

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2085 of 2019 (O&M)

Date of Decision: 17.11.2023

T.R.Khurana

... Appellant(s)

Versus

The Commissioner and Secretary to Government Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Manoj Makkar, Advocate
for the appellant(s).

Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana, 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. In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of facts arrived at by both the Courts below while dismissing his suit for the grant of decree of declaration with the consequential relief of mandatory injunction. He retired from service on 31.10.2010 on attaining the age of superannuation, whereas, the suit was filed on 25.07.2012.

The plaintiff, while filing the suit, claim the following reliefs:-

“(i) Grant of relief of the selection Grade in the scale of 1640/2900 w.e.f. 01.01.1986 alongwith the pay fixation in the pay scales granted on 4th Pay Commission Report and also the 5th and 6th Pay Commission.

(ii) Grant of benefit of additional increment on having acquired stage of 11th or 21st stage in the regular pay scale w.e.f. 01.01.1991.

(iii) Grant of benefit of additional increment on having acquired regular satisfactory service of 8 years or 18 years in the cadre w.e.f. 01.07.1992.

(iv) Grant of Higher Standard Scales (H.S.S.) w.e.f. 01.01.1994 as no promotion has been given in the hierarchy of service on completion of 10/20 years regular satisfactory service.

(v) Grant of ACP scales w.e.f. 01.01.1996 after re-fixation of pay in the entitled pay scales granted to the other J.Es on completion of 10/20 years regular satisfactory service.

(vi) Grant of Selection grade 2nd ACP of Rs. 6500/10500 from the day when it was given to his juniors.

(vii) E. B. may be allowed to be crossed from the day it was due to the plaintiff in routine service of his official life.

(viii) Refund the amount so recovered/deducted from the salary for the months of December 2000 to October 2006 of the plaintiff and kept in the suspense head of P. W. Deposits to the tune of Rs. 1,09,650/- in the office of the Executive Engineer, Public Health Engineering Division, Bahadurgarh.

(ix) Regularise the period of his suspension from 05.12.1992 to 09.12.1998 and the period be treated as on duty as already decided and given acquittal by the Hon'ble Courts. Also to allow the benefit of normal annual increments for this period.

(x) Grant the regular promotion of SDE in the scale of 8000/13500 from the day when his juniors were promoted and the consequential benefit accrued there upon may be given to him with all the revision of pension. Payment of pension is recurring cause of action being payable every month. Thus, the right of pension cannot be forfeited on the ground of limitation. The suit is thus, well in time.

(xi) The interest accrued be paid @ 18 % per annum for the period from the date of retirement till its actual payment on all the retiral benefits.”

4. The defendants, on the other hand, while contesting the suit, submitted that the appellant was served with three charge sheets on 04.04.1985, 02.03.1987 and 15.10.1992. Ultimately, a joint penalty order was passed on 10.07.2000. The civil suit filed by the plaintiff to challenge the correctness of the order dated 10.07.2000 was allowed on 16.04.2007. Ultimately, on 22.09.2008, the High Court permitted the respondents to hold a fresh inquiry. Subsequently, fresh orders after the inquiry were passed on 24.01.2011 and 07.03.2011 (Ex.D24 to Ex.D26). In this round, the penalty of recovery of ₹1,77,546/- has been passed. Both the Courts below, on appreciation of evidence, have concurrently found that the plaintiff has failed to make out a case.

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

6. The learned counsel representing the appellant contends that a fresh inquiry could not be ordered once it was set aside. He submits that both the Courts below have erred in dismissing the suit.

7. It is evident that the High Court on 22.09.2008, while

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modifying the judgment and decree passed by the First Appellate Court on 22.09.2008, directed as under:-

“(a) The show cause notice dated 06.05.1995 issued by the Punishing Authority by clubbing three different enquiry reports and the consequent order of the punishment are quashed.

(b) The order dated 10.07.2000 passed by the Appellate Authority is quashed.

(c) The judgment and decree of the First Appellate Court in so far as it quashes the enquiry reports are reversed.

(d) The Punishing Authority would be at liberty to proceed afresh, with the departmental proceedings from the stage of service of show cause notices in accordance with law. Decree-sheet be drawn accordingly.”

8. As per Clause (b) of the order, the Punishing Authority was at liberty to proceed afresh with the departmental proceedings.

9. In view of the aforesaid position, which is not disputed, there is no ground to interfere. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

November 17, 2023

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No