

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5679 of 2019(O & M)

Date of Decision:7.1.2020

Sr.Manager, Punjab National Bank, Nangal and others

...Appellants

Versus

Bal Kishan Gupta

...Respondent

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Saurav Verma, Advocate
for the appellants

RAJIV NARAIN RAINA, J. (ORAL):

CM-46-C-2020

Application is allowed as prayed for. Additional affidavit dated
1.1.2020 is taken on record.

RSA No.5679 of 2019

1. When this matter came up for hearing on 12.12.2019, the
following order was passed:

*Let the Chief Manager, HRD Department, Punjab
National Bank, Circle Office, Rohtak, file an affidavit
detailing therein the action taken against the
officers/officials for not filing the appeal within the period of
limitation as there was an inordinate delay of more than
seven months in filing the first appeal before the District
Judge, Narnaul.*

List on 07.01.2020.

2. In pursuance of the directions issued by this Court, the officer

of the Bank has filed his affidavit dated 1.1.2020 explaining the reasons which caused delay of more than 3 months in filing the first appeal under Section 96 CPC before the learned District Judge, Narnaul. It has been deposed that the judgement and decree was pronounced on 1.10.2016 by the learned Civil Judge (Jr.Divn.), Narnaul. Legal opinion was sought from the counsel who appeared for the petitioner-Bank, who gave the following opinion on 12.10.2016:-

“The main controversy between the plaintiff and the bank was that the plaintiff claiming the Gratuity from his date of appointment i.e. 23.1.1970 while the Bank assuming that his date of appointment was 23.9.1977. Based on examination of Sh.Bhagwan Singh Yadav, Manager, PF & Pension Division, Head Office as PW3 and record summoned by him, it was proved that the DOJ of the plaintiff was 23.1.1970 and accordingly the Hon'ble Court passed the judgement dated 1.10.2016.”

3. In view of the opinion expressed on 12.10.2016 by Mr.Yadav advising that the judgement and decree passed by the trial Court is legal and not fit for appeal, there is no need to file an appeal against the judgment.

4. On 26.10.2016 the Circle Office of the petitioner-Bank referred the matter to the Head Office for compliance of the action. On 23.11.2016, the case record was called up from the Head Office along with its comments wherein the Circle Office agreed with the view of the counsel and recommended compliance of the judgement. The Bank accepted the advice and agreed to comply with the impugned judgement and decree dated 1.10.2016. However, when the Pension Department of the petitioner-bank

while effecting compliance found on audit a glaring discrepancy in the calculations, the matter was referred back with the objection that an amount of Rs.3,50,000/- was paid to the plaintiff-respondent on 19.8.2008 at the time of retirement from service on 31.7.2008 by considering his date of joining service as 23.9.1977 for the purpose of payment under the Payment of Gratuity Act, 1972. After wage revision in 2010 as per the Bipartite settlement difference of gratuity of Rs.77,430/- was paid on 10.6.2011 by taking his date of joining as 23.1.1970. The calculations in tabular form have been reproduced in para No.6 of the affidavit.

5. In view of the aforesaid developments of reckoning date of joining as 23.1.1970, a letter was written to the respondent-plaintiff by the appellant Bank requesting him to visit the Circle Office along with all records available with him so as to reconcile the account. However, instead visiting the office, the present respondent filed execution petition before the trial Court from where this appeal arises.

6. It is in these circumstances that on 29.4.2017 the matter was referred to Head Office seeking approval to file an appeal as nothing was payable to the respondent towards gratuity. Accordingly, on 6.5.2017, approval was granted to file an appeal and the appeal was filed on 9.5.2017 before the learned District Judge, Narnaul.

7. In this manner, there has been no laxity or inaction in pursuing remedy and it was in fact the mistaken belief with regard to the calculation and how it was to be made as pointed out by the Pension Department that had led to the procedural delay with the decision taken at the appropriate time.

8. As a result of a cumulative understanding of these facts and

circumstances, penal action has not been taken by the Bank against any official for causing delay in filing the first appeal. The entire admissible dues have been paid to the respondent and the decree has been satisfied more than what the plaintiff-respondent may have actually been entitled to. The Bank has no objection to any over payment of gratuity, if any. In view of this, Mr.Verma submits that the execution proceedings have presently been rendered an abuse of the process of law and deserve to be terminated as no undue benefit can be granted to the plaintiff-respondent to cause him unjust enrichment to the deficit of the Bank and public money.

9. In view of the above, the appeal is allowed. I find no occasion to issue notice to the plaintiff-respondent to hear him on a cause which no longer subsists, nor actually did and stands concluded, to my understanding during the hearing in the Court today. Since the first appellate Court had dismissed the appeal on the ground of bar of limitation there is sufficient cause shown as a result of the interim order dated 12.12.2019 to justify the remand for decision by the appellate Court on merits.

10. As a result, the impugned judgement and decree dated 7.9.2019 passed by the learned District and Sessions Judge, Narnaul is set aside. The case is remanded to the learned District Judge, Narnaul, who may either himself hear the appeal or mark it to any of the learned Additional District Judges for a decision on merits. Also, in my considered view, no opportunity of hearing to the plaintiff-respondent is required to pass this order as it would only prolong the proceedings without sufficient cause or legal justification.

11. Mr.Saurav Verma, Advocate would serve a copy of this order on the counsel for the plaintiff-respondent, which will be deemed sufficient

service on the respondent party in view of Order 3 Rule (3)(1) CPC as per the amendment to the Punjab and Haryana High Court Rules and Orders.

12. Parties to appear before the learned District Judge, Mahendergarh at Narnaul on 13.2.2020.

January 7, 2020
neenu

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable-	Yes/No