

RSA No.2400 of 2013 (O&M)

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

Sr. No.207

**RSA No.2400 of 2013 (O&M)
DECIDED ON: July 12, 2017**

STATE OF HARYANA AND OTEHRS

..APPELLANTS

VERSUS

OM PARKASH LAMBA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rajesh Gaur, Additional Advocate General, Haryana,
for the appellants.

Mr. Malkeet Singh, Advocate,
for respondent No.1.

Mr. Ashish Gupta, Advocate,
for respondents No.2 & 3.

JASPAL SINGH, J.

Aggrieved against the judgment and decree dated February 20, 2013, passed by learned Additional District Judge, Ambala in Civil Appeal No.272/CA of 2012 captioned as “*Om Parkash Lamba vs. State of Haryana & ors.*”, whereby while accepting an appeal against judgment and decree dated November 30, 2011 passed by learned Civil Judge (Jr. Divn.),

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Ambala, Appellate Court has decreed the suit of the respondent No.1/plaintiff with cost to the effect that respondent No.1/plaintiff is entitled to get interest @ 9% per annum which has been paid on delayed payment of his retiral benefits as well as recovery of amount by way of refund of ₹18,382/- along with interest @ 9% per annum which has been deducted from his account of leave encashment.

2. Shorn off all necessary details, brief facts giving rise to the instant appeal are that respondent No.1/plaintiff joined the service in Haryana Irrigation Department as Junior Engineer in the year 1971 in Augmentation of Canal Circle, Ambala as well as in Satluj Yamuna Link Division, Ambala. In January 2001, he was transferred to Bhakra Beas Management Board (BBMB) in the same capacity. He was promoted as Sub-Divisional Officer vide Memo. No.10771-010870 dated August 08, 2006 and joined as on August 17, 2006 at Slapper, District Mandi. On attaining the age of superannuation, he was retired on October 31, 2006 by the Government of Haryana, Irrigation Department. Since retiral benefits were not released and disbursed to him, he was constrained to knock the doors of Civil Court. However, during the pendency of the suit before Civil Judge (Jr. Divn.) Ambala, retiral benefits were released to him.

3. After hearing the learned counsel for the parties and appraisal of evidence available on record, suit was dismissed by learned Civil Judge (Jr. Divn.) Ambala vide judgment and decree dated November 30, 2011.

4. Aggrieved against the aforesaid judgment and decree dated November 30, 2011, plaintiff-Om Parkash preferred an appeal before District Judge which was entrusted to the court of Additional District Judge,

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Ambala. Vide judgment and decree dated February 20, 2013, an appeal was allowed and decreed the suit as has been fully detailed and described in para No.1 of this judgment.

5. Dishearten with the acceptance of an appeal and consequent decretal of the suit vide judgment and decree dated February 20, 2013, State of Haryana and others have approached this Court by way of filing of instant appeal.

6. Assailing the impugned judgment and decree dated February 20, 2013, it has been contended by learned State counsel that delay in payment of retiral benefits has occurred due to lapse, omission or negligence on the part of the respondent No.1/plaintiff in non-submission of pension/retiral documents. As per Government instructions issued by Financial Commissioner, Principle Secretary to Government of Haryana, vide letter No.68/2/2001/FD/Pension/SAP dated October 10, 2006, he was obliged to submit requisite pension papers/documents one year prior to the date of his retirement but requisite documents were submitted by him only 13 days before his retirement i.e. on October 18, 2006. He was to retire on October 31, 2006 on attaining the age of his superannuation. Moreover, at the time of his retirement, respondent No.1/plaintiff was on deputation and posted in BBMB, his Service Book was to be received by parent department which was not sent in time. Due to non-submission of requisite papers/documents by respondent No.1/plaintiff, the delay has occurred.

7. Learned State counsel has further submitted that respondent No.1/plaintiff is also guilty of illegal retention of Government accommodation. He did not vacate the Government accommodation

allotted to him for residential purposes within prescribed period and which was vacated by him on June 30, 2007 i.e. after eight months of his retirement. Apart from it, delay in release of retiral benefits to respondent No.1/plaintiff has occurred on account of reason that he preferred a civil writ petition No.14726 of 2006 before this Court, whereby he challenged order of his reversion. Immediately, after collection of documents i.e. Service Books etc., process for disbursement of retiral benefits was initiated and completed without any delay. Thus, respondent No.1/plaintiff is not entitled to interest on account of delay of disbursement of retiral benefits which is fully attributable to him.

8. Learned State counsel has further urged that as far as refund of ₹18,382/- deducted by the appellants is concerned, same has rightly been deducted as it was wrongly paid to respondent No.1/plaintiff. The passing of order with regard to refund of amount of ₹18,382/- that too, along with interest @ 9% per annum is absolutely illegal and unjustified. Since, respondent No.1/plaintiff was inadvertently given the said benefit, it has simply been withdrawn. As such, he did not suffer any pecuniary loss. He accordingly prayed for acceptance of an appeal for setting aside of impugned judgment and decree dated February 20, 2013 passed by learned Additional District Judge, Ambala.

9. On the other hand, learned counsel for respondent No.1 has supported impugned judgment and decree and has submitted that same are absolutely in consonance with evidence available on file and settled canons of law. There is no lapse, omission or negligence on the part of respondent No.1 in submission of requisite papers/documents. In fact, it was bounden

duty of the Department to initiate proceedings for grant of retiral benefits within a reasonable time prior to date of retirement of an employee so that all the papers be completed on the day of retirement and necessary retiral benefits be given to a retiree and in the instant case, Department did not initiate the proceedings well in time on account of which, delay in disbursement of retiral benefits has occurred which is totally attributable to the appellants.

10. While concluding his arguments, it has been submitted by learned counsel for respondent No.1 that since there is no infirmity or illegality in the impugned judgment and decree dated February 20, 2013 and instant appeal is devoid of merits. As such, it deserves to be dismissed that too, with special costs.

11. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties, appraisal of documents available on record and scrutinizing the impugned judgment and decree dated February 20, 2013, this Court is of the considered view that there is no infirmity, illegality, impropriety or perversity in the aforesaid impugned judgment and same is absolutely in consonance with evidence as well as settled cannons of law applicable to the facts and circumstances of the case in hand.

12. Undisputably, respondent No.1 stood retired from service on October 31, 2006 by virtue of order bearing No.1/1/2005-011E dated October 30, 2006 as retiral benefits were not disbursed to respondent No.1 well in time, he was constrained to file civil suit which though was dismissed but an appeal preferred by him against dismissal of his suit, vide judgment and decree dated February 20, 2013 an appeal has been accepted

by lower Appellate Court/Additional District Judge, Ambala, whereby the judgment and decree November 30, 2011 has been set aside and suit has been decreed as reflected in para No.1 of the judgment.

13. Undisputably, right to pension is a valuable right and any delay by the Government of machinery to disburse the same to retiree amounts to gross violation of principles of natural justice as well as rules for which retiree is to be compensated by way of payment of interest. In the case in hand, though it has been stressed by learned State counsel during arguments that entire fault lies with respondent No.1 on account of non-submission of requisite papers/documents within a reasonable time prior to date of his retirement but at the same time it is also obligatory upon the appointing and punishing authority of the concerned employee who is on the verge of retirement to initiate the proceedings for disbursal of retiral benefits within a reasonable period prior to date of retirement. But in the case in hand, no such proceedings were initiated till respondent No.1 submitted certain papers. Even after submission of papers, appellants made the payment of pension, gratuity, leave encashment, connotation of pension and GIS with a considerable delay. The due date as well as dates(s) of payments of aforesaid benefits has been reflected by Additional District Judge, Ambala in his judgment dated February 20, 2013.

14. A glance at the aforesaid relevant portion transpires that payments were made after an abnormal delay. If at all, papers were submitted 13 days prior to date of retirement by respondent No.1, appellants were duty bound to disburse retiral benefits within a reasonable period which has been considered to be three months' from the date of retirement

as observed by Hon'ble Apex Court in *State of Kerala vs. M. Padmanabhan*, AIR 1985 SC 356; *D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Nitran Nigam Ltd.*, 2014(4) S.C.T. 128; *A.S. Randhawa vs. State of Punjab & others*, 1997(3) SCT 468; *J.S. Cheema vs. State of Haryana & others*, 2014(3) RCR (Civil) 355; and *Manohar Lal vs. State of Punjab & others*, 2016(4) SCT 250.

15. Since the delay is attributable to the appellants in disbursement of payment of retiral benefits, respondent No.1 deserves to be compensated. In the case in hand, learned lower Appellate Court has awarded interest @ 9% per annum for the delayed period on different amounts keeping in view settled principles and observations made in cases "*Maha Singh Sinhmar vs. State of Haryana*, 1995(1) RSJ 643; *Madan Lal vs. State of Punjab & ors.*, 2003(1) RSJ 732; *Lal Singh vs. State of Punjab & Ors.*, 2003(1) RSJ 726; *Kirat Gopal vs. Haryana Vidyut Parsaran Nigam Ltd. & ors.*, 2000 (3) RSJ 39; *A.J. Randhawa vs. State of Punjab*, 1998(1) SCT 343; *A.K. Kapoor vs. State of Haryana*, 1992(1) RSJ 469 and *R. Kapoor vs. Director of Inspection, Income-Tax and another*, 1994 (6) SCC 589".

16. Thus, so far as grant of interest by lower appellate court is concerned, it has rightly been granted. As such, no interference by this Court is justified.

17. As far as, refund of amount of ₹18382/- is concerned that was granted to respondent No.1, there was no misrepresentation, fraud or deception on the part of respondent No.1, rather it was paid wrongly or due to some inadvertence by the concerned authorities. It is well settled proposition of law that no such amount can be deducted from retiral benefits

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of a retiree and in case same is deducted that too, without any show cause notice and without affording an opportunity of hearing, same is liable to be refunded. In the instant case, an amount has been deducted without notice or affording any opportunity of being heard from retiral benefits of respondent No.1, which is illegal on the face of it especially in view of the judgments passed in *Madan Lal vs. State of Punjab & ors. (supra)* and *Lal Singh vs. State of Punjab & Ors. (supra)*. Thus, refund of amount that too, along with interest has rightly been ordered by learned lower appellate court.

18. In the light of aforesaid facts and circumstances, this Court is of the considered view that there is no infirmity, perversity or illegality in the impugned judgment and decree dated February 20, 2013 passed by learned lower appellate court. As such, same are not required to be meddled with by this Court.

19. As an upshot of the aforesaid discussion, this Court does not find any merit in the instant appeal. Accordingly, it stands dismissed, whereby impugned judgment dated February 20, 2013 is upheld.

20. No order as to costs.

July 12, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**