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RSA-4899-2014 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4899-2014 (O&M)

Date of Decision: 22nd April, 2019

Davinder Kumar Jain

...Appellant

Versus

The Executive Engineer Central Works Division, PWD (B&R),
Ferozepur City & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Puneet Gupta, Advocate and
Mr. Anil Rana, Advocate
for the appellant.

Mr. Charanpreet Singh, Asstt. A.G., Punjab
for the respondents – State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-11568-C-2014

Exemption is granted from filing certified/typed copies of the annexures and photocopies of the same are taken on record, subject to all just exceptions.

Application stands disposed of.

RSA-4899-2014

Challenge in this appeal is to the judgment and decree dated 20.05.2014 passed by the Additional District Judge, Ferozepur, vide which, appeal preferred by the State of Punjab has been partly allowed against the

judgment and decree passed by the Civil Judge (Junior Division), Ferozepur, dated 18.09.2013, vide which, suit of the appellant – plaintiff for declaration to the effect that he is entitled to two increments i.e. one increment under the Assured Career Progression Scheme (for short 'ACP Scheme') of 4-9-12 w.e.f. 01.11.2006 and the other increment on passing the promotional departmental examination in the first attempt w.e.f. 01.08.2008 along with all benefits and arrears bills and also arrears of bills of dearness allowance w.e.f. 01.07.2003, 01.01.2004 and 01.07.2004 amounting to ₹ 3122/- with interest as also interest on the GPF amounting to ₹ 2,96,786/- w.e.f. 01.04.2009 to 15.06.2009 was allowed. It may be added here that interest at the rate of 9% was granted by the trial Court to the extent that appellant – plaintiff is only entitled for interest at the rate under the prevailing rules on the delayed payment of G.P.F. of 45 days.

2. It is the contention of the learned counsel for the appellant that the lower Appellate Court has wrongly interpreted Rule 10 (3) of the Punjab Department of Public Works (Building and Roads) Junior Engineers (Class-III) Service Rules, 1993 (hereinafter referred to as '1993 Rules'). He contends that the lower Appellate Court has confused itself with regard to the language of the said rule and because of which, the advance increment which was granted to the appellant on passing his departmental promotional examination of Junior Engineer conducted on 31.08.2008 culminating into the declaration of the result on 14.11.2008 declaring the appellant having passed the examination against Roll No.12151 is not sustainable. His submission is that on declaration of his result on 14.11.2008, appellant

would be entitled to an advance increment w.e.f. the said date till the date of his retirement i.e. 30.04.2009. These facts are admitted by the respondents.

3. His further submission is that the appellant is entitled to one increment under the ACP Scheme of 4-9-14 and in support of this contention, he places reliance upon the judgment passed by this Court in CWP No.16446 of 2010, titled as 'Jaswinder Singh Bedi & others Vs. State of Punjab & others', decided on 20.05.2013, which judgment has been upheld by the Division Bench of this Court in Letters Patent Appeal No.244 of 2014, titled as 'State of Punjab & others Vs. Jaswinder Singh Bedi & others', decided on 19.12.2014. He, thus, contends that so far as the claim of the appellant for grant of one increment under the ACP Scheme is concerned, the said claim is covered by the said judgment. He, thus, contends that the impugned judgment and decree as passed by the Additional District Judge, Ferozepur, dated 20.05.2014, cannot sustain and deserve to be set aside and the judgment and decree passed by the trial Court dated 18.09.2013 restored.

4. Counsel for the State, on the other hand, asserts that the lower Appellate Court has taken into consideration Rule 10 (3) of the 1993 Rules. He contends that the appellant would have been entitled to the grant of his advance increment only on completion of one year after he having passed the departmental examination of the Junior Engineer. Since he did not work for one year with the respondent after he having passed the examination and retired prior thereto, there is no question of the appellant being held entitled

to the benefit of the said increment. As regards the assertion of the counsel for the appellant that the claim of the appellant is covered by the judgment of this Court in *Jaswinder Singh Bedi's* case (supra) with regard to the grant of one increment under the ACP Scheme, counsel for the State is unable to distinguish the said judgment. He, however, contends that the impugned judgment and decree passed by the lower Appellate Court does not call for any interference by this Court.

5. I have considered the submissions made by the learned counsel for the parties with their assistance have gone through the records of the case as well as the impugned judgments passed by the Courts below.

6. Sub-Rule 3 of Rule 10 of the 1993 Rules reads as under:-

“Rule 10:- Departmental Promotional Examination:

(1) XXXXXX

(2) XXXXXX

(3) A member of the service who passes the examination in the first attempt shall be entitled to one advance increment to be absorbed in the next normal increment on the day on which the next increment falls due.”

7. A perusal of the above rule clearly indicates that the employee who has passed the departmental examination in the first attempt would be entitled to one advance increment to be absorbed in the next normal increment on the day on which the next increment falls due from the date of passing the departmental examination. The language of the rule is itself clear in this regard and therefore, need no further elaboration as the question of absorption of an advance increment which an employee becomes entitled

to on his passing the examination in the next normal increment on the date when the next annual increment becomes due in routine would only come if he is earlier granted advance increment, otherwise the said rule would not be operative at all.

8. In the present case, admittedly, the departmental examination of the junior engineer was conducted on 31.08.2008 result of which was announced on 14.11.2008 where the appellant had passed the examination against Roll No.12151. He, therefore, became eligible for grant of advance increment w.e.f. 14.11.2008 and would continue to get the said additional increment increment till the date his next normal increment day would fall. In case the next normal increment day is subsequent to the date of his retirement i.e. 30.04.2009, he would be entitled to the said advance increment upto 30.04.2009 or otherwise till the date he would have normally get the annual increment as the advance increment would be absorbed in the said increment.

9. As regards the benefit of one increment under the ACP Scheme which is the subject matter of the present appeal, the claim of the appellant is covered by the judgment passed by this Court in *Jaswinder Singh Bedi's* case (supra) and therefore, the lower Appellate Court has wrongly proceeded to deny the said benefit.

10. In view of the above, the present appeal is allowed. The judgment and decree passage by the Additional District Judge, Ferozepur, dated 20.05.2014 is set aside and the judgment and decree passed by the trial Court is upheld to the extent of it being in consonance with the order

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passed by this Court above relating to advance increment to the appellant on passing the departmental test on 14.11.2008 as also with regard to the judgment passed by this Court in *Jaswinder Singh Bedi's* case (supra). It goes without saying that the interest which has been granted by the trial Court shall remain intact.

CM-11569-C-2014

In the light of the disposal of the main appeal, no order is required to be passed in the present application for stay as the same has been rendered infructuos.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

22nd April, 2019
Harish

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