

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

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**R.S.A No. 2996 of 2016 (O&M)
Date of decision : January 13, 2017**

Mukhtiar Singh

... Appellant

versus

The State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Suresh Kumar Arya, Advocate, for the appellant.

RAJIV NARAIN RAINA, J

This is an appeal against concurrent findings of fact recorded by both the Courts below dismissing the suit. The appellant claimed pension from the Government in the suit as well as increments for the period when he served in the Public Health Department in the State of Punjab, from 1973 to 1977. In 1977, the Unit in which the appellant was working was transferred permanently to the Punjab Water Supply and Sewerage Board, Division, Gurdaspur, which entity was an autonomous body and service non-pensionable. The appellant was regularised in 1990 by the Board and he has been paid all his dues towards contributory provident fund, general provident fund etc. by the Board from 1990 onwards. On transfer to the Board, the appellant ceased to be a government servant and became an employee of the Board. He did not dispute his transfer to the services of the Board at any time thereafter.

The lower appellate Court has correctly held that since the service was not pensionable, therefore, he could not make a claim for pension from the Board, obviously because he had no right. He could also

not claim pension from the government for the period of work charge service because the department of government did not regularise his services while he worked with the Public Health Department and therefore, the Full Bench ruling in **Kesar Chand Vs. State of Punjab**, 1988 (5) SLR 27, would not help the appellant since it is not a case where work charge service was followed by regular service in government. Claim against government was rightly rejected by the court below. His permanent service lies in the Board. There is, therefore, no merit in the content of the appellant that he is entitled to pension from the Government from 1973 onwards. After his transfer to the board his employer had changed.

The second claim of the appellant is based on discrimination. It was asserted by the appellant before the trial Court that three persons, namely, Jagir Singh, Raj Masih and Kashmir Singh were appointed in the Punjab Health Department and were also transferred to the Board, are earning pension from the State department and therefore his case should be treated on par. This argument has been noticed by the Learned Additional District Judge, Gurdaspur, in para. 15 of the judgment and after appreciating Ex.P-1 to P-3, the Court has reached the conclusion that the cases of three persons are on a separate footing and the case of the present appellant is totally different from the afore-mentioned three persons. It is not possible to upset the findings of the Courts below recorded after appreciating the evidence on record especially when there are no material facts pleaded in detail regarding services of Jagir Singh, Raj Masih and Kashmir Singh and, therefore, it would be far too risky to apply blindly the principles of Article 14 to this Case. Besides, the appellant admits that he had filed Civil Suit No.415 of 06.10.2007 in the Court of learned Civil Judge (Junior Division),

Gurdaspur, claiming mandatory injunction short of retirement from the Board on much the same pith and substance. The appeal against the decree failed before the first appellate Court and the appellant did not challenge the same in a regular second appeal before the High Court and that order has become final. In that case pension was not sought but a claim was made to count the total period of service spent with the State of Punjab and the Board to count length of service by clubbing for grant of proficiency step up increments on completion of 8/10, 10/20 years' service with all service benefits along with arrears and interest thereon. To be entitled to receive the benefits of proficiency step up increments, regular satisfactory service is required and, therefore, the obstacles that are placed in the way of appellant in Civil Suit No.415 of 2007 will remain the hurdle to relief in the present appeal. It is not a case where the fate of that case can have no impact whatsoever on the present appeal. This is an additional argument against the appellant to deny him relief claimed.

I find no reason to differ with the views expressed by the Courts *a quo* and on the other hand, I would endorse them as a correct and sound view taken. No substantial question of law arises in this appeal for determination, either within the jurisdiction bestowed by Section 100 of the CPC or within Section 41 of the resurrected Punjab Courts Act, 1918.

The appeal is, accordingly, dismissed.

(RAJIV NARAIN RAINA)
JUDGE

January 13, 2017
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Whether speaking/reasoned – Yes

Whether reportable – No