

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 102

Regular Second Appeal No.3889 of 2017 (O & M)
Date of Decision: September 15, 2017

Nathu Ali

..... APPELLANT

VERSUS

State of Haryana & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Manoj Chahal, Advocate, for the appellant.

. . .

Jaspal Singh, J

Delay condoned.

The instant regular second appeal has been preferred by the plaintiff – appellant Nathu Ali aggrieved by judgment & decree dated December 18, 2014 passed by the Civil Judge (Junior Division), Bhiwani, whereby suit filed by the plaintiff – appellant has been dismissed; and judgment & decree dated April 11, 2017 passed by the Additional District Judge, Bhiwani, vide which, appeal filed by the plaintiff – appellant against the decision rendered by the trial court has been dismissed holding that the findings given by learned trial court regarding issue No.1 are based upon correct appreciation of fact and law and deserves no disturbance in appeal.

Brief facts of the case are that plaintiff – appellant, who was working as Driver in respondent – Department, was retired prematurely w.e.f. August 03, 2010 vide order dated August 13, 2010 by GM Haryana Roadways as he was declared medical unfit to drive heavy vehicle by the Civil Surgeon, Bhiwani vide report dated August 03, 2010. Plaintiff challenged the order of his premature retirement by way of civil suit seeking declaration that the same is not binding upon his rights being illegal, unlawful and arbitrary with consequential relief of mandatory injunction directing the defendants – respondents to release all his service benefits. The civil suit was dismissed vide judgment & decree dated December 18, 2014 by the trial court and appeal preferred against the decision of trial court was also dismissed vide judgment & decree dated April 11, 2017 by the lower appellate court.

Aggrieved by the judgments & decrees rendered by the courts below, plaintiff – appellant has preferred the instant regular second appeal.

While assailing the impugned judgments & decrees rendered by the courts below, learned counsel for the appellant has vehemently contended that the same are wrong, against law & facts on the file and the entire approach of both the courts for determination of material question of law arising in the present case is erroneous. The courts below have not appreciated the evidence in proper perspective. The courts below have erred by not taking into consideration the service rules under which plaintiff – appellant could have been retired

in the prevailing circumstances and to what benefits he was entitled. Misreading of evidence as well as documents on record has resulted into miscarriage of justice and thus, the same are liable to be dismissed.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant and perused the documents available on file but does not find any legal weight in the same.

A perusal of Ex.P2, order dated August 13, 2010 that plaintiff – appellant himself made a request and his case was sent to the Civil Surgeon, Bhiwani and on his report, he was declared physically unfit for driving. Undisputably, plaintiff – appellant was offered the job of Chowkidar subject to the condition that total of pension, pay & allowances of Chowkidar should not exceed from present total emoluments last drawn. Moreover, he was also given option for alternate job or compensation as is clear from Ex.P3, letter dated September 21, 2010. A perusal of Ex.D5, letter dated January 10, 2011, plaintiff – appellant refused to take compensatory alternative job and opted for compensation. Moreover, from letter dated January 19, 2011 (Ex.D6), it is clear that compensation was provided to the plaintiff – appellant. Plaintiff – appellant has specifically admitted in his cross examination that he was offered alternate job of Chowkidar or seek additional compensation and he opted additional compensation. Once the plaintiff – appellant has opted and received the additional compensation and other retiral benefits, serving of notice upon the defendants – respondents under Section 80 CPC, after a lapse of nine

months, is of no use for him that he was not satisfied with the aforesaid relief.

In the nutshell, there is no merit in the regular second appeal so as to warrant any interference in the concurrent findings rendered by the courts below. No other question of law muchless substantial question of law arises in the instant appeal.

Dismissed.

September 15, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No