

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

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Regular Second Appeal No.6070 of 2016 (O&M)
Date of Decision: December 5th, 2019

Bharat Bhushan

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gulshan Sharma, Advocate
for the appellant.

Mr. Manish Dadwal, Assistant Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.15989-C of 2016

Prayer in this application is for exemption from filing true typed copies of impugned judgment and decree dated 06.10.2015 passed by learned Civil Judge (Senior Division), Bhiwani, grounds of appeal before the learned District Judge, Bhiwani as well as impugned judgment and decree dated 06.08.2016 passed by learned District Judge, Bhiwani.

Application is allowed subject to just exceptions.

Exemption, as prayed for, is granted.

RSA No.6070 of 2016

On 30.10.2019 when the case was taken up for hearing, following order was passed:-

“Having considered the submissions made by counsel for the parties and keeping in view the judgment and decree dated 16.12.2018 passed by the District Judge, Bhiwani, where the statutory rules governing the entitlement and grant of family pension has been referred to, there can be no doubt that the appellant was entitled to the grant of family pension. The question which needs to be further proved is the entitlement of interest on delayed payment of family pension and arrears.

Counsel for the appellant prays for an adjournment to

go through the records to assist the Court on the issue as to when, for the first time, the appellant had approached the respondent-Department claiming family pension from them.

List on 05.12.2019.

To be shown in urgent list.”

2. Learned counsel for the appellant has pointed out that the date of the judgment and decree passed by the District Judge, Bhiwani, has been wrongly typed as 16.12.2018 in the above order, whereas it should have been 16.12.2010.

3. Learned counsel for the appellant very fairly states that there is nothing on the record in the form of evidence that the appellant had earlier approached the respondents for the grant of family pension, although the counsel has asserted that he had been approaching the respondents for the grant of family pension and that too mean that he had been approaching for the grant of interest as well. There has been delay on the part of the respondents in releasing the benefit of family pension and, therefore, the interest should have been granted from the date it became due i.e. the family pension in the year 02.11.1996 instead of 04.03.2011, which has been ordered by the Lower Appellate Court at the rate of 9% per annum. His further contention is that the duty and responsibility is that of the department to get the family pension papers completed. No efforts whatsoever has been made by the respondents in this regard. The onus was, therefore, on the department to fulfill their duty and responsibility, which they have failed and, therefore, the appellant is entitled to the pension from 02.11.1996 till the date of release of the said family pension amount.

4. On the other hand, learned counsel for the State has submitted

appellant had been, on the basis of a Will, claiming family pension. Civil suit was filed which ultimately culminated with the decision of this Court in a revision petition which was dismissed on 13.01.2014. According to the judgments passed by the Courts below, the statutory rules entitled the appellant-plaintiff the grant of benefit of family pension. After the passing of the judgment and decree by the Civil Court, the department had proceeded to release the retiral benefits, although on a notice being served upon them for interest subsequently after the release of the family pension. He asserts that as per the judgment dated 06.08.2016 of the Lower Appellate Court, interest at the rate of 9% has been granted to the appellant two months after the date of he having served a notice for grant of interest i.e. 04.03.2011. He, thus, contends that the judgment and decree as passed by the Lower Appellate Court do not call for any interference as it was limited to the extent of grant of interest, which the appellant construed as delayed payment on the part of the department.

5. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the impugned judgments.

6. No doubt, there has been litigation between the family itself i.e. the father and the sons but as per the statutory rules, which have been finally settled, appellant was found to be entitled to the grant of family pension. The Will was said to be applicable limited to the extent of gratuity and other benefits but the family pension is payable to the appellant. The said aspect having attained finality with the dismissal of the revision petition before this Court on 13.01.2014, which had been preferred by the

the District Judge, wherein when initially stay was granted, the respondents had proceeded with the matter and granted him pension in the month of July 2011 after the passing of the judgment dated 16.12.2010 by the District Judge. In the light of these facts, it cannot be said that there has been delay on the part of the respondents in processing the claim of the appellant-plaintiff once they were satisfied with regard to the judgment passed by the District Judge holding the appellant-plaintiff entitled to the grant of family pension. Appellant-plaintiff has thereafter served a notice through counsel, which on receipt the respondents, did not grant interest and, therefore, the appellant-plaintiff had preferred a civil suit, where the Lower Appellate Court had granted him interest two months after the serving of the legal notice upon the respondents. This aspect has been challenged by the appellant-plaintiff by asserting that he should be entitled to the grant of interest with effect from the date of his entitlement i.e. 02.11.1996. The said plea cannot be accepted in the given facts and circumstances of the present case, especially in the light of the fact that there is no evidence on record, which would indicate that the appellant-plaintiff has ever claimed interest on retiral benefits, which accrued to him in the year 1996 itself.

7. The judgment and decree dated 06.08.2016, therefore, as passed by the Lower Appellate Court, cannot be faulted with on this score as no fault can be attributed to the respondents for non-grant of the interest to the appellant on pension.

8. It may be added here that even the Lower Appellate Court in its judgment dated 16.12.2010 did not grant any interest to the appellant-plaintiff while holding him entitled to the grant of family pension.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

December 5th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No