

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

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Regular Second Appeal No.6216 of 2018 (O&M)
Date of Decision: November 26th, 2018

M/s Punjab State Civil Supplies Corporation Limited, Chandigarh
and others

...Appellants

Versus

Baljit Singh (now deceased) through his LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. A.D.S. Jattana, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 06.05.2015 passed by the Additional Civil Judge (Senior Division), Samrala, vide which the suit preferred by the appellants praying for a declaration to the effect that the respondent has wrongly mentioned the date of birth in service record leading to he having served for six years beyond his date of superannuation resulting in payment of ₹1,77,366/- as pay and allowances and the claim was for recovery of ₹2,82,455/-, which included interest of ₹1,05,085/-. The said judgment and decree has been upheld by the learned Additional District Judge, Ludhiana, vide judgment dated 25.07.2018, which has led to the filing of the present appeal by the appellants-plaintiffs.

2. It is the contention of learned counsel for the appellants that the respondent disclosed his date of birth wrongly leading to he continuing in service beyond the date of his superannuation, for which the appellants cannot be held liable. The findings as recorded by the Courts below are based on documents as the date of birth of deceased-respondent Baljit Singh was taken to be true leading to his continuing in service for a period of six

years beyond the date of his retirement leading to undue enrichment against

the entitlement of the respondent and, therefore, the suit as preferred by the appellants-plaintiffs needs to be accepted and the judgments and decree passed by the Courts below set aside.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments and decree but do not find myself in agreement with him.

4. The Courts below have rightly appreciated the facts and evidence which has been brought on record and the findings as recorded by the Lower Appellate Court in para 20 cannot be faulted with, which read as follows:-

“20. It is apperrant from the material on the file that the respondent continued to be in service and remained attending his duties beyond the date of superannuation due to fault on the part of the plaintiff corporation and the subsequent letters issued in this regard to the respondent by the plaintiff, were merely a cover up exercise in order shift the blame upon the respondent and to save the skin of the erring officials. It was for the department to keep a record of date of superannuation of employee and the process of the preparing papers for retirement begins atleast 2 months prior to the date of superannuation, as is admitted by PW-2. If the plaintiff was vigilant enough, then it would have well known that respondent was to be retired on attaining the age of superannuation and it would have not permitted the respondent to carry on in service beyond such date. It appears that the respondent bonafide kept continuing in service, as he was never asked to retire nor was served any memo regarding the same. Ex. D1 was prepared on 11.09.1998 and even on that date, no effort was made by the plaintiff corporation to retire the respondent immediately, as it was clearly within their notice and knowledge at the time of preparation of seniority list that the respondent has attained the age of superannuation. Even there si no eidence as to how the plaintiff came to know regarding the wrong recording of date of

birth in the records. As far as the FIR against the respondent is concerned, he has since been acquitted by the Court of Laearend Additional Sessions Judge in the case got registered against him by Plaintiff Corporation. Nothing has come on the record to show that there was any misrepresentation or concealment of actual date of birth by the respondent and these circumstances, it can not be held that the respondent was at fault in continuing in service despite his having attained the age of superannuation and rather clearly, the fault and lapse is on the part of the appellant and the respondent cannot be now penalised for the same. Even otherwise, equity demands that the said amount be not ordered to be withheld or recovered, as the respondent had in actual rendered services for this period, even though it was after the date of his attaining the age of superannuation.”

Perusal of the above would show that the respondent continued in service with the appellants-plaintiffs and the appellants despite having come to know of the same, had not initiated steps to retire him. It cannot, therefore, be said that the respondent, who had worked with the appellants-plaintiffs would not be entitled to the pay and allowances, which he has received. As he has worked with the appellants and his work and conduct has not been found to be in any manner unsatisfactory or doubtful, the plea of the appellants-plaintiffs cannot be accepted.

5. Finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal, the application for stay i.e. CM No.17455-C of 2018, stands disposed of as infructuous.

November 26th, 2018

Puneet

**AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned:

Yes

Whether Reportable:

No