopted by the learned District Judge is best quoted:

*“....by virtue of Memo No. Pen-Pol-98/4-13
dated 01.01.1999 a clarification has been made*

that the period of service rendered under the Punjab Government or Army during Emergency (for which no pension was allowed) cannot be considered as period qualifying for pension unless the State Government and the Defence Department is willing to share the proportional pension liability that may be worked out under relevant rules as provided in the Central Account Code Rules and since neither the State Government nor the Defence Authorities would contribute their shares, this period cannot be counted as period qualifying for pension and, thus, clearly negates the case of the plaintiff in its entirety and in view of this admitted fact that there is no matching grant either by the Defence or the State Government nor any contribution made by the plaintiff for this very period towards CPF, the plaintiff, therefore, is certainly not entitled to any such relief on this score. The learned lower Court while adjudicating on issue No.1 has given a thoughtful consideration and has rightly concluded that during the period neither any contribution was made by the plaintiff himself nor by his employer to CPF as per rules, the plaintiff was, thus, not entitled to any such relief and has rightly held that the relief of mandatory injunction even cannot be granted in such a circumstance being purely a discretionary relief under Section 39 of the Specific Relief Act. Therefore, the findings of the learned Lower Court on issue No.1 are upheld. No arguments were advanced on issues No.2 and 3 and which findings of the learned Lower Court are also upheld in appeal.”

- 6. The above reasoning appeals to reason and with which I concur.
- 7. No question of service law arises in this case much less substantial to determine on the second appeal side.
- 8. Accordingly, the appeal has no merit and stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

25.04.2017
manju/neeraj

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>