

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

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Regular Second Appeal No.4223 of 2019 (O&M)
Date of Decision: September 11th, 2019

State of Haryana and others

...Appellants

Versus

Dharampal

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ravi Partap, Assistant Advocate General, Haryana,
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.11786-C of 2019

Prayer in this application is for condonation of delay of 407 days in filing the appeal.

The delay in filing the appeal has been explained by the appellants in para 2 and 3 of the application and it has also been mentioned therein that the misconduct of one Clerk Naresh and one Assistant Vijender Singh, who are posted in the office of CHC, Meham, has led to the delay in filing the appeal. One of the persons, against whom the charge-sheet was issued, has resigned. It has further been stated that the action has been taken against the erring officials.

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

Delay of 407 days in filing the appeal stands condoned.

RSA-4223-2019

Challenge in this appeal is to the judgment and decree dated 23.07.2018 passed by the learned Additional District Judge, Rohtak, whereby appeal preferred by respondent-plaintiff-Dharampal against the

judgment and decree dated 28.08.2017 passed by the Civil Judge

(Junior Division), Rohtak, vide which the suit of the respondent-plaintiff for declaration and mandatory injunction had been dismissed, stands allowed by granting the declaration as prayed for and mandatory injunction for grant of consequential benefits.

2. It is the contention of learned counsel for the appellants that a suit for declaration to the effect that the respondent-plaintiff was entitled to Assured Career Progression (ACP) Scale with effect from 01.04.2003 instead of 01.04.2006 along with others resultant benefits and arrears with interest was based upon the fact that the Annual Confidential Reports for the years 1994-95, 1995-96, 1996-97, 1997-98 and 2002-03 were average and, therefore, the said benefit was not granted to him as he did not possess 70% good/satisfactory service Annual Confidential Report to his credit. The said suit was dismissed by the trial Court by giving a finding that the adverse Annual Confidential Reports were duly conveyed to the respondent-plaintiff, against which representations were submitted by the employee which was beyond the period prescribed for the same, resulting in their rejection. It is on this basis that the civil suit was dismissed. He contends that the Lower Appellate Court has failed to appreciate that the Annual Confidential Reports, which were average, had been communicated to the respondent and the findings as returned by the Lower Appellate Court are not sustainable. He asserts that letters Exhibits P-15 to P-20 were clear to the effect that the adverse Annual Confidential Reports for the relevant period were duly communicated to the respondent-plaintiff. Reference has also been made to the fact that he had filed representations against the adverse ACRs which clearly indicated that the same had been communicated to the respondent-plaintiff. He, thus, contends that the

judgment and decree passed by the Lower Appellate Court cannot sustain and deserves to be set aside.

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

4. It is not in dispute that an Annual Confidential Report, which is adverse and not communicated and conveyed to an employee, cannot be taken as adverse and used against an employee. The principle behind it is that the employee should get an opportunity to file a representation against the said adverse/average Annual Confidential Report. As a matter of fact, now as per the latest judgment of the Supreme Court and the instructions issued by the Government, all Annual Confidential Reports of each of the employees are to be communicated irrespective of the fact whether it is good, average or adverse.

5. The fate of the claim made by the respondent-plaintiff in the civil suit would be dependent upon the factum as to whether the average Annual Confidential Report, which he had achieved during the period which is a subject matter of the civil suit, had been conveyed to the respondent-plaintiff or not. The learned Lower Appellate Court had considered this aspect in paras 13 and 14 of the judgment, where the evidence which has been led by the parties, have been dealt with. As per the evidence produced by the respondent-plaintiff himself Exhibits P-21 to P-23, those were the average ACRs for the year 1996-97, 1997-98 and 2001-02, which were communicated to him. The departmental witness i.e. DW-1 Dr. Ved Pal has admitted in the cross-examination that the acknowledgment receipts being available on the file of the

respondent-plaintiff, which clearly indicates that the other Annual Confidential Reports have not been communicated by the appellants-defendants to the respondent-plaintiff as there are no receipts of other ACRs. Exhibits P-21 to P-23 are only with regard to the Annual Confidential Reports for three years. That apart, no acknowledgment receipts have been produced by the department which could be taken into consideration against the respondent-plaintiff. Reliance was placed upon Exhibits P-15 to P-20 to contend that all average ACRs have been communicated to the respondent-plaintiff. These exhibits are letters which have been written by the Director, Health Services, to the concerned authority i.e. the Chief Medical Officer with a direction to communicate the Annual Confidential Reports to the respondent-plaintiff but there is nothing on the record which would indicate nor has it been produced which would show that in compliance of these letters of the Director, Health Services, the average Annual Confidential Reports were ever conveyed to the respondent-plaintiff.

6. In the light of there being no evidence on record that the Annual Confidential Reports were actually conveyed to the respondent-plaintiff, the conclusion as drawn by the Lower Appellate Court that those Annual Confidential Reports cannot be taken as adverse against the respondent-plaintiff and thus, would not adversely affect his claim, cannot be faulted with.

7. In the light of settled preposition of law and the facts on record, the findings as recorded by the Lower Appellate Court while reversing the judgment and decree passed by the trial Court, cannot be faulted with.

8. There is no illegality in the judgment which has been passed by

the Lower Appellate Court which would call for any interference by this Court in the present appeal.

9. There being no question of law involved in the present appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, application for stay i.e. CM No.11787-C of 2019 stands disposed of as infructuous.

September 11th, 2019

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No