

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

131

Regular Second Appeal No.1066 of 2019 (O&M)
Date of Decision: February 15th, 2019

Varinder Kumar

...Appellant

Versus

Groz Beckert Limited, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Raj Kishore, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

This appeal has been filed challenging the judgment and decree dated 23.02.2017 passed by the Civil Judge (Junior Division), Chandigarh, whereby the suit for mandatory injunction directing the respondents-defendants to award pension under the Employee's Pension Scheme 1995, which stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Chandigarh, dated 01.10.2018.

2. It is the contention of learned counsel for the appellant that on termination of the services of the appellant, an industrial dispute was raised, in which the Labour Court initially dismissed the reference, however, in a writ petition which was preferred by the appellant, the case was remanded back to the Labour Court by setting aside the award. On the basis of the remand, the Labour Court proceeded with the matter and the matter was amicably resolved by way of a settlement. According to the settlement, appellant gave up his right of reinstatement and back wages in case he gets a lump sum amount of ₹1,90,000/-. He further claimed the benefit of gratuity, pension in case any and the provident fund applicable to him in

accordance with the Rules. Appellant filed the suit in pursuance to the said

award for mandatory injunction. He contends that since the Employees' Provident Fund Scheme came into effect in the year 1995 and the award has been passed subsequently on the basis of the settlement which has been entered into between the parties, appellant would be entitled to the pension under the said scheme. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

4. Perusal of the judgment passed by the Lower Appellate Court would indicate that the statement which has been given by the appellant before the Lower Appellate Court was to the effect that he would take a lump sum compensation of ₹1,90,000/- instead of reinstatement and back wages and further that he would be entitled to the legal benefits including gratuity, if any applicable, pension in case any and provident fund applicable to him according to the Rules. In the light of the statement which has been given by the appellant, what has to be seen is whether the claim of the appellant for grant of pension under the Employees Pension Scheme, 1995 would be payable to him or not. For being eligible for grant of pension under the said scheme, he has to fulfill the requisite mandate thereof. One of the conditions as provided for under the scheme is that the employee should be a member of the scheme. It is not in dispute that the appellant had never opted for the scheme nor has he ever participated in the scheme. There is no evidence on the record indicating that he has ever submitted the pension papers with the competent authority for grant of pension. Since the appellant has not fulfilled the basic requirements for being eligible for the

grant of pension under the Employees Provident Fund Scheme dated 16.11.1995 or under the Employees Provident Fund Scheme, 1952, the appellant would not be entitled to the mandatory injunction as prayed for. The judgments and decree as passed by the Courts below being in consonance with the requirement of the statute and on proper appreciation of the pleadings and the evidence on record, do not call for interference by this Court as there is no perversity or illegality in the same.

5. No substantial question of law is involved in the present appeal. Therefore, 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.2591-C of 2019, stands disposed of as infructuous.

February 15th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No