

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

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Regular Second Appeal No.4349 of 2019 (O&M)
Date of Decision: September 20th, 2019

Hardarshan Singh

...Appellant

Versus

Punjab Mandi Board, Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Manik Makkar, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-12206-C-2019

Prayer in this application is for condonation of delay of 8 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the counsel, the same is allowed.

Delay of 8 days in filing the appeal stands condoned.

CM-12205-C-2019

Prayer in this application is for exemption from filing the certified copy of judgment and decree dated 30.01.2017.

Application is allowed subject to just exceptions.

Exemption, as prayed for, is granted.

RSA No.4349 of 2019

Challenge in this appeal is to the judgment and decree dated 30.01.2017 passed by the Additional Civil Judge (Senior Division), Rupnagar, whereby the suit for declaration preferred by the appellant-plaintiff that he on his retirement with effect from 31.10.2011 is entitled to all retiral benefits which were due from the

respondents-department i.e. full pension in place of the provisional pension,

commuted pension, gratuity etc., which have not been released and illegally withheld with a further mandatory injunction directing the respondents to make the payment of all dues towards pensionary benefits and allied benefits along with interest from the date of accrual till the date of actual payment, stood dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Rupnagar, on 14.05.2019.

2. It is the contention of learned counsel for the appellant that as per the Notification dated 10.09.2012 Exhibit P-8, appellant could have opted for the grant of the benefit under the General Provident Fund scheme of the department. His contention is that the said benefit has not been given to the appellant. Assertion has also been made that as per the Notification dated 30.11.1987, although the appellant had not initially opted for the benefit under the Punjab State Agricultural Marketing Board and Market Committee Employees Provident Fund and Gratuity Rules, 1965, but could have so opted under the 1987 Rules. He contends that because of the time schedule of three months, the appellant could not apply for the same as he was in the field and came to know of it very late. He asserts that the appellant had filed two applications, one dated 26.09.2011 (Exhibit P-4) and another dated 31.10.2011 (Exhibit P-6) opting for pension which was prior to the date of his superannuation i.e. 31.10.2011 but the said applications have not been taken into consideration. He contends that the Courts below have wrongly proceeded on the assumption that merely because the earlier two applications dated 26.09.2011 and 31.10.2011 (Exhibits P-4 and P-6) have not been mentioned in the subsequent applications dated 10.01.2013 and 20.12.2012 (Exhibits P-9 and P-10 respectively), which the

appellant-plaintiff had submitted, the same could not have been made the basis for rejection of the claim. Because of the fault of the respondents, appellant-plaintiff cannot be made to suffer. He, thus, contends that the orders as 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 records of the case as well as the Notification.

4. Coming to the first contention of learned counsel for the appellant that the benefit of Notification dated 10.09.2012 has not been given to the appellant-plaintiff, suffice it to say the said Notification would not be applicable to the case of the appellant for the simple reason that the appellant had retired from service on 31.10.2011 which is prior to the notification. Admittedly the said Rules were only applicable to the employees, who were in service on the date of the said Notification.

5. The other Notification dated 30.11.1987, under which the appellant-plaintiff could have opted for the grant of the benefit of the Punjab State Agricultural Marketing Board and Market Committee Employees Provident Fund and Gratuity Rules, 1987, the said option also was not exercised by the appellant-plaintiff and, therefore, could not be granted the benefit thereof. The plea of the appellant-plaintiff that as per sub-clause 2 of the said Notification, appellant was entitled to the benefit of the said Rules as there was a deeming fiction of the said Notification but the said aspect unfortunately is not found in the Notification dated 30.11.1987, as has been provided for in the Notification dated 10.09.2012, where it is so provided. Admittedly, appellant has not contributed to the

General Provident Fund nor has the share of the appellant of the employees Contributory Provident Fund along with interest accrued thereon being deposited and credited to the General Provident Fund. If that be so, the claim of the appellant-plaintiff has rightly been rejected by the Courts below as he would not be entitled to the said benefit.

6. As regards the contention of learned counsel for the appellant that the appellant had opted for pension vide application dated 26.09.2011 and 30.10.2011 Exhibits P-4 and P-6, suffice it to say that there was a period of three months fixed as per the Notification dated 30.11.1987, which period having expired, the claim of the appellant could not have been accepted. That apart, the question with regard to the submission of the applications Exhibits P-4 and P-6 has been doubted by the Courts below keeping in view the fact that the dates have been implanted in different ink from the ink which has been used for writing the application. Apart from that, the Court has also taken into consideration the fact that in the subsequent applications after retirement i.e. dated 20.12.2012 Exhibit P-10 and 10.01.2013 Exhibit P-9, there is no mention of his earlier applications, vide which he asserts himself to have opted for the pension scheme prior to his retirement. There is nothing for taking a different view from the one which has been taken by the Courts below.

7. As regards the contention of the counsel for the appellant relatable to some of the employees, who have been granted the benefit of the General Provident Fund with specific reference to the case of another employee Som Nath, the Courts below have clearly held and pointed out the distinction between the case of the appellant and that of the co-employee of the appellant. The distinction as pointed out is that the said employee had

been contributing to the General Provident Fund, whereas the appellant-plaintiff has never contributed for the same. The distinction, therefore, as culled out by the Courts below, cannot be faulted with. It may be pointed out herein that Article 14 can be invoked only for claiming discrimination, where there is a right which has accrued to a person legally. Assuming an employee, who has been given the benefit, which is not legally permissible, the same cannot be made the basis by the other employee for enforcing it as a right to get that benefit. Unless a right is supported by a statutory and/or legal mandate, the same cannot be pressed into service for getting the benefit of Article 14 of the Constitution of India. In other words, Article 14 confers a positive right and not a negative right and a negative right cannot be enforced. Repeated mistakes would become a habit but the same cannot be made a rule to be followed by others and in same manner, many wrongs cannot make it right which can be enforced as a precedent in Court.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeals. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 20th, 2019

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**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: Yes