2023:PHHC:120433

129 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1039-2019 (O&M)
Date of decision: 13.09.2023

Joginder Singh

..Appellant

Versus

State of Punjab and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amandeep Singh Manaise, Advocate and
Mr. Hardik Ahluwalia, Advocate for the appellant

Mr. Ajit Singh Natt, AAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. Learned counsel representing the appellant has informed about the death of the appellant. However, he has fairly come forward to assist the Court. As per the amendment in Order XXII of the Code of Civil Procedure, 1908, as applicable to the States of Haryana, Punjab and UT, Chandigarh, if a party dies and his estate is represented by his counsel, then the court can proceed with the hearing of the case.

2. The appellant before this Court was the plaintiff. He filed a suit on 08.10.2013 claiming that he is entitled to annual increments from the date of his joining in the Revenue Department i.e. since January, 1999.

3. In order to comprehend the controversy, which requires adjudication, some relevant facts, in brief, are required to be noticed.

4. The appellant was appointed as a Canal Patwari in Canal and Drainage Department in July, 1976. Subsequently, he alongwith certain other Patwaris, got appointed in the Revenue Department. They

were appointed in the Revenue Department by way of transfer. In the terms of their transfer, it was stipulated that they will not earn annual increments unless they qualify the departmental examination, which was necessary for a Revenue Patwari. The appellant gave an undertaking to this effect, which reads as follows:-

> *"That I undertake to comply all the conditions laid down for my appointment as Revenue Patwari including the conditions regarding Seniority, training/condensed course and passing of patwari examination and I will not seek any exemption from passing the said examination nor shall I make any representation to behind of the Government/ Director/ Land Record/ Court. In case, I make such any representation, the department of Revenue will liberty to send me back in irrigation Department."*

5. The appellant retired as a Revenue Patwari on 31.03.2010 whereas he filed the suit on 08.10.2013. The trial court, on appreciation of evidence and while relying upon the aforesaid undertaking as well as the terms of the appointment of the appellant, dismissed the suit. However, the First Appellate Court has held that the appellant is entitled to increments three years prior to the filing of the suit i.e w.e.f 09.10.2010.

6. Heard the learned counsel representing the parties and with their able assistance perused the paperbook. Learned counsel representing the appellant submits that the appellant did not come to know that he has not been granted annual increments and he never undertook to the effect that he will not claim annual increments unless he qualifies the departmental examination.

7. This Court has considered the submissions made by the learned counsel representing the parties. As already noticed, the appellant was inducted in service in July, 1976. He came to the Revenue Department after serving the State of Punjab for a period of nearly 22 years. In such circumstances, it would not be appropriate to plead that the appellant did not know that he was not being granted salary with annual increments.

8. It is not in dispute that as per the terms of the transfer of the appellant from Canal Patwari to Revenue Patwari, it was provided that he shall be entitled to annual increments only after he passes the departmental examination. The appellant also gave undertaking though he did not specifically refer to the increments. However, the terms of transfer of the plaintiff from the post of Canal Patwari to Revenue Patwari is not in dispute. Moreover, he filed the suit after a period of more than 3 years from the date, when he superannuated as Revenue Patwari.

9. Keeping in view the aforesaid facts, this Court does not find it appropriate to interfere with the findings of fact arrived at by the courts below.

10. Hence, dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

13.09.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**