

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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**CM-11178-C-2018 &
CM-11179-C-2018 &
RSA-4211-2018**

Date of decision: 10.04.2019

THE STATE OF PUNJAB AND OTHERS

...APPELLANTS

VS.

ASHOK KUMAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Charanpreet Singh, AAG, Punjab,
for the appellants.

Mr. Parveen Kumar Garg, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-11178-C-2018

Prayer in this application is for condonation of delay of 181 days in filing the appeal.

The details with regard to time spent during the process of filing the appeal have been explained in the application, which is duly supported by the affidavit of the District Controller, Food Civil Supplies and Consumer Affairs, Gurdaspur.

The prayer made in the application is vehemently opposed by the counsel for the respondent by asserting that the explanation, which has been projected in the application, is not well-reasoned and justified. It has

further been asserted that the appellants were having sufficient time to file the appeal within the limitation period and still they were not vigilant in filing the appeal within time. He, therefore, prays that the application is liable to be dismissed.

I have considered the submissions made by the learned counsel for the parties and have gone through the application.

A perusal of the application would show that the delay has been reasonably explained in the application and, therefore, the present application is allowed. Delay of 181 days in filing the appeal stands condoned.

RSA-4211-2018

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Gurdaspur dated 11.05.2017, whereby the suit of the respondent-plaintiff has been partly decreed as retiral benefits, except for gratuity and leave encashment, were released to the respondent during the pendency of the civil suit and the trial Court proceeded to order release of the benefit of leave encashment along with interest @12% per annum from the date of accrual till the date of actual release of the amount. Challenge has also been posed to the judgment passed by the appellate Court, which has been preferred by the State of Punjab, in which cross objections have also been filed by the respondent-plaintiff, which has been decided vide judgment dated 18.10.2017 by the learned Additional District Judge, Gurdaspur upholding the order passed by the trial Court dismissing both the appeals.

It is the contention of the learned counsel for the appellants that the Courts below have failed to take into consideration the provisions, as

contained in Rule 8.21 (aa) of the Punjab Civil Service Rules, Volume-II which pertains to withholding of the leave encashment where there is a departmental enquiry pending against the employee. He contends that the gratuity has not been granted to the respondent-plaintiff by the Courts below but the grant of leave encashment along with interest in the light of the above statutory provisions as also the Full Bench judgment of this Court in **Punjab State Civil Supplies Corporation Limited and others vs. Pyare Lal**, 2015 (1) PLR 617, cannot sustain. He, thus, contends that the appeal preferred by the State deserves to be allowed by setting aside the judgments and decree passed by the Courts below.

On the other hand, learned counsel for the respondent-plaintiff asserts that the judgments, which have been passed by the Courts below, are based upon proper appreciation of the pleadings and the evidence on record. His assertion is that out of four charge-sheets issued to the respondent, two charge-sheets have been issued subsequent to the date of his retirement and that too, relatable to the incident, which had taken place much before his retirement and thus, these charge-sheets being beyond the period, as provided under the Statutory Rules, cannot sustain. He, thus, contends that the enquiry proceedings, which have been initiated against the respondent-plaintiff, cannot be said to be justifiable and the Rule, as referred to by the learned counsel for the appellants i.e. Rule 8.21 (aa) of the Punjab Civil Service Rules, Volume-II, would not be applicable to the case of the respondent-plaintiff. He, thus, contends that the appeal deserves to be dismissed.

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

judgment as well as the Statutory Rules and the judgment, on which reliance has been placed by the counsel for the State.

It is not in dispute and rather admitted by the counsel for the respondent-plaintiff as well that according to the stand taken by the respondent in the written statement, two enquiries were initiated prior to the date of retirement of the respondent-plaintiff whereas two enquiries have been initiated subsequent to the date of his retirement as the charge-sheet was issued thereafter.

If that be so, Rule 8.21 (aa) of the Punjab Civil Service Rules, Volume-II would come into force as there is nothing mentioned in this rule with regard to the number of enquiries which are pending against the employee on the date of his retirement. Pendency of a single enquiry would be good enough for making the Rule 8.21 (aa) of the Punjab Civil Service Rules, Volume-II applicable. It is not disputed that under the said Rule, leave encashment benefit can be withheld where an enquiry is pending against an employee on the date of his retirement. The Full Bench judgment of this Court in the case of Punjab State Civil Supplies Corporation Limited and others (supra) has also held the same.

In view of the above, the present appeal is allowed, the impugned judgment passed by the Civil Judge (Junior Division), Gurdaspur dated 11.05.2017 as well as the judgment passed by the learned Additional District Judge, Gurdaspur dated 18.10.2017 cannot sustain and are, hereby, set aside to the extent of granting the decree for release of leave encashment along with interest to the respondent-plaintiff.

Liberty is, however, granted to the respondent-plaintiff to avail of his remedy, if permissible in law, in case he intends to challenge the two

enquiries, which, he asserts, have been initiated after his retirement and are beyond the period of limitation, as provided for under the Statutory Rules, which could be invoked for initiation of such enquiries.

CM-11179-C-2018

In the light of the disposal of the main appeal, the present application has been rendered infructuous and the same is disposed of as such.

April 10, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No