IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA 3238/2017
Date of decision:25.09.2018

Harbhajan Singh (since deceased) through LRs Daljit Kaur and others

..............Appellants.

v.

Secretary, PSPCL and others

..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.BD Sharma,Advocate for the appellants.

Jaswant Singh,J,

Appellants/plaintiffs-legal representatives of deceased Harbhajan Singh are in second appeal against concurrent findings recorded by the Courts below whereby the suit for mandatory injunction directing the defendants to reimburse the excess amount of Rs.97,961/- with interest @ 18% per annum from the date of retirement of plaintiff till actual realization of the said amount was dismissed by the Civil Judge (Junior Division) Amritsar vide judgment and decree dated 25.10.2013 and findings affirmed in appeal by learned Additional District Judge,Amritsar vide judgment and decree dated 25.1.2017.

Facts in brief are that plaintiff filed the suit aforesaid with the averments that he was appointed as M.Mate on 1.2.1987 in the office of Sr.Executive Engineer,Civil Works Division,Punjab State Electricity Board, Amritsar and was regularized as an Assitant Line Man. He joined as such in the office of Industrial Division,PSEB,City Circle,Amritsar w.e.f. 15.6.1999. On attaining the age of superannuation he retired from the post of Assistant Line Man on 31.12.2006. It was further averred that well before his retirement he made a representation to the office of XEN, Ind.Division,City Cirlce,Amritsar to consider his work charge service towards his pensionary benefits as per standing instructions of the Punjab State Electricity Board. He had also sought information regarding the amount to be deposited on account of Board's share which had already been received from EPF Commissioner's office vide memo dated 8.8.2000. On the basis of such information received, he deposited a sum of Rs.56,269/- on 6.2.2007 as Board's share alongwith due interest. Thereafter, he was again asked by defendants to deposit an amount of Rs.27,126/- as difference of the Board's share and interest on it. Plaintiff is said to have made a submission that if any such amount was due, then the same should be deducted from his gratuity. Plaintiff received his Gratuity Payment Order dated 10.9.2008 in which gratuity was shown as an amount of Rs.90,413/- and amount of recovery as Rs.97,961/-. It was also mentioned therein that the balance amount of Rs.7548/- was deductible from the pension of the petitioner. It was thus averred that defendants in total had recovered a sum of Rs.1,54,230/- i.e. Rs.97961/- from gratuity/pension and Rs.56,269/- deposited by him on 6.2.2007. According to the plaintiff as intimated by Assistant EPF Commissioner,Jalandhar, the benefit of Rs.78009/- enjoyed by plaintiff included Rs.46219/- as employee's share and Rs.31,790/- as employer's share. The further case set up by the plaintiff was that as per standing instructions of the Punjab State Electricity Board, if any employee was willing to avail the benefits of work charge period towards pension, then he was liable to pay Board's share alongwith interest @ 12% and he accordingly had already deposited the amount of Rs.56269/- on 6.2.2007 as per direction received from A.O. CPC,City Circle,PSEB,Amritsar on account of Board's share of Rs.31790/- and due interest amounting to Rs.24479/-. It was further averred that since two gratuity payment orders dated 20.9.2007 were passed amounting to Rs.67280/- and Rs.97961/- hence no amount was refundable as the plaintiff had not received any amount from the office of EPF as Board's share and that the said office had wrongly kept 3.67% of the Board's share under the head of Employee Pension Scheme. It was next averred that plaintiff wrote several times to the office of Asstt. EPF Commissioner to refund the balance amount of Board's share i.e. amount of Rs.14,428/- (3.67% share separate for Employees Pension Scheme) with interest so that he could deposit the same with the XEN Industrial Division. It was pleaded that as per Employee Pension Scheme,1995, EPF Commissioner was having no authority to release the pension in case of the plaintiff as plaintiff had retired from a regular post as the said scheme was only for those employees who retired as work charge employees and thus defendants had wrongly,illegally and deliberately deducted the amount of Rs.97,961/- from gratuity payable to the plaintiff which they were liable to refund alongwith interest @ 18% per annum.

Upon notice, defendants contested the suit by filing written statement. It was stated that as per rules 50% of the Employee Provident Fund is deposited by the employer and 50% by employee. As per record, defendant had deposited Rs.31790/- upto August 2000 alongwith interest from 1.9.2000 to 31.1.2007 to the tune of Rs.24479/-. The plaintiff deposited Rs.56269/- on 6.2.2007 for the purpose of regularization of his EPF account. However, the Pension and Audit Section vide letter dated 11.6.2010 raised objection regarding lesser amount deposited by plaintiff. It was stated that in fact plaintiff's share worked out to the tune of Rs.46219/- upto August 2000 and after giving adjustment of Rs.31790/- deposited by him, he was liable to pay Rs.14429/- as difference of amount besides an amount of Rs.12697/- on account of interest for the period from 1.9.2000 to 31.12.2007 and thus he had deposited lesser amount of Rs.27126/-. It was further stated that in fact plaintiff was required to deposit total amount of Rs.83398/- i.e. 27126/- plus Rs.56269/- but instead of Rs.83398/- he had deposited only Rs.56269/- i.e. less amount of Rs.27126/-. Deduction of Rs.27126/- was denied on the ground that these were two separate accounts.

Assistant Employees Provident Fund Commissioner,Amritsar-defendant no.5 filed separate written statement stating therein that due provident fund had already been released and Pension Fund Contribution @ 8.33% of wages was retained as per Employees Provident Fund and Miscellaneous Provisions Act,1952 and not paid due to membership above ten years. It was further averred that as per die-cheat of the member, either he may apply for monthly pension under EPS,1955 under No Objection Certificate from employer or apply Form 13 for transfer of EPS,1995 contribution to Pension fund of PSEB.

On the pleadings of the parties, issues were framed. Both sides led evidence.

On the basis of oral as well as documentary evidence led by both sides, it has been held by the Courts below that as per rules of the department 50% of the Provident Fund is to be deposited by employee. It was depicted from the record that plaintiff retired as Lineman on 31.12.2006. His share worked out to the tune of Rs.46219/- upto August 2000 and after giving adjustment of Rs.31790/- deposited by him he was liable to pay Rs.14429/- as difference of amount. He was further held liable to pay interest of Rs.12697/- for the period from 1.9.2000 to 31.12.2007 and thus he had deposited lesser amount of Rs.27126/-. It was also held that gratuity of Rs.57280/- was paid to him vide cheque no.9239156 dated 23.5.2015. It was established on record that plaintiff had failed to show as to how he was entitled to claimed reimbursement of Rs.97,961/- with interest. Further, it was noticed that the plaintiff had retired on 31.12.2006 but he filed the suit on 11.8.2012 and as such the suit was time barred also.

In view of the findings and reasons recorded by the Courts below,no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

25.09.2018 **(Jaswant Singh)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**