

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 128

Regular Second Appeal No.3349 of 2017 (O & M)
Date of Decision: July 24, 2017

State of Punjab & others

..... APPELLANTS

VERSUS

Sohan Singh Mann

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Ms. Sudeepti Sharma, Additional Advocate General,
Punjab.

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Jaspal Singh, J

1. Challenge in this appeal is to judgment & decree dated August 06, 2016 passed by the Civil Judge (Junior Division), Mohali, whereby suit filed by the respondent – plaintiff has been decreed and he has been held entitled to pensionary benefits from the date of his retirement i.e. February 29, 2012 alongwith interest @ 6% per annum from the date of filing the suit till its recovery; as well as judgment & decree dated March 15, 2017 passed by the District Judge, SAS Nagar (Mohali) whereby plaintiff has been held entitled to receive pensionary benefits, however, interest part has been modified to the effect that the same will be allowed from the date of culmination of criminal proceedings i.e. April 25, 2013 till its payment.

2. Briefly stated, the facts giving rise to the instant lis are that respondent Sohan Singh filed a suit for declaration with regard to his

including pension, gratuity, leave encashment, special increment(s) (4-9-14), salary for suspension period and interest @ 18% per annum on late payment of GPF and further, mandatory injunction to direct the appellants – defendants to release the aforesaid benefits alongwith interest @ 18% from the due date till its realization. The suit preferred by the plaintiff was decreed vide impugned judgment & decree dated August 06, 2016 passed by the trial holding the plaintiff to be entitled to pensionary benefits from the date of his retirement i.e. February 29, 2012 including pension, gratuity, leave encashment, special increment under 4-9-14, salary for suspension period, GPF alongwith interest @ 6% per annum from the date of filing the suit till recovery of decretal amount. Appellants preferred an appeal against the judgment & decree of trial court, which has been dismissed vide impugned judgment & decree dated March 15, 2017 upholding the findings of trial court whereby plaintiff has been held entitled to pensionary benefits, however, interest has been granted from the date of culmination of criminal proceedings i.e. April 25, 2013 instead of date of retirement i.e. February 29, 2012.

3. Aggrieved against the aforesaid judgments & decrees passed by the courts below, defendants have approached this Court by way of instant regular second appeal.

4. Learned counsel for the appellant – State has vehemently argued that the impugned judgments are absolutely against the evidence available on file and settled canons of law. Misappreciation of evidence as well as legal proposition has caused injustice. Both the courts below have committed a grave error by not applying the judicious mind while passing the impugned judgments. The plaintiff retired from the post of Naib

Acquisition, GMADA, Mohali. Prior to his retirement, two criminal cases viz. FIR No.51 dated August 14, 2006 and FIR No.2 dated March 05, 2008 were registered against him. Case bearing FIR No.51 dated August 14, 2006 was decided in favour of plaintiff on July 08, 2011 prior to his retirement whereas another case bearing FIR No.2 dated March 05, 2008 was decided in favour of plaintiff on April 25, 2013 after more than one year from the date of his retirement. Besides, departmental proceedings were also pending against the plaintiff and he was chargesheeted vide Memo dated March 27, 2012 in case No.98 and Memo dated November 04, 2004 in case No.1290. Both the cases were consigned on October 19, 2015 and February 26, 2015, respectively. Plaintiff caused a huge financial loss to the Government due to his negligence in duty.

5. Learned counsel for the appellants – State has contended that as per Rule 2.2 of Punjab Civil Services Rules, Volume – I, Part – II, the department is competent to withhold the pension and pensionary benefits of an employee on his retirement if departmental proceedings/ criminal cases are pending against him. Gratuity and special increment(s) can also be withheld till the final outcome of departmental proceedings. Learned counsel has contended that plaintiff is not entitled to interest as the delay in making retiral dues has occurred due to pendency of criminal cases/ departmental proceedings against him which were the result of his own acts & conducts. Moreover, plaintiff himself had moved an application in the office of Deputy Commissioner on December 05, 2013 not to release the provisional pension which has been admitted by him in his cross examination. Therefore, plaintiff cannot claim interest on payment of retiral dues.

6. Learned counsel for the appellants – State has further

contended that GPF was paid to the plaintiff on November 01, 2012 and

leave encashment was paid on February 05, 2014. Arrears of leave encashment and provisional pension for the period March 01, 2012 to May 31, 2014 were paid to plaintiff on June 30, 2014, even departmental proceedings were pending. In this view of the matter, impugned judgments & decrees are not sustainable in the eyes of law; liable to be set aside; and suit of the plaintiff deserves to be dismissed in toto.

7. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellants – State and perused the record available, but does not find any legal or factual weight therein.

8. Admittedly, plaintiff retired on February 29, 2012 from the office of Collector, Land Acquisition, GMADA, Mohali. Plaintiff sought declaration with regard to his entitlement to pensionary benefits including pension, gratuity, leave encashment, special increment(s) under 4-9-14, salary for suspension period and interest @ 18% per annum on delayed payment of GPF besides issuance of mandate to direct the defendants to release the retiral benefits alongwith interest @ 18% per annum from the due date till its realization.

9. No doubt, as per the provisions of Rule 2.2 of Punjab Civil Services Rules, Volume – II, on account of conduct of the employee, due to pendency of departmental and judicial proceedings, retiral benefits as such can be withheld by the concerned department. In the case in hand, plaintiff while subjected to cross examination had admitted about the pendency of disciplinary and judicial proceedings against him. He also admitted that at the time of his retirement two disciplinary proceedings (Nos.981 and 1290) were pending against him in the office of Commissioner, Patiala. Pendency of criminal cases was also admitted, though, said proceedings were finally culminated in favour of plaintiff and he stood acquitted in both the cases.

Therefore, so far as withholding of retiral dues is concerned, the department was within its jurisdiction to withhold the same.

10. As regards provisional pension, the same was ordered to be paid to him by the Commissioner vide order Ex.P8. However, vide letter Ex.D1, plaintiff himself wrote to the Deputy Commissioner, SAS Nagar that his provisional pension be not released as he wants the retiral benefits to be released in consolidated form. This fact has been admitted by the plaintiff during his cross examination. The lower appellate court has rightly observed that plaintiff cannot assert that there was delay in payment of provisional pension. Arrears of pension have since been released to the plaintiff after culmination of criminal proceedings. Certain benefits relating to leave encashment had also been released, even during pendency of departmental proceedings. In this backdrop of facts, ld. lower appellate court has rightly held the plaintiff to be entitled to retiral benefits and interest on the delayed payment from the date of culmination of criminal proceedings i.e. April 25, 2013 instead of his retirement i.e. February 29, 2012. As such, the impugned judgments & decrees passed by the courts below are absolutely in consonance with the settled principles of law and do not call for any interference by this Court.

11. In the light of what has been discussed above, instant appeal being devoid of merits is dismissed with no order as to costs.

July 24, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No