

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

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R.S.A. NO.4495 OF 2019

DATE OF DECISION: OCTOBER 01, 2019

Dass Ram

.....Appellant

VERSUS

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

**Present: Mr. Ram Niwas Sharma, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

This second appeal has been preferred against the judgment and decree dated 18.04.2015 passed by the Civil Judge(Junior Division), Hisar, whereby suit for declaration to the effect that the appellant-plaintiff is entitled to all retiral benefits, including pension, gratuity, leave encashment etc. from the respondents for the service he has rendered with all consequential relief of mandatory injunction, directing release of arrears of retiral benefits alongwith penal interest @ 18% per annum, stands dismissed, appeal against which preferred by him has been dismissed by the Additional District Judge, Hisar, vide judgment dated 31.07.2019.

2. Brief facts are that the appellant was appointed on the post of Junior Engineer (Civil) by the Deputy Commissioner, Bhiwani, vide memo dated 13.03.1981, on which post he joined on 17.03.1981 in the office of the

Block Development and Panchayat Officer, Tosham. In the said

appointment letter, it was mentioned that the post was purely temporary and is likely to abolish at any time and carries no promise for subsequent permanent appointment. He continued to serve the respondents till the date of his retirement i.e. 30.09.2011 but his services were not regularized by the respondents. Suit for regularization, as preferred by the appellant-plaintiff, was dismissed by Civil Judge (Junior Division), Hisar, on 17.08.2013, against which appeal preferred by him was also dismissed. The present suit has been filed by the appellant-plaintiff after the dismissal of the suit by the trial Court, as referred to above, for grant of retiral benefits, on the plea that the said claim was not made by him in the earlier suit.

3. Contention of counsel for the appellant is that appellant-plaintiff cannot be denied the benefit of retirement on having attained the age of superannuation, although his services were not regularized. He has rendered 30 years of service with the respondent-Department and it does not make any difference as to whether the appellant was working on regular, temporary or adhoc basis as the said period has to be considered for grant of retiral benefits. His further submission is that the services of the appellant ought to have been regularized as per the decision of the Hon'ble Supreme Court in Secretary, State of Karnataka and others Vs. Uma Devi, 2006 (4) SCC 1, wherein the Court had laid down that in case where the services have been rendered by an employee for more than 10 years, such services ought to have been regularized as a one time measure. The judgments, which have been passed by the Courts below, have primarily gone against the appellant-plaintiff on the ground that his services have not been regularized and that his suit for regularization of his services stand dismissed, ignoring the fact that he had been regularly getting the annual

increments, pay fixation etc. He was also granted the other benefits as granted to a regular employee. He asserts that except for passing a formal order of regularization, rest of the benefits, which a regular employee is entitled to during his services, had been granted to the appellant-plaintiff. His assertion, thus, is that the judgments and decree passed by the courts below cannot sustain and deserve to be set-aside.

4. In support of this assertion, he places reliance upon the judgment passed by this Court in Civil Writ Petition No.4860 of 1999 (Sohan Singh Vs. State of Punjab and others) decided on 25.05.2010, wherein this Court in the case of a Driver, who was appointed and continued on work charge basis in the Irrigation Department of the Government of Punjab, rendered 25 years of service without he being regularized. This Court proceeded to regularize the services of the petitioner therein and grant all consequential benefits, including the retiral benefits. Reliance has also been placed on the judgment of Hon'ble Supreme Court in Prem Singh Vs. State of Uttar Pradesh and others, Civil Appeal No.6798 of 2019 decided on 02.09.2019, where it has been held that the employees who have not been regularized inspite of rendering 30/40 years of service prior to their superannuation, their services were required to be considered for regularization as a one time measure in the light of the judgment of Uma Devi's case (supra) and the Court had further gone to the extent of saying that they shall be entitled to receive pension as if they had retired from regular establishment and their services shall be counted as qualifying service for the purpose of pension.

5. I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned

judgments and decree passed by the Courts below.

6. Present is a case where the appellant had been employed purely on temporary basis, as asserted by him on 13.03.1981 and he joined as such on 17.03.1981 as a Junior Engineer in the office of the Block Development and Panchayat Officer, Tosham. As per the pleadings, as has come on record, his appointment letter stipulated that the post is purely temporary, which is likely to be abolished at any time and carries no promise or subsequent permanent appointment. Surya Parkash (DW2) tendered his sworn affidavit as Ex.DW2/A, where he deposed on oath that the post on which the appellant had worked was temporary and was not made permanent ever. He has further asserted that the appellant was not retired from service but was relieved on 30.09.2011 on completion of the age of 58 years. The appellant-plaintiff has also admitted this fact that his services were never regularized. The Courts below have returned a finding that the appellant-plaintiff has not produced any evidence to substantiate his contention, although an assertion has been made that he has regularly been granted the benefit of increments etc. as a regular employee but no evidence to that effect has been produced. Nothing has been brought on record in this appeal as well.

7. An objection, which has been taken by the respondents, is that the present suit of the appellant-plaintiff is not maintainable as it would be hit by Order 2 Rule 2 C.P.C. It is apparent from the document, Ex.D2, which is the judgment passed by the Civil Judge (Junior Division), Hisar, dated 17.08.2013, wherein he has sought not only the regularization of his services but had claimed consequential benefits of seniority, promotion and pension as well. The said suit having been dismissed and it is admitted that

the appeal preferred against that judgment and decree was also not accepted, therefore, present suit would not be maintainable. Thus, it is apparent that the claim of the appellant for regularization of his services having been dismissed, he was relieved from service on having attained the age of 58 years on 30.09.2011.

8. As per the Punjab Civil Services Rules, as applicable to the State of Haryana, an employee, who is not appointed on regular basis or his services have not been regularized, cannot be granted the retiral benefits. The claim of the appellant, therefore, being not covered by the provisions of the Civil Services Rules cannot be granted the benefit as has been claimed in the present suit, irrespective of the fact that the earlier suit, which has been preferred by the appellant, including the grant of retiral benefits, as has been claimed in the present appeal, stands dismissed.

9. The claim of the appellant, therefore, can be said hinges on the fact that his services should have been regularized on or prior to the date he was relieved from service. Unfortunately the same has not happened and the suit, which has been preferred by him for grant of such declaration for regularization of the services, has been dismissed by the Courts below, as has been referred to above. Since the said claim has been dismissed, relief, as claimed by the appellant-plaintiff in the present suit, cannot be granted to him.

10. Sohan Singh's case (supra), on which reliance has been placed by counsel for the appellant, was a case where the claim of the petitioner therein was found to be covered by the policy instructions of the State of Punjab and despite that the claim as put forth by him for regularization of his service, was not acted upon by the respondents. It is under those

circumstances that the Court had proceeded to regularize the services of the petitioner therein and thereafter held him entitled for grant of retiral benefits. In the present case, unfortunately the claim of the appellant-plaintiff for regularization of his services stands dismissed. As regards, the judgment of Uma Devi’s case (supra), suffice it to say that in the light of the judgment passed by the Courts below in the civil suit, which was earlier preferred by the appellant-plaintiff, including the judgment passed by Hon’ble the Supreme court in Prem Singh’s case (supra), the said relief cannot be granted to the appellant-plaintiff as he does not fulfill the mandate of the statutory rules.

11. In the impugned judgments concurrent findings have been returned by both the Courts below, which, being in accordance with the pleadings and proper appreciation of the evidence brought on record, do not call for any interference by this Court as there is no misreading or non-consideration of the material available on record nor is there any perversity or illegality in the same.

12. Further, there being no substantial question of law involved in the present appeal, no interference in the same by this Court is called for.

13. The appeal, therefore, stands dismissed.

October 01, 2019
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No