107

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-3564-CII-2018 in/and
CR No. 1132 of 2018 (O/M)
Date of decision : 13.3.2018

State of Punjab and others .... Petitioners

Versus

Darshan Singh .... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. M.S. Dhillon, DAG Punjab, for petitioners.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-.- -.-

KULDIP SINGH J. (ORAL)

CM-3564-CII-2018

Application is allowed as prayed for.

Application is disposed of.

Main case

Heard.

In a suit filed by plaintiff-respondent, the lower Court decreed the suit holding that defendants are directed to release entire pensionary benefits after calculating the same as per the rules of concerned department within two months alongwith interest at the rate of 12 per cent per annum from the date of retirement i.e. 30.6.2008 subject to adjustment of amount being paid by the concerned department to the plaintiff after his retirement and after adjustment of the amount due against plaintiff, if any. It was further directed to fix the pension of plaintiff as per the rules. The said judgment and decree has become final. In the execution filed before the learned Additional Civil Judge (Senior Division), Dhuri, other retiral benefits are released. However, the State raised the objection that decreeholder is not entitled to pension. The learned Additional Civil Judge (Senior Division), Dhuri, dealt with the matter and observed as under :-

> '5. .... However, the both the rules are being interpreted wrongly by the JDs as the Punjab Civil Services Rules only lays down that a minimum of ten years qualifying service is required to be eligible for the pension. The word qualifying service has been explained in rule 2(k) of the rules of 2000, wherein it has been mentioned that "qualifying Service" means the service of an employee of Panchayat Samiti or Zila Parishad, as per the case may be, for which he has made contribution towards the Contributory provident fund before and after the commencement of these rules. Thus, from the perusal of the definition itself, it is clear that the contribution made by the employee/DH before the commencement of these rules i.e. under the prior rules of 1966, is also to be counted while counting the qualifying service of an employee. The only condition laid down in rule 12(3) of the rules of 2000 is that employee must deposit his/her share of CPF alongwith interest deducted under the rules of 1966 within stipulated period after exercising his option for these rules. The Hon'ble Punjab and Haryana High Court in the case titled as *'Satish Rani Sodh Versus State of Punjab and others'* bearing CWP No. 9125 of 2011 and 5131 of

2010, decided on 1.4.2013 has held that on deposit of the CPF alongwith interest, the qualifying service of the petitioner shall be taken as the date of initial appointment till the date of her retirement and benefits to be released to her within a further period of one month. In the present case, the DH admittedly has served in the department for 31 years and thus, it is clear that earlier he was governed by the rules of 1966 and as per the mandatory provision of rule 4 (2), every servant under these rules was mandatory to be a subscriber to the provident fund. Thus, it is further clear that earlier the DH was subscriber to the provident fund under the rules of 1966 and later on he opted for the rules of 2000. Now so far as, the deposit of CPF alongwith interest with the concerned authorities after opting for the rules of 2000, is concerned, it has not pleaded by the JDs that the same has not been deposited by DH. In view of my above said discussion, it is clear that the present objections filed by JDs are not maintainable and the DH has clearly completed his more than 10 years of qualifying service and as such he is entitled for the pension.'

The lower Court held that decree holder is entitled to pension.

I am of the view that first of all in the decree, the direction was to fix the pension as per rules, meaning thereby that the lower Court held that the decree holder is entitled to pension. The question was only of fixation of pension. The Executing Court otherwise cannot go beyond the decree. However, even if the rules are taken into consideration, the 'qualifying service' which has been discussed by the lower Court. The