

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

CWP-13325-2019 (O&M)
Date of decision: 19.08.2019

Mohan Lal Sally

....Petitioner

Versus

Central Bank of India & others

...Respondents

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

Present: Mr.Brijesh Nandan, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

CM-11574-CWP-2019

Application for placing on record copy of Execution No.31340 of 2013 and order dated 30.04.2019, passed by the Trial Court, as Annexures P-6 & P-7, respectively, is allowed, in view of the averments made in the application, duly supported by affidavit. Said documents are taken on record, subject to just exceptions. Office to tag the same at appropriate place.

CM stands disposed of.

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Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India is for grant of benefit of interest on delayed payments on arrears of pension, balance Leave Encashment, Gratuity etc, on the strength of various judgments passed by this Court.

It is not disputed that the petitioner had filed Civil Suit on 19.07.2004 (Annexure P-4) challenging the order passed by the Enquiry Officer and the disciplinary authority dated 21.03.2005 and 22.04.2005, whereby he had been removed from service. In the plaint, he had also claimed interest @ 18% per annum. The suit was decreed on 23.12.2010 (Annexure P-5) whereby the order of removal from service was set aside and the petitioner was deemed to be in continuous service in the Bank as a Manager, if he had already not attained the age

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of superannuation and the respondents were directed to give him all the benefits due under the Rules within a period of 6 months. Liberty was also given to pass a fresh order, within a period of 6 months of the date of passing of the said order. The decree reads as under:

“This suit is coming on this 23rd day of December, 2010 before me (Sanjiv Joshi, PCS, ACJ (SD), Jalandhar) for final disposal, in the presence of S/Sh.Pawan Malhotra Adv, counsel for plaintiff and N.S.Toor Adv, counsel for defendants.

It is hereby ordered that the impugned dated 22.04.2005 is set aside being illegal, null and void and against the principles of natural justice and is not binding upon the plaintiff. The plaintiff is deemed to be in continuous service of the defendant bank as Manager. However, he is not entitled to back wages of the period during which plaintiff did not perform any duty with the defendants. The defendants are directed to give the plaintiff posting order at the earliest. If plaintiff has already attained the age of superannuation, then, defendants are directed to give him all the pensionary/retiral benefits due to him under rules within the period of six months. However, defendants have the liberty to pass the fresh order on the basis of enquiry report Ex.P9 as per rules within the period of six months from the date of this order.”

It is not disputed that the appeal of the respondent-Bank was dismissed on 26.03.2013 by the Additional District Judge, Fast Track Court (Adhoc) Jalandhar. RSA-3080-2013 also met the same fate on 04.09.2017 (Annexure P-1). Petitioner never chose to file any cross-objection, at any point of time, to claim the benefit of interest which had been denied by the Trial Court, which he had claimed.

In the present writ petition, the benefit of interest which could have been claimed on account of the denial in the judgment and decree which

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was never done in the said set of proceedings. Petitioner also filed an execution petition, which was dismissed in default on 30.04.2019 (Annexure P-7).

Counsel for the petitioner submits that the financial benefits, as such, have been duly paid and therefore, the execution petition was not pressed.

In such circumstances, the claim for interest by filing a writ petition, would not lie, as admittedly, the Writ Court cannot exercise jurisdiction over and above what the Trial Court had not granted. It was for the plaintiff-petitioner to agitate for his grievances in case of non-grant of interest by the Trial Court. Having failed to do so, recourse to changing of tracks for the same benefits, cannot be permitted by way of filing a writ petition under Article 226 of the Constitution of India.

Accordingly, in view of the above, finding no merit in the present writ petition, the same is dismissed in limine.

19.08.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*