IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3939 of 2017 (O&M)
Date of decision: 11.08.2017

Punjab State Co-operative Supply & Marketing Federation Ltd. and anr.

... Appellants

Vs.

Makhan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.P. Mittal, Advocate
for the appellants.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendants No.2 and 3 are in regular second appeal against the impugned judgments of both the learned Courts below, whereby suit for declaration and mandatory injunction filed by the plaintiff-respondent No.1 seeking release of his retiral benefits, was decreed by the learned trial Court vide its impugned judgment and decree dated 27.08.2013 and first appeal of defendants No.2 and 3-appellants was partly allowed by the learned first appellate Court vide its impugned judgment and decree dated 10.09.2015.

Brief facts of the case, as noticed by learned trial Court in para 2 of its impugned judgment, are that plaintiff was working as Manager in the Gidderbaha Co-operative Marketing-cum-Processing Society Ltd., Gidderbaha (now merged with defendant No.2 “Punjab State Co-operative Supply &

Marketing Federation, Chandigarh") and he was retired on superannuation w.e.f. 31.01.2008 (afternoon). As per the terms and conditions indicated in the letter bearing No.EST/EAG-6/09-679 dated 20.02.2009, according to which all the employees of the society merged with MARKFED (defendant No.2) would be entitled to get those benefits, which were standing at the credit of the employees concerned. In the balance sheet of the society, the following amounts were standing in the account of plaintiff, as finally verified by the (Nareekhak Parhtaal) Co-operative Societies, Malout vide letter dated 03.06.2010.

(a) Gratuity	Rs.3,50,000/- (Three lacs fifty thousand)
(b) Leave encashment	Rs.1,90,784/- (One lac ninety thousand seven hundred eight four)
(c) Arrears of pay from 2000-2001 onwards	Rs.7,61,972/- (Seven lacs sixty one thousand nine hundred seventy two)
Total	Rs.13,02,756/- (Thirteen lacs two thousand seven hundred fifty six).

The plaintiff gave reminders on dated 17.03.2009 and 16.06.2009 and a legal notice dated 08.09.2009, but only an amount of Rs.8,28,408/- had been paid to the plaintiff by means of cheque No.055922 dated 10.06.2010, a sum of Rs.3,35,360/- (Three lacs thirty five thousand three hundred sixty) including interest on account of loan raised by the plaintiff and an amount of Rs.88,988/-. So, the plaintiff was required to be disbursed the payment of Rs.8,78,408/- (Eight lacs seventy eight thousand four hundred eight) instead of Rs.8,28,408/-. Thus an amount of Rs.50,000/- had been withheld with Gidderbaha Co-operative Marketing-cum-Processing Society Ltd., Gidderbaha without any cause or reason. As the amount of salary and retirement benefits, to which the plaintiff had a right to property, had been utilized by the societies (MARKFED and the merged Gidderbaha CMS), the plaintiff was entitled to get the amount.

Defendants were put to notice. Defendants No.1 and 2 did not appear and were proceeded against ex-parte vide order dated 01.03.2011 passed by the learned trial Court. Defendant No.3 appeared and filed the contesting written statement, raising more than one preliminary objections. Plaintiff did not file any replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP.
3. Whether the plaintiff has no cause of action? OPD.
4. Whether the suit is not maintainable in the present form? OPD.
5. Relief.

In order to prove their respective pleaded cases, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff has duly proved his case. Accordingly, suit for declaration and mandatory injunction filed by the plaintiff was decreed by the learned trial Court vide its judgment and decree dated 27.08.2013. Feeling aggrieved, defendants No.2 and 3 filed their first appeal, which was partly allowed by the learned first appellate Court vide impugned judgment and decree dated 10.09.2015. Dissatisfied, defendants No.2 and 3 have approached this Court by way of instant regular second appeal.

Heard learned counsel for the appellants.

Before proceeding further, it deserves to be clarified that the impugned judgments and decrees passed by the learned Courts below are being examined only from the angle and viewpoint put forth by the defendants-appellants. It is so said because the instant appeal has been found without any merit and the same is being dismissed, for the following more than one reasons. However, it also deserves to be made clear that passing of the instant order will not prejudice the rights of plaintiff-respondent No.1 in any manner. In case, he comes before this Court by way of his separate appeal against the impugned judgment of the learned first appellate Court, said appeal would be decided independently and this order would not come in the way of the plaintiff-respondent No.1.

Payment of retiral benefits, including pension and gratuity, is no longer any bounty to be distributed by the Govt. to its employees on their retirement, as held by the Hon'ble Supreme Court as far back as on 17.12.1984 in the case of **The State of Kerala and others Vs. M. Padmanabhan Nair, 1985 (1) SCC 429.** In view of the decision of the Hon'ble Supreme Court and different High Courts, retiral benefits have been recognized as valuable rights and property in the hands of retirees. It has been further repeatedly held that culpable delay in settlement and disbursement of retiral benefits must be visited with the penalty of payment of interest at the current market rate till its actual payment.

So far as the present case is concerned, it has gone undisputed before this Court that there was long and unexplained delay at the hands of the defendants in releasing and disbursing all the retiral benefits in favour of the plaintiff-respondent No.1. Having been left with no other option, plaintiff had to approach the Court, by filing a suit for declaration and mandatory injunction, which was rightly decreed by the learned trial Court vide its abovesaid impugned judgment and decree dated 27.08.2013. Having said that, this Court feels no hesitation to conclude that the learned trial Court was well within its jurisdiction to decree the suit of the plaintiff and the impugned judgment and decree passed by the learned trial Court deserve to be upheld.

Similarly, the learned first appellate Court, while partly allowing the first appeal of defendants No.2 and 3, recorded its findings in paras 9 to 11 of the impugned judgment, which deserve to be noticed here and the same read as under: -

> *"Learned counsel for the appellants argued that appellants are not liable to pay interest on delayed payment as respondent No.1 was employee of Gidderbaha Co-operative Marketing-cum-Processing Society Ltd. Gidderbaha and retired on 31.01.2008, must before the date of merger of Society in the appellants on 20.02.2009. So, it was Gidderbaha Co-operative Marketing-cum-Processing Society, who is liable to pay interest and furthermore, the delay was caused by the Society and not by the appellants. Learned counsel for the appellants further argued that the learned lower Court has further erred in awarding interest on the sum of*

₹3,35,336/- which was due from respondent No.1 on the loan raised by respondent No.1 when that amount was deducted on account of interest to be paid by the plaintiff-respondent. There is no question of any delay in payment of that amount. Whereas, counsel for the respondent-plaintiff argued that there is no illegality or infirmity in the impugned judgment passed by the learned lower Court. After taking over of Society by appellant, appellant is liable for all kind of liabilities of the Society and prayed for dismissal of the appeal.

Ex.D3 is the order vide which number of Societies were merged in the MARKFED vide order dated 06.11.2008 and in para No.2 of that letter, it has been specifically made clear that all the assets and liabilities of these Co-operative Societies are to be taken over by the MARK-FED and hereinafter MARK-FED shall be liable to settle the assets and liabilities at its own. So, the liability of Society in delayed release of retiral benefits of the respondent-plaintiff are of MARK-FED after the issuance of letter Ex.D3.

There is force in the contention of learned Government Pleader for the appellant that the appellant is not liable to pay interest on ₹3,35,336/- which has been deducted on account of interest due from the plaintiff-respondent as that amount is deemed to have been released to the respondent-plaintiff in time and in reply to the notice Ex.P17, it has been specifically stated by *counsel for the appellant that amount of ₹50,000/- has been retained temporarily and thereafter, no order has been passed by the appellant-Corporation with regard to those ₹50,000/-. Learned lower Court has rightly decreed the suit of the plaintiff-respondent for recovery of that amount of ₹50,000/- and interest on the delayed payment but the interest is due only on ₹8,78,408/-, not on ₹13,02,756/- as has been held by learned lower Court. Learned lower Court has granted the interest from the date of accrual upto the filing of the suit at the rate of 9% per annum. Whereas, appellants were required to be granted reasonable time to release the amount. So, I am of the opinion that a period of two months from the date of retirement of plaintiff-respondent is reasonable period to release the retiral benefits of plaintiff and interest will accrue on ₹8,78,408/- from 01.04.2008 to the date of filing of the suit @9% per annum and from the date of filing of the suit to actual realization of the amount @6% per annum. So, judgment and decree passed by the learned lower Court is modified accordingly and appeal of the appellant-Corporation is partly allowed with no order as to costs."*

When learned counsel for the appellants was confronted as to why the plaintiff-respondent was not entitled for interest on the delayed payment of his retiral benefits under different heads, he had no answer and rightly so, it being a matter of record. By now, it is the settled proposition of law that as and when the employer causes unexplained delay in releasing and disbursing the retiral benefits in favour of the retiree, he shall be entitled to receive his retiral benefits along with interest.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***State of Uttar Pradesh and others Vs. Dhirendra Pal Singh, 2017 (1) SCC 49 (SC).***
2. ***A.S. Randhawa Vs. State of Punjab and others, 1997 (3) SCT 468 (P&H).***
3. ***Om Parkash Vs. State of Haryana and others, 1995 (4) S.C.T. 331 (P&H).***
4. ***Hans Raj Sharma Vs. Uttar Haryana Bijli Vitran Nigam Limited and others, 2004 (3) PLR 431 (P&H).***
5. ***Ram Narain Dua Vs. Dakshin Haryana Bijli Vitran Nigam Limited and others, 2006 (3) PLR 733 (P&H).***
6. ***Dayanand Vs. UHBVNL and others, 2016 (2) S.C.T. 120 (P&H).***

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the impugned judgments and decrees. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Since the appeal is being dismissed on merits and the appellants have failed to furnish any plausible explanation for condonation of inordinate long delay of 589 days in filing the appeal, application for condonation is also dismissed.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

11.08.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No