In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2194 of 2019

Date of Decision: 10.08.2023

Gurjeet Kaur

... Appellant(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. D.S.Malwai, Advocate
for the appellant(s).

Mr. Sandeep Chopra, Deputy Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157***.

2. The plaintiff assails the correctness of the concurrent findings of fact arrived at by both the Courts below in this appeal.

3. The plaintiff's suit for grant of permanent and mandatory injunction directing the defendants to release the remaining amount of ₹1,85,744/- towards the general provident fund has been dismissed by both the Courts below after finding that the plaintiff, in the previous years, was granted an excess credit of ₹87,289/-. The First Appellate Court has

examined the account statement of the plaintiff while returning the following findings:-

> *"Having gone through these documents, it is evident that the plaintiff-appellant has failed to prove on record as to how recovery of amount of Rs. 2,61,692/- has been wrongly imposed. During her cross examination, the plaintiff has admitted that she did not know whether during the financial year 1998-1999, the interest amount of Rs.87289/- was credited in her GPF account in excess due to some clerical mistake. The version of the defendants-respondents is that during re-inspection of the GPF record, interest amount of Rs.87,289/- were found to be wrongly credited in the GPF account of the plaintiff during the year financial year 1998-1999. DW1 Avtar Kaur, Senior Assistant office of Director Rural Department, Punjab Vikas Bhawan, Mohali, has proved on record the letter no. 27561 dated 17.10.2012 Ex.D1/A, letter no. 959 dated 11.1.2013 Ex. D2, letter no. 2630 dated 08.8.2013 Ex. D3, letter no. 13.11.2013 Ex. D4, self declaration of Gurjeet Kaur Ex. D1, copy of the affidavit of plaintiff given at the time of retirement Ex. D5, copy of calculation sheet Ex. D6, ledger for the year 1998-99 Ex. D8, ledger for the year 1997-98, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 Ex. D9 to Ex D22 respectively.*

Further, DW2 Jaspreet Singh, BDPO, Dhuri, while deposing on the lines of written statement, has deposed that Rs.87,289/- were found to be wrongly credited in the GPF account of the plaintiff. After calculating interest on the said amount, Rs. 2,61,692/- is due towards the plaintiff. After deducting Rs.1,85,744/- credited in the GPF account of plaintiff, an amount of Rs. 75,948/- is still due towards the plaintiff. He has proved on record self declaration of plaintiff Ex. D1, letter dated 11.1.2013 Ex. D2, letter dated 17.102012 Ex. D1/A, letter having endorsement no. 2630 dated 08.8.2013 Ex. D3, letter no. 1389 dated 13.11.2013 Ex. D4, copy of affidavits of plaintiff Ex. D5, copy of calculation sheet Ex. D6, copies of provident ledgers from the year 1998-99 to 2012-2013 Ex. D7 to Ex. D22.

19. The contention of the learned counsel for the plaintiff/appellant is that before retirement, 'No Due Certificate' was issued by the department, but even then the defendants imposed a recovery of Rs.2,61,692/- upon him. This recovery is unjustified. However, a bare scrutiny of Ex. D7, ledger account for the year 1998-99 reveals that the balance amount available in the account of plaintiff as on 31.3.1998 was Rs.80,311/- and the amount of interest of Rs.10,654,50 ps was to be credited therein instead of Rs. 97,944/-. It is a typographical mistake occurred in due course of work. Ex. D6 is the calculation sheet of interest, which shows that the *department has only claimed interest on the amount of Rs.87289/-, which was wrongly granted thereon during subsequent years."*

4. The learned counsel representing the appellant contends that the respondent-department was not justified in recovering the amount with 12% interest. Whereas on the general provident fund, the interest payable is fluctuating between 7% to 8%. On a Court question, the learned counsel representing the appellant admits that this argument was never pressed before both the Courts below.

5. This Court does not find it appropriate to permit the appellant to make out a new case which was not pressed before both the Courts below. In any case, this Court has correctly read the findings of fact arrived at by both the First Appellate Court and the trial Court which is based on a calculation sheet prepared by the department.

6. Keeping in view the aforesaid facts of the case, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

August 10, 2023
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No