

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

RSA-1812-2013 (O&M)
Date of Decision : 11.10.2017

Karam Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Ms. Jyoti Sareen, Advocate
for the appellant.

Mr. H.S. Sethi, A.A.G., Punjab.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant for declaration to the effect that at the time of his retirement, he was drawing basic salary of Rs.4140/- per month and thus the respondent had committed an error in wrongly fixing his pension w.e.f. 01.02.2007.

Brief facts of the case are that the appellant was initially appointed as a Conductor on 24.10.1977. However, by an order dated

challenging the order dated 27.03.1978. The court below held that the order of termination was illegal since it was a stigmatic order and had been passed without following procedure according to law. The respondent-State had taken the plea of limitation but the court below held that the suit was within limitation and decree was passed where by the declaration was issued that the order dated 27.03.1978 was void and illegal and the appellant continued to be in service of the respondent-State. However, the monetary benefits were restricted to a period of 3 years prior to the filing of the suit. This decree attained finality and the appellant was reinstated. When he ultimately attained the age of superannuation, the respondent-State did not count the period from 1978 to 1984 (that is beyond a period of 3 years prior to the filing of the suit) as qualifying service for computing his terminal benefits and that was why the instant suit was filed. In the instant suit, another claim was that there were some subsequent periods of suspension for which the appellant had been given subsistence allowance but even those had not been counted as qualifying service for the purpose of terminal benefits on the ground that those periods had been treated as periods of extraordinary leave.

In the reply, the stand of the respondent-State was that since by the original decree the benefits had been restricted to a period of 3 years prior to the filing of the suit, the appellant was not entitled to count the period from 27.03.1978 to 1984 as qualifying service for computation of terminal benefits. As per the respondent-State the period from the year 1978 to 1984 had been treated by them as extraordinary leave without pay.

Another plea which was taken was that this suit too was barred by delay.

Counsel for the appellant has argued that once the original suit was decreed and the appellant was granted continuity of service (except for monetary benefits) the respondent-State would have to count the entire period as service for the purpose of pension. In this connection she has relied upon a Division Bench judgment of this Court in the matter of ***Shiv Kumar Goel vs. State of Haryana and another, 2007 (2) RSJ 119.*** As regards the subsequent periods of suspension for which the appellant was held disentitled for pension on the ground that he had been treated on extraordinary leave, counsel for the appellant has relied upon the judgment of the Supreme Court in the matter of ***Bibhuti Bhushan Chaudhary vs. Union of India and another, 1997(11) SCC 373,*** wherein the Supreme Court held as follows:-

“3....Having regard to the fact that the petitioner has been paid the subsistence allowance for the period of suspension, the said period of suspension could not be excluded from the qualifying service for the purpose of computing pension of the petitioner and the pension payable to the petitioner should be calculated by taking into account the said period of suspension as part of his qualifying service.....”

Learned Assistant Advocate General is not in a position to justify how once the original decree had specifically declared the appellant to have continued in service, the respondents could treat that period as extraordinary leave. The mere fact that the monetary benefits were restricted to 3 years could not be taken to mean that all other benefits were also taken away because this would then make the decree contradictory and take away the effect of continuity of service which was granted to the appellant. He

knew about the fact that the period from 1978 to 1984 had been treated as extraordinary leave and consequently he could not have filed this suit in 2007 and the suit was barred by limitation.

Counsel for the appellant has shown to the Court the statement of the appellant as PW-1 and from a perusal thereof it is clear that the appellant had only admitted to the knowledge of this fact but did not mention the date when he attained that knowledge. On their part the respondents have neither mentioned any date or order by which the appellant was informed or put to notice that the period from 1978 to 1984 had been treated as extraordinary leave without pay. Consequently, I have to agree with the argument of the counsel for the appellant that he actually came to know of this fact only when he superannuated from service and prior thereto he had impression that the entire period would be counted for pension, since he was granted continuity of service though the monetary benefits were restricted to a period of 3 years prior to the filing of the earlier suit.

In the circumstances, the appeal is allowed. The impugned judgments and decrees are set aside. It is held that the entire period which has been treated by the respondents as extraordinary leave whether from 1978 to 1984 or for the subsequent suspension periods be counted for the purpose of grant of terminal benefits. The respondents are directed to deposit the arrears on this account and to start giving enhanced pension after computing the same within 3 months from the date of receipt of a certified copy of this order, failing which, the appellant would be entitled to claim the same with interest @ 6% p.a. from the date/s the amount/s fell due

till the date/s of payment.

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

October 11, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No