

RSA-3536-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3536-2017 (O&M)

Date of Decision: 24th January, 2019

Banwari Lal

...Appellant

Versus

Financial Commissioner and Principal Secretary
to Government of Haryana, Chandigarh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. V.P. Sangwan, Advocate,
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-8531-C-2017

Prayer in this application is for condonation of delay of 37 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the applicant – appellant – plaintiff, the same is allowed. Delay of 37 days in filing the appeal stands condoned.

CM-8532-C-2017

Exemption is granted from filing typed copies of judgments and decree passed by the Courts below and grounds of appeal, subject to all just exceptions.

Application stands disposed of.

RSA-3536-2017 (O&M)

CM-6700-C-2018

Copies of plaint of Civil Suit No.997 of 2009 as well as judgment and decree dated 10.06.2011 are taken on record, subject to all just exceptions.

Application stands disposed of.

RSA-3536-2017

Challenge in this appeal is to the judgment and decree dated 11.12.2014 passed by the Civil Judge (Junior Division), Bhiwani, whereby, suit for declaration to the effect that the appellant – plaintiff is entitled to get the withheld amount of gratuity i.e. ₹ 24,036/- along with interest @ 12% per annum and the delayed payment of retiral benefits, further order dated 05.05.2009 inflicting punishment of 3% cut in pension passed by the Director, Food and Supplies, Haryana, Chandigarh and order dated 25.11.2010 passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Food and Supplies Department, being illegal, unlawful and not binding upon the rights of the appellant – plaintiff, with consequential benefits by issuing the mandatory injunction for release of the benefits, stands dismissed by the said Court not only on merits but also primarily based upon the fact that the said suit is barred by the principle of *res judicata* as the appellant – plaintiff had earlier challenged the order passed by the Director, Food and Supplies, Haryana, dated 05.05.2009 inflicting punishment of 3% cut in pension, along with the other benefits, which civil suit has been

dismissed by the Court vide judgment dated 10.06.2011, appeal against which preferred by the appellant – plaintiff has also been dismissed on 17.12.2012 the issue being settled upto the the Appellate Court and for having attained finality Similarly, the appeal which has been preferred by the appellant – plaintiff challenging this judgment and decree dated 11.12.2014, has also been dismissed by the learned Additional District Judge, Bhiwani, vide judgment dated 20.10.2016.

2. It is the contention of the learned counsel for the appellant – plaintiff that principle of *res judicata* would not be applicable so far as the present suit of the appellant – plaintiff is concerned in the light of the fact that the challenge in the present suit is not only the orders passed by the Director, Food and Supplies, Haryana, dated 05.05.2009, but a subsequent order dated 25.11.2010 passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Food and Supplies Department, which was never the subject matter of the earlier suit. He, therefore, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

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

4. The Courts below have not only considered the case on merits but have also rejected the claim of the appellant – plaintiff on the grounds of principle of *res judicata*. The initial order, on the basis of

which, appellant – plaintiff had earlier filed a suit which resulted in dismissal followed by dismissal of appeal as well. These had attained finality and therefore, at that stage, the departmental proceedings as initiated resulting in the punishment order had been tested and a finding recorded that they were according to the statutory rules and therefore, that chapter could not have been opened. The plea with regard to the order dated 25.11.2010 passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Food and Supplies Department, which was subsequent to the filing of the suit, which has now been challenged, has already upheld the proceedings so far as the departmental enquiry and the punishment are concerned except for the quantum of punishment, whereby, rather granting him the benefit of cut in the period of deduction of pension i.e. earlier it was penalty of cut of 3% in pension in future has been reduced to two years from the date of passing of punishment order.

5. In this case, even if the merits of the case are taken into consideration, the subsequent order would not confer the Civil Court with the jurisdiction to entertain a fresh suit on the quantum of punishment especially when the more stringent punishment had been upheld by the Courts earlier, therefore, the conclusion as has been drawn by the Courts below cannot be said to be not in accordance with law .

6. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below being in

accordance with the pleadings and the evidence brought on record and further based upon the settled principles of law, which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

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

24th January, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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