

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

RSA No.3710 of 2013

T.R Raseen

...Appellant

Versus

Punjab Agricultural University, Ludhiana and Ors.

....Respondents

Date of Order: 11.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Appellant-T.R Raseen in person.

Mr. H.N.S Gill, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J (ORAL)

Plaintiff-appellant is in second appeal aggrieved of the judgment and decree of reversal dated 20.3.2013 passed by learned Addl. District Judge, Ludhiana vide which the appeal filed by the defendants-appellants against the judgment and decree dated 04.10.2011 passed by Civil Judge (Jr. Division), Ludhiana, decreeing the suit of the plaintiff, has been accepted.

Plaintiff-appellant instituted the suit on the ground that he had been working as Junior Assistant in the Department of Economic and Sociology, Punjab Agricultural University, Ludhiana (for short "PAU"). He retired from his services on 30.11.1997 but was not paid his retiral benefits including pension, fixed medical allowance from the date of retirement till date. He was only granted leave encashment and death-cum-retirement

gratuity on the old scale although he was entitled to the same on the revised scale, which was revised w.e.f 01.01.1996. It was further averred that his service during agitation for the period from 11.9.1996 to 12.11.1996 was not regularized and his arrears on account of proficiency step up, which became due in the year 1986, were also not paid.

Upon notice, the defendants appeared and contested the suit by filing written statement. Numerous preliminary objections qua cause of action, maintainability, deficiency of court fee and jurisdiction were raised. On merits, it was pleaded that the plaintiff being employee of PAU was not denied his retiral benefits. It was averred that the plaintiff on retirement had opted for contributory provident fund scheme and was thus not covered under the pension scheme at the time of retirement in the year 1997. As per the recommendations of the Finance Committee by the Board of management of the Punjab Agricultural University, the employees were allowed to exercise the options afresh. Plaintiff opted for the pension scheme in June 1998.

In order to prove their respective pleadings, both the parties led evidence besides tendering documents on record and the trial Court on the basis of material evidence placed on record decreed the suit of the plaintiff. In the appeal, the lower Appellate Court reversed the findings on the ground that the trial Court while not examining certain documents on record had not properly taken into consideration the admissions made by the plaintiff during his evidence especially when the plaintiff opted for pension scheme in June 1998 and only thereafter his pension at the enhanced rate was re-fixed.

Appellant submitted that the lower Appellate Court has

committed error in reversing a well reasoned judgment passed by the trial Court, for, the documentary evidence brought on record had not been appreciated in correct perspective. A grave injustice and discrimination has been caused to the appellant, which is in violation of Articles 14 & 16 of the Constitution. All the material documents noticed by the lower Appellate Court in fact did not indicate that the appellant had ever received payment qua proficiency step up and revised scale. The amount, which was raised in the statement of pension, was due to the rise in the dearness allowance and not on account of revision of pay scale. Even the cross examination of the plaintiff had not been read in conjunction with the examination in chief but in isolation. He further submitted that the application filed by the respondents-defendants for leading additional evidence should not have been entertained, for, the ingredients of Order 41 were not complied with.

Per contra, learned counsel for the respondents-defendants submitted that the lower Appellate Court has correctly re-appreciated the evidence and has given cogent reasons for reversing the findings of the trial Court. He submitted that during the pendency of appeal, an application under Order 41 Rule 27 CPC was filed to lead additional evidence only to prove that there was nothing outstanding to the plaintiff-appellant and everything had been taken care of. He thus prayed for dismissal of the present appeal.

After hearing the appellant in person, who is lawyer and learned counsel for the respondent and appraising the paper book, I find no force and merit in the submissions made by the appellant, for, the appellant during his cross examination categorically admitted that he had opted for Contributory Pension Fund Scheme, which was valid till his retirement on

30.11.1997. He received 90% of his contributory provident fund amounting to Rs.74,605/- in October, 1997 (vide Ex.D6) i.e before filing of the present suit. It was also admitted that the plaintiff opted for pension scheme in June 1998 and thereafter his pension was enhanced at the rate, which was re-fixed on 2.2.1999 w.e.f 01.12.1997 (vide order Ex.D1). He also received pension which was deposited in his personal account in the bank, which also included the fixed medical allowance. Statement of account brought on record by way of additional evidence w.e.f January 1997 to February 2012 showed that the fixed medical allowance was paid to the plaintiff w.e.f February 1999.

There was admission on his part that he had received the arrears of proficiency step up from 01.01.1986 onwards. He did not deny about passing of the order (Ex.PX3) dated 02.6.2004, granting proficiency step up w.e.f 01.01.1986 to 28.7.1986 amounting to Rs.160/-. All the arrears of proficiency step up before filing of the suit besides getting the amount of leave encashment in December, 1997 was not denied.

All the aforesaid documents have borne in the mind of lower Appellate Court by reversing the findings, which were not adverted to by the trial Court. In my view, the lower Appellate Court has duly exercised its powers under Section 96 CPC being the last court of law and facts. There is no bar for advertence or re-examination of the documents. Purpose of filing the appeal is only to re-examine the finding of facts recorded by the trial Court.

Taking into account the admission of the plaintiff much less additional documents placed on record, plaintiff-appellant, in my opinion, did not have any right to pursue the suit and thus the judgment and decree

passed by the trial Court has rightly been set aside. No other material document has been placed on record enabling this Court to form a different view.

Dismissed.

May 11, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No