

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(254)

RSA-483-2022 (O&M)

Date of Decision : April 21, 2023

The Ferozepur Central Cooperative Bank Ltd Ferozepur and anr.
.. Appellants

Versus

Mahesh Kumar

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashwani Prashar, Advocate, for the appellants.

Mr. Mahesh Kumar- respondent in person.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1379-C-2022

As prayed for, the application is allowed.

Decree-sheet as Annexure A-1 is taken on record.

CM-1380-C-2022

As prayed for, the application is allowed.

RSA-483-2022

Present Regular Second Appeal has been filed challenging the judgment and decree of the lower Appellate Court dated 11.11.2021 by which, the judgment and decree of the trial Court dated 02.12.2019 has been set aside and the suit filed by the respondent-plaintiff has been allowed qua his claim for the grant of interest on the delayed release of certain service

benefits.

Certain facts may be noticed for the correct appreciation of the issue in hand.

The respondent-plaintiff, who is an ex-serviceman, joined the services of the appellant-Bank on 18.04.1980 as a Peon. He was further promoted to the post of Junior Clerk in the year 1998. From the post of Clerk, he was further promoted as Accountant on 15.02.2009. While working on the said post of Accountant, a civil suit was filed by the respondent-plaintiff in the year 2008 claiming promotion to the post of Accountant from a date prior to 15.02.2009 by giving him benefit of reservation on a roster point. Though the eligibility of the respondent-plaintiff for the grant of ACP in the cadre of Accountant was not disputed to be given w.e.f. 15.02.2009 but the same was not extended on the premise that in case the suit filed by the respondent-plaintiff claiming antedated promotion as Accountant and consequential relief thereof, before completion of period of 9 years for the grant of benefit under ACP scheme, he would have got a promotion to the further cadre which fact would have resulted in non-grant of the benefit of ACP in the cadre of Accountant w.e.f. 15.02.2009.

The suit filed by the respondent-plaintiff claiming the antedated promotion as Accountant was dismissed by the Court on 23.01.2014 after which date, the appellant-Bank granted the benefit under ACP Scheme to the respondent-plaintiff in the cadre of Accountant w.e.f. 15.02.2009 and paid him the arrears on 31.05.2014.

Upon the grant of benefit under ACP Scheme along with arrears, the respondent-plaintiff claimed interest, which was not given to

him, which led to the filing of another civil suit at the hands of the respondent-plaintiff. Keeping in view the facts and evidence which came on record and by interpreting the same in a particular manner, the trial Court came to the conclusion that there was no intentional withholding of the benefits of ACP Scheme by the Bank, hence, no interest on the delayed release of the benefits under ACP Scheme is admissible and the civil suit was dismissed by the trial Court vide judgment and decree dated 02.12.2019.

Feeling aggrieved against the decision of the trial Court, appeal was preferred by the respondent-plaintiff before the lower Appellate Court, which appeal came to be decided on 11.11.2021 and the judgment and decree of the trial Court dated 02.12.2019 was set aside and the suit filed by the respondent-plaintiff was allowed by the lower Appellate Court by recording that there was no impediment in the release of the benefit under ACP Scheme in the year 2009 which benefit was concededly released in May 2014, hence, the respondent-plaintiff is entitled for the grant of interest on the said amount.

The judgment and decree of the lower Appellate Court dated 11.11.2021 is under challenge in the present Regular Second Appeal.

The first argument which has been raised by the learned counsel for the appellants is that keeping in view Section 82 of the Punjab Cooperative Societies Act, 1961, any service dispute being raised by an employee is barred, hence, the suit filed by the respondent-plaintiff could not have been adjudicated upon by the Civil Court, which has wrongly been decided against the appellants by the lower Appellate Court.

It may be noticed that it is a conceded position that both the Courts below have held that the suit filed by the respondent-plaintiff was maintainable and the same is not barred keeping in view the provisions of the Punjab Cooperative Societies Act, 1961.

In the present case, it is a conceded position that grant of benefits under ACP Scheme was accepted by the appellants themselves. It is only the interest on the arrears which was being claimed by the respondent-plaintiff and there is no challenge or claim with regard to the service benefits.

Once, it is a conceded position that service benefit was released by the appellants-Bank on its own to the respondent-plaintiff and the present suit for the grant of interest on arrears, present claim is not covered under the clause “any matter relating to the service conditions of the employees of the cooperative society” so as to exclude the jurisdiction of the Civil Court hence, the findings recorded by the Courts below on the said issue are not perverse and are in consonance with law and needs no interference by this Court.

Further question which arise is whether the respondent-plaintiff is entitled for the grant of interest on the arrears extended to him under the ACP Scheme which concededly were given on 31.05.2014 but w.e.f. 15.02.2009.

The argument which has been raised by the learned counsel for the appellants is that the said relief was not released due to the filing of the civil suit by the respondent-plaintiff himself. The said argument cannot be accepted. Any benefit for which an employee becomes entitled for is to be granted at the time when the employee becomes entitled for the same.

Benefits under ACP Scheme were withheld by the appellant on their own. Even if, the respondent-plaintiff would have got relief in the civil suit seek promotion with retrospective effect, while implementing the said relief, the appellant could have withdrawn the ACP in case the respondent-plaintiff was not found entitled for and re-fixed his salary. But mere pendency of a litigation cannot give a right to an employee to withhold a conceded benefit. In the present case, the entitlement of benefit in favour of the respondent-plaintiff with regard to the ACP in the cadre of Accountant on completion of 9 years of service is a conceded fact. That being so, the grant of interest on the arrears of ACP as the same were only released on 31.05.2014 is perfectly valid and no interference is called for by this Court.

Even otherwise, as per the settled principle of law settled by the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, any amount belonging to an employee but has been retained and used by the employer to its benefit, the employee will be entitled for the grant of interest. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

In the present case, the benefit of ACP was admissible to respondent-plaintiff from 15.02.2009 but the same was only released on 31.05.2014. The amount was kept by the appellant-Bank and used to its benefit, hence, keeping in view the settled principle of law in ***J.S. Cheema's case (supra)***, the respondent-plaintiff will be entitled for interest on the said amount.

At this stage, learned counsel for the appellants submits that while granting the interest, the same has been granted @ 9% per annum, which is excessive keeping in view Section 34 of the Code of Civil Procedure.

Respondent, who appears in person, submits that he has no objection in case the rate of interest is reduced from 9% to 6%.

Keeping in view the above, present Regular Second Appeal is partly allowed so as to modify the rate of interest granted in favour of the respondent-plaintiff from 9% to 6% per annum starting from 15.02.2009 till 31.05.2014, when the benefits were actually released.

CM-1381-C-2022

As the main appeal has been partly allowed, present application also stands disposed of.

April 21, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No