

LPA no.1095 of 2017 (O&M) 1

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

**LPA no.1095 of 2017 (O&M)
Date of Decision :26.09.2017**

State of Punjab and others

....Appellant(s)

Versus

Rajinder Kaur

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJ SHEKHAR ATTRI**

Present : Mr.P.P.S.Thethi, Addl.AG, Punjab
for the appellant(s)

MAHESH GROVER, J.(ORAL)

This appeal is directed against the judgment of the learned
Single Judge dated 16.12.2016.

The respondent – Rajinder Kaur initiated writ proceedings with
the following prayer:-

“Civil Writ Petition under Article 226/227 of
the Constitution of India with a prayer that the Hon'ble
Court may please to issue a writ in the nature of
Mandamus directing respondents to release the salary for
the period 28.5.2002 to 4.10.2010 and retiral
benefits/dues postmouthly i.e General Provident Fund,
Death cum Retirement Gratuity, Leave encashment and
Group Insurance Scheme etc. alongwith interest @ 12%
p.a to the petitioner who is legal wedded wife of deceased

Harinderpal Singh ex-driver.”

The deceased husband of the respondent who was working as a driver was removed from service i.e. 28.5.2002 against which he filed a civil suit that was decreed on 19.11.2007. The impugned order of removal was specifically set aside.

The appellants went up in appeal which was decided by the First Appellate Court on 6.11.2009 resulting in modification of the Trial Court's judgment only to the extent that appellants could hold a fresh inquiry regarding allegations mentioned in the charge-sheet. A Regular Second Appeal no.732 of 2010 was preferred by the deceased employee which was disposed of without any interference with the judgment of the First Appellate Court but with a mandate to complete the inquiry in a time bound frame. The Regular Second Appeal was decided on 17.2.2010. The husband of the respondent died on 4.10.2010. The inquiry against him was never undertaken. This would imply that on the date of death and in the absence of any further adverse order there was nothing against the deceased since the initial order of dismissal has been set aside by the Trial Court, a finding not interfered by the Appellate Court as also this Court.

If that be so then the respondent's husband certainly would be deemed to be in service for the period 2002-2010 when the matter remained under litigation. After 5 years of the death of the employee the appellants passed an order treating this period as leave of the kind due.

The writ petition was accepted by the learned Single Judge by negating this order and holding respondent entitled to the benefits accruing from the period 28.5.2002 to 4.10.2010.

After hearing learned counsel for the appellants, we are of the

opinion that no interference is warranted in view of the above stated clear facts. On the date when Regular Second Appeal was decided no order adverse to the appellants was in existence and neither was any passed after holding an inquiry even though directions were given by the First Appellate Court as also this Court in Regular Second Appeal. The argument of the learned counsel for the appellants that the order dated 16.12.2016 treating the period on leave of the kind due was never impugned by the any one does not merit acceptance for a simple reason that writ Court is empowered to take into consideration the totality of circumstances and pass an order to do substantial justice. This is one such case where such a course is desirable and therefore, we decline interference, more particularly, when it is barred by an inordinately long delay of 122 days in filing the appeal which we do not intend to condone as the explanation given merely discloses laxity in process and to condone this would be putting premium on such act.

Hence, instant appeal is hereby dismissed.

(Mahesh Grover)
Judge

26.09.2017

rekha

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(Raj Shekhar Attri)
Judge