

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

Date of decision: 22.02.2017

RSA No.4581 of 2016 (O&M)

Devinder Kaur

...Appellant

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gagan Pradeep S. Bal, Advocate, for the appellant.

RAJIV NARAIN RAINA, J.

After the death of Gurcharan Singh, his widow Devinder Kaur filed a civil suit in July, 2012 claiming that while her husband was in service as Chief Pharmacist in Civil Hospital, Chamkaur Sahib, he was wrongly denied the benefit of Assured Career Progression Scheme benefits on completion of 4/9/14 years of service w.e.f. 01.11.2006. She claimed these amounts together with interest at the rate of 18% p.a. from due date till payment in the civil suit from where this appeal comes.

The ACP Scheme of the Punjab Government came into place on 01.11.2006. Gurcharan Singh had opted for the Scheme as per Rules. Rule 4(b) of the ACP Scheme required an employee to have at least 50% 'good' ACRs for the last three years from the date of consideration. However, he had been awarded punishment of recovery of ₹12,232/- and a penalty of withholding one annual increment with cumulative effect vide order dated 03.10.2007. Gurcharan Singh was entitled to the benefit prior to 03.10.2007, but the same was not released on account of order of recovery as a major punishment. He preferred an appeal against the order, which was

not considered for a decision. He filed a writ petition in this Court against the punishment order which was partly allowed and the major punishment was converted to one without cumulative effect vide order dated 26.08.2011. Soon thereafter Gurcharan Singh unfortunately died leaving his widow to litigate.

His widow made representations for grant of benefit. She served a notice under Section 80 CPC on the department on 23.05.2012, but the authorities refused to accede to her request. She filed suit. The civil trial took place. The suit succeeded before the Civil Judge (Junior Division), Rupnagar and the plaintiff was held entitled to benefits of ACP Scheme as Class I Heir and Legal Representative of her late husband's service benefits. The suit was decreed with all consequential benefits and directions for payment of arrears thereof with interest at the rate of 12% p.a. from due date till its payment as against the claim for award of 18% in the plaint. The judgment and decree are dated 10.03.2014.

Aggrieved by this decree, the State appealed to the learned District Judge, Rupnagar, who marked the appeal to be heard by the learned Additional District Judge, (Fast Track Court), Rupnagar in Civil Appeal No.116 of 21.04.2014. The lower Appellate Court in its judgment and decree dated 27.05.2014 has agreed with the trial Judge that the benefit was due and payable, but has interfered in the percentage of interest and reduced it from 12% p.a. to 6% p.a. citing Section 34 of the Civil Procedure Code, 1908. The appeal was partly allowed reducing interest by half. In the view of the lower Appellate Court, award of interest at the rate of 12% p.a. was excessive relief, which was liable to be modified.

Though the lower Appellate Court has not addressed itself to the nature of the right to interest except to notice and rely on Section 34 of the CPC, a few more words may be necessary to add. The Government in its wisdom had imposed punishment of recovery and withholding of one annual grade increment with cumulative effect. This was a major punishment imposed on 03.10.2007 and, therefore, was within its right to have denied benefits of ACP Scheme because satisfactory service was required for the benefit to flow in the terms and conditions spelled in the Assured Career Progression Scheme Rules. Upon intervention by this Court and after deliberations that must have taken place at the hearing, the major punishment was converted to minor thereby giving rise for the first time to past benefits. The order was passed on 26.08.2011. No particular date was claimed or pleaded from where 4th, 9th & 14th years stages fell. Nor are those dates particularized in the work of the Courts below. It is, therefore, difficult to know the measuring points and match them to the service record of Gurcharan Singh to form a definite view.

In the absence of this material, it would be taken that the right for the first time accrued on 26.08.2011 by Court's declaration by writ intervention altering the punishment from major to minor and, therefore, it would not be fair or proper to run interest on those amounts. However, after 26.08.2011 and till the suit was brought on 28.07.2012 and the intervening period of litigation, the plaintiff-appellant has been held entitled to interest at the rate of 6% p.a. by reducing the interest awarded by the trial Court by half. The claim for interest was not made prior to at least 23.05.2012, when the legal notice was served under Section 80 CPC on the department. The legal notice has not been placed on record because its receipt has not been

disputed by the defendant. Therefore, it need not have been produced in evidence.

All the same, interest is not a common law right flowing automatically on every principal amount except in terms of Section 34 CPC or from any statutory enactment including the Interest Act, 1978. Therefore, I see no justification for this Court in second appeal to modify the judgment and decree of the lower Appellate Court by restoring the rate of interest granted by the trial Court at the rate of 12% p.a. When the trial Court granted 12% interest, it did not assign reasons why it chose the percentage, while on the other hand, the lower Appellate Court went into the question, noticed the provisions of Section 34 and brought the percentage in tune with law.

In **Central Bank of India Vs. Ravindra & others**, AIR 2001 SC 3095, a Constitution Bench of the Supreme Court has examined the parameters for granting interest in different fact situations and branches of law. The Apex Bench observed that Section 34 is a general procedural provision and whether it would apply or not and to what extent would obviously depend on the fact situation of each case. The Bench held that granting of future interest is in the discretion of the Court. It further observed as follows:

“55. xxx xxx xxx

(8) Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC de hors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in

awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.”

Thus, the discretion exercised by the lower Appellate Court cannot be said to be unjustified. It is the last court of fact. There is no illegality or irregularity in the reasons adopted in scaling down the element of interest by the lower Appellate Court, which may give rise to any substantial question of law. I would, therefore, not interfere with the decree of the lower Appellate Court reducing interest while upholding the other parts of the judgment of the court of first instance. Accordingly, the judgment in appeal is endorsed and the appeal declined in limine.

In view of the dismissal of the case on merits, I would also dismiss the appeal on limitation since the same was filed 440 days after the expiry of the period of limitation prescribed for filing a second appeal. There is no satisfactory explanation in the affidavit filed in support of the application under the Limitation Act, 1963 to cover the delay with reasonable explanation. However, the delay of 120 days in re-filing the appeal is condoned for the reasons set out in the application bearing CM No.11871-C of 2016. No costs, the appellant being a widow.

22.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>