IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.2242 of 2016 (O&M)
Decided on : 21.01.2019

Haryana Khadi & Village Industries Board ...... Appellant

Versus

Chander Parkash ...... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. A.K.Jain, Advocate
for the appellant.

Mr. K.L.Arora, Advocate
for the respondent.

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Manjari Nehru Kaul, J.

CM-4633-LPA-2016

This is an application filed under Section 5 of the Limitation Act for condonation of delay of 554 days in filing the appeal.

Learned counsel for the applicant contended that review petition was filed before the learned Single Judge against the order dated 02.03.2015, which was dismissed on 07.04.2016. Copy of the said review petition was received on 28.05.2016. He further contended that due to the procedural delay in obtaining the requisite advice, legal opinion and sanction from the office of Advocate General, Haryana as well as concurrence from the Finance Department, Haryana the delay of 554 days occurred in filing the appeal.

After hearing learned counsel for the applicant and perusing the application, which is duly supported by an affidavit of the competent officer of the appellant, delay of 554 days in filing the appeal is condoned.

CM stands disposed of.

LPA-2242-2016

The present appeal has been preferred impugning the orders dated 02.03.2015 passed by the learned Single Judge in CWP No.10731 of 2014 and order dated 07.04.2016 passed in the Review Petition vide which the writ petition of the respondent was allowed and the review petition of the petitioner was dismissed.

2. Respondent/petitioner, who retired on 30.04.2006 as Senior Accounts Officer was drawing a salary @ ₹ 28,639/- per month on the date of his retirement. However, the petitioner-department took an average of the salary paid to the respondent in the last 10 months in calculating his pension. Feeling aggrieved, respondent filed writ petition for grant of highest emoluments drawn by him in terms of Rule 9 of Haryana Civil Services (Revised Pension) Part-II Rules, 2009 (for short 'the Rules').

3. Learned Single Judge vide order dated 02.03.2015 allowed the petition and directed the respondent-department to refix and recalculate the pension of the petitioner in terms of the Rules. It was further directed that the same shall be disbursed to the petitioner along with interest @ 6.5% per annum within a period of four months from the date of receipt of certified copy of the order.

4. Learned counsel for the appellant Board averred that learned Single Judge had overlooked Rule 8(3) of the Rules, which dealt with the calculation of pension of retired employees prior to coming into force of the 2009 Rules.

5. After hearing learned counsel for the parties and perusing the

material available on record, we do not find any merit in the contention raised by learned counsel for the appellant-Board.

6. Learned Single Judge while allowing the writ petition relied upon Rule 9 of Haryana Civil Services (Revised Pension) Part-II Rules, 2009, which is reproduced herebelow:

> *9. The amount of pension shall be subject to a minimum of Rs.3500/- w.e.f. 01.01.2006 and maximum upto 50% of highest pay in the government. The highest pay in Haryana Government is Rs.79,000/- w.e.f. 01.01.2006 (pay band+grade pay).*

7. A perusal of Rule 9 clearly stipulates that the minimum amount of pension shall be ₹ 3,500/- w.e.f. 01.01.2006 and maximum upto 50% of highest pay in the government. Since the respondent was drawing salary of ₹ 28,639/- per month on the date of his retirement, therefore, the said rule is fully applicable in his case. The learned Single Judge accepted the writ petition with the following observations:

> *"The Rule in question is very clear, specific and unambiguous and there is no scope for reinterpretation or interference drawn other than that indicated in Rule 9 of 2009. Therefore, this Court feels that the respondent erred in not calculating the pension of the petitioner @ 50% of the highest emoluments drawn by him in the month of April, 2006.*
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> *In the circumstances, the petition is allowed; orders dated 20.12.2013 (Annexure P-8) and 12.04.2013 (Annexure P-9) are, hereby, set aside and the respondent-Board is directed to recalculate and refix the pension of the petitioner in terms of Rule 9 of 2009 (Annexure P-10) along with interest @ 6.5 % p.a,*

within a period of four months after the receipt of certified copy of this order."

8. No illegality or perversity could be shown in the approach of the learned Single Judge warranting interference in appeal. Accordingly, the appeal being devoid of merit is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

21.01.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No