

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

**CR No.649 of 2019(O&M)
Date of Decision-24.05.2019**

State of Punjab through its secretary and another
..... Petitioners

Versus

Joginder Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Rukhsaar Dhindsa, AAG, Punjab.

Mr. Ashok Giri, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the orders dated 10.12.2018 and 07.01.2019 passed by the executing Court whereby the objections filed by the petitioners were dismissed and permits of the buses already attached vide order dated 20.01.2018 were ordered to be attached.

[2]. Respondent Joginder Singh filed a suit for declaration to the effect that he was entitled to pension and other benefits attached to the post and non-grant of pension and other benefits were illegal, null and void.

[3]. The suit was dismissed by the trial Court vide judgment and decree dated 18.10.2014. The decision of the trial Court was assailed before the Lower Appellate Court. The appeal filed by the plaintiff/respondent was allowed and he was held entitled to claim service benefits along with interest

@ 12% per annum on the amount found due. Lower Appellate Court while accepting the appeal of the plaintiff/respondent vide judgment and decree dated 11.07.2017 observed that defendant No.2 had failed to produce original inquiry file in the Court, therefore, defendants could not show that the inquiry was duly conducted against the plaintiff/respondent. Since the plaintiff did not seek relief of reinstatement in service and only confined his prayer to pension and other service benefits, therefore, to that extent, the impugned order was set aside. Punishment dated 30.03.1993 and claim of the plaintiff/respondent for pension and other service benefits were ordered to be considered. He was held entitled to claim the aforesaid service benefits with interest on the amount found due. Punishing authority was called upon to pass afresh order within three months on the passing of the judgment and decree passed by the Lower Appellate Court for consideration of the claim of the plaintiff for pension and other service benefits. Plaintiff was held entitled to interest @ 12% per annum on the payments found due from the date of filing of the suit. The operative part of the judgment dated 11.07.2017 passed by Additional District Judge, Jalandhar was to the following effect:-

“23. In the light of the above discussion, this appeal succeeds. The impugned order dated 30.03.1993 is accordingly set aside to the extent that the same does not consider the claim of the plaintiff for grant of pension

and other service benefits. The defendant No.2 is called upon to pass a fresh order within three months of the passing of this order, considering the claim of the plaintiff for pension and other service benefits. The plaintiff shall be entitled to interest on the amount found due @ 12% per annum from the date of filing of this suit till date of actual realization. Accordingly, this appeal is accepted. The judgment and decree passed by the learned trial Court is set aside and the suit of the plaintiff is partly decreed for the relief of declaration and mandatory injunction. Decree be drawn. File be consigned to the record room. Trial Court record be returned along with a copy of this judgment.”

[4]. Thereafter, General Manager, Punjab Roadways, Jalandhar-1 vide order dated 30.10.2018, rejected the claim of the plaintiff/respondent. In continuation of aforesaid order, General Manager, Punjab Roadways, Jalandhar-I, vide order dated 29.11.2018, held that the plaintiff/respondent had rendered service only for 18 years, 1 month and 24 days after deducting the period of 4 years, 7 months and 4 days as absence period from total service of 22 years, 8 months and 27 days. Plaintiff/respondent had not completed qualifying age of service for grant of pensionary benefits under the rules, therefore, he was not entitled for any pensionary benefits according to rules.

[5]. At the time of termination of services, due regard to the length of services was not given, therefore, the Court in its wisdom directed the authority to consider the claim of service

benefits with interest @ 12% per annum on the amount found due.

[6]. At this stage, determination of the amount to be found due is the issue for consideration before the executing Court on the basis of total length of service rendered by the decree holder after completion of qualifying age of service.

[7]. Judgment passed by the Lower Appellate Court has to be read as a whole. In para No.15 of the judgment, the Lower Appellate Court has discussed the incriminating facts to the effect that while passing the order of termination of services of the plaintiff, the punishing authority did not consider the claim of the plaintiff for pension and other benefits after giving due regard to the length of service. There was nothing on the file to show that the order of termination was ever conveyed to the plaintiff. The suit was held to be within limitation on the basis of detailed findings recorded by the Lower Appellate Court. Defendant No.2 did not produce original inquiry file in the Court, therefore, the defendants could not show that the inquiry against the plaintiff was duly conducted. It was only on the ground that the plaintiff did not seek relief of reinstatement, the Court confined its consideration on the claim of pensionary and other benefits.

[8]. The consideration in entirety would have given different analogy, had the relief of reinstatement been claimed

by the plaintiff. Petitioners could not have drawn illegal premium over their misdeeds. In para No.17, the Lower Appellate Court set aside the order dated 30.03.1993 to the extent that the claim of the plaintiff for pension and other service benefits was not considered and the plaintiff was held entitled to claim such service benefits with interest @ 12% per annum on the amount found due. All the three points for determination were decided in favour of the plaintiff and against the judgment debtors. Conflicting scenario came to fore with reference to alleged ineligibility of the plaintiff on the basis of total length of services which has been computed after excluding period of absence. Inquiry report impugned in the suit had already been adversely commented upon. It was only on account of relief confined by the plaintiff himself, no consideration could have been made by the Court for the relief of reinstatement along with full back wages and other consequential benefits, otherwise, the order dated 30.03.1993 was set aside by the Additional District Judge, Jalandhar. Decree passed by the Lower Appellate Court has already attained finality.

[9]. In view of these peculiar facts, the order dated 29.11.2018 passed by General Manager, Punjab Roadways, Jalandhar-I is ordered to be set aside. It needs to be revisited to the extent of considering the case of the plaintiff/respondent on the basis of findings recorded by the Lower Appellate Court

in para Nos.15, 16, 17, 21, 22 and 23. General Manager, Punjab Roadways, Jalandhar-I is directed to consider the cumulative effect of findings recorded in the aforesaid paragraphs and then pass a fresh order in accordance with law within a period of one month from the date of receipt of certified copy of this order. Till such time, executing Court shall not proceed with the execution.

[10]. Disposed of.

24.05.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No