

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

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Regular Second Appeal No.6112 of 2018
Date of Decision: December 5th, 2019

R.K. Garg

...Appellant

Versus

Board of School Education Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Chander Pal Tiwana, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 28.04.2015 passed by the Civil Judge (Junior Division), Bhiwani, whereby suit of the appellant-plaintiff has been decreed except for the grant of interest on payment of the revised pay scale as per the 5th Pay Commission, arrears of which have been released to him, appeal against which preferred by the appellant-plaintiff has been dismissed by the learned Additional District Judge, Bhiwani, on 05.05.2018.

2. It is the contention of learned counsel for the appellant that the appellant-plaintiff could not have claimed interest on delayed payment of the arrears of the 5th Pay Commission on the basis of the pay scale, which he was claiming he was entitled to and had been denied to him. He contends that there was no delay on the part of the appellant-plaintiff. He had filed a civil suit on 19.07.1999, which was decreed by the Civil Judge (Senior Division), Bhiwani, on 30.10.2003. Appeal preferred by the respondent-defendant was dismissed by the District Judge, Bhiwani, on 20.09.2004. On 13.09.2008, the Regular Second Appeal was dismissed and similarly the SLP by the Supreme Court on 20.01.2012 preferred by the

respondent-defendant. It is after that only that the appellant-plaintiff could

have claimed interest on delayed payment of arrears, which he had immediately claimed and filed civil suit on 27.04.2013. There has been no delay on the part of the appellant in approaching the Court and, therefore, the said aspect could not have been taken into consideration by the Courts below.

3. That apart, he asserts that since there was no occasion for the appellant-plaintiff to claim interest on delayed payment as he was not proceeding on the assumption that the payment would be delayed by the respondent-defendant, he has approached the Court immediately after the finalization of his claims. Prayer has, thus, been made for setting aside the impugned judgments and decree passed by the Courts below to this extent denying him the limited benefit, which he had also claimed along with the other benefits, which have been decreed in his favour.

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

5. The factum that the appellant-plaintiff had earlier preferred a civil suit in the year 1999, which was decreed by the trial Court on 30.10.2003 and had attained finality up to the Supreme Court is not disputed. Since the appellant-plaintiff had not only claimed the pay scale, which he asserted had been wrongly denied to him, he had also claimed arrears thereon.

6. It that be so, he could also claim the benefit of interest on payment. He was well aware of the fact that he has not been granted the pay scale and, therefore, he was claiming the pay scale from 01.01.1996 to 24.11.1998 and the higher pay scale with effect from 25.11.1998 in view of

the revision of the pay scales. He was well aware of the fact that he was not being paid the pay scale as per his entitlement from the date it became due and it is thereafter that he filed a civil suit in the year 1999. The plea of the counsel for the appellant, therefore, cannot be accepted that his right of interest did not accrue to him and, therefore, he could not have claimed the said benefit as he was well aware of the fact that there would be delay in granting him the pay scale in case his suit is decreed by the Court. That apart, as per the provisions of Order II Rule 2 CPC, appellant-plaintiff could have claimed the benefit of interest as every civil suit must include the whole of the claim, which the appellant is entitled to make in respect of the cause of action. Appellant-plaintiff having omitted to claim the benefit of interest, he has relinquished such portion of claim and, therefore, is not entitled to the said benefit. The present suit with regard to the said claim is, therefore, hit by the provisions of Order II Rule 2 CPC, on which reliance has been placed by the Courts below for denying him the said benefit, which cannot be said to be illegal in any manner.

7. The other aspect is with regard to the delay in approaching the Court. The said aspect also would go against the appellant-plaintiff as it is an admitted position that the arrears, as per the judgment and decree passed by the Civil Court in favour of the appellant, had been released to him in August 2008. He has filed the suit on 26.04.2013, which is after more than four years, which also bars the claim of the appellant-plaintiff.

8. The judgments and decree, therefore, as passed by the Courts below being in accordance with law, do not call for any interference by this Court.

9. Both the Courts below have returned concurrent findings after

properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

10. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

December 5th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No