

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

RSA No. 2049 of 2019 (O & M)

Date of decision: 22.10.2019

State of Haryana through Collector Sirsa and others

....Petitioner(s)

Versus

Murari Lal

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Shivendra Swaroop, AAG, Haryana,
for the appellants.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 5577-C of 2019

Application for condonation of delay of 164 days in filing the appeal is allowed, in view of averments made in the application supported by affidavit and in view of the nominal delay.

Delay condoned.

RSA No. 2049 of 2019 (O & M)

The present regular second appeal filed by the State is directed against the judgment of the District Judge, Sirsa dated 23.07.2018 whereby, he decreed the suit of the respondent-plaintiff while allowing the appeal. The claim in the civil suit as such was that the plaintiff was entitled to get the benefit of second Assured Career Proficiency Step up (in short 'ACP') w.e.f. 01.04.2010 and the third ACP as per Haryana Government notification dated 04.03.2014.

The plaintiff was working as a Driver with the Haryana Roadways and retired on 31.05.2015 and filed a suit on 09.02.2016 for the said benefit. The defence of the State was that his services were regularized

w.e.f. 01.04.1993 since he had been appointed on 19.01.1989 for a period of 3 months through the Employment Exchange. As per the Rules, he was to be given the benefit of ACP on the completion of 10 years of regular service. From the date of regularization on 01.04.1993, he was entitled for the second ACP and was given the said benefit on 01.04.2013. After completion of 24 years of regularization, the third ACP would have become due on 01.04.2017 and, therefore, the plaintiff having retired on 31.05.2015, was not entitled to the benefit.

The evidence was led and the plea of the plaintiff was that his services were regularized on 16.09.1990 (Ex.D-2) and, therefore, he would be entitled for the benefits as claimed for. The Trial Court had rejected his claim as such on the ground that his services were regularized only on 01.04.1993 and accepted the defence as such of the State. It was accordingly held that the third ACP would become due after the period of retirement i.e. 2017 and, therefore, was not tenable. The suit was accordingly dismissed on 16.12.2016.

In appeal, it has been rightly noticed by the Appellate Court that his services had been regularized after completion of 240 days from 19.01.1989 w.e.f. 16.09.1990. He had been given his first ACP in the year 2000 after completion of 10 years and no one had raised any objection as such regarding the date of regularization. The instructions were issued on 12.01.2004 (Ex.D-3) whereas the formal order was passed on 10.05.2013 (Ex.D-4) which was during his service period and no notice was as such given to the plaintiff regarding this change of his date of regularization to 01.04.1993, which has adversely effected him. It was only when he filed civil suit on 09.02.2016, this issue was raised for the first time. In such

circumstances, the Appellate Court has rightly decreed the suit that even as per Ex.D-3, a notice was required to be given to the effected employee but he was condemned unheard in violation of instructions of the Government when order Ex.D-4 was passed.

It is not disputed that as per Ex.D-3, a show cause notice/hearing was to be given to the employees before any adverse order was passed and it is not the case of the State that any such procedure was followed. Once the action denying the benefits of increment is based on the change of date of regularization, merely because the same was not challenged as such would not give the State an opportunity to contend that the Appellate Court did not have jurisdiction to grant the benefit as no such challenge was raised to the order changing the date of regularization. The State being a model employer, is expected to follow the principles of natural justice and having violated it with impunity should not sit behind the shield of technicalities. The order as such which was passed in the year 2013 and the Appellate Court had rightly noticed that it is after a period of 20 years that an adverse order was passed which changed the date of regularization to the detriment of the respondent.

In such circumstances, the Lower Appellate Court was well justified in decreeing the suit and keeping the order of regularization dated 16.09.1990 intact. Once that is so, the necessary effect as such would be that the respondent would be entitled for the benefits of the ACP scheme as it would become entitled to him in 2014 before his date of retirement on 31.05.2015. The reasoning given by the Trial Court as such to deny the same was, thus, not justified. The Lower Appellate Court was well within its jurisdiction to rectify the error, which the State has committed.

Resultantly, there is no merit in the present appeal and the same is dismissed in limine as no substantial question of law arises.

22.10.2019
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No