

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(300)

RSA-1025-2022 (O&M)

Date of Decision : 13.04.2023

Punjab State Power Corporation Limited and others

...Appellants

Versus

Santokh Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Abhilaksh Grover, Advocate and
Ms. Nandini Gupta, Advocate for the appellants.

Mr. V.K. Shukla, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

CM-3293-C-2022

Present application has been filed for placing on record
Annexures A-1 to A-8.

Application is allowed and Annexures A-1 to A-8 are taken on
record.

RSA-1025-2022

1. The present regular second appeal has been filed challenging
the judgment and decree of the trial court by which, the suit filed by the
respondent-plaintiff was allowed vide judgment and decree dated
20.09.2018 as well as the judgment and decree of the lower appellate court
dated 10.11.2021 by which, the appeal filed against the judgment and decree
of the trial court dated 20.09.2018, has been dismissed.

2. Certain facts need to be mentioned for the correct appreciation of the controversy in hand.

3. The respondent-plaintiff joined the department as a Lineman on 28.04.1975 and was promoted as a Junior Engineer on 01.01.1997. In the year 2000, an FIR No. 23 dated 09.06.2000 was registered against the respondent-plaintiff under the Prevention of Corruption Act, 1988 and the respondent-plaintiff was convicted in the said FIR by the Sub Judge, Faridkot on 26.09.2003.

4. Keeping in view the conviction of the respondent-plaintiff under the Prevention of Corruption Act, 1988, exercising the powers under Article 311 of the Constitution of India, the respondent-plaintiff was dismissed from service. The conviction was challenged by the respondent-plaintiff before this Court by filing an appeal, which appeal was admitted and during the pendency of the said criminal appeal, the respondent-plaintiff attained the age of retirement on 31.08.2008. The Criminal Appeal i.e. CRA-S-1865-2003 filed by the respondent-plaintiff was allowed by this Court vide judgment dated 22.07.2015 and the conviction of the respondent-plaintiff was set-aside.

5. Upon being acquitted by the court of the allegations, the respondent-plaintiff filed a civil suit challenging the order of dismissal from service dated 16.01.2004 as well as order dismissing his appeal dated 07.04.2005 on the ground that he was dismissed from service on the basis of the conviction, which basis no longer exists keeping in view the order passed in appeal as he has already been acquitted of the allegation and, therefore, he is entitled for all the service benefits from the date of

dismissal.

6. Keeping in view the evidence, which came on record, the trial court held that as the impugned order dated 16.01.2004 was passed on the basis of conviction of respondent-plaintiff, which conviction no longer exists, the order of dismissal as well as the order dismissing the appeal dated 07.04.2005 cannot be sustained and the same were quashed with all consequential benefits including arrears of salary along with interest.

7. Feeling aggrieved against the judgment and decree of the trial court dated 20.09.2018, appeal was preferred, which appeal has also been dismissed by the lower appellate court vide judgment and decree dated 10.11.2021 upholding the judgment and decree of the trial court dated 20.09.2018. Hence, the present regular second appeal.

8. Learned counsel for the appellants-defendants argues that in the present case, all the service benefits for the period respondent-plaintiff remained out of service, have been extended by the courts below on the ground the respondent-plaintiff was acquitted by this Court, whereas as per the settled principle of law, in case a convicted employee is later on acquitted, the said employee is not entitled for the back wages, which settled principle of law has not been considered by the courts below while passing the judgments and decrees, which have been impugned in the present appeal.

9. Learned counsel for the appellants relies upon the judgment in ***Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat***, (1996) 11 SCC 603 as well as the judgment in Civil Appeal No. 3339 of 2019 titled as ***Raj Narain Vs. Union of India and others***, decided on

01.04.2019, to contend that the grant of back wages by the courts below even prior to the date when the respondent-plaintiff was acquitted by this Court in the year 2015, is bad in law and the judgments of the courts below are liable to be set-aside.

10. Learned counsel for the respondent-plaintiff submits that once the respondent-plaintiff has been acquitted of the allegations, which led to his dismissal from service then why he should suffer prejudice qua non grant of the arrears. The alternative argument raised on behalf of the respondent-plaintiff is that even if the judgment in ***Ranchhodji Chaturji Thakore's case (supra)*** and ***Raj Narain's case (supra)***, are applicable then also, it is only for the service period that the back wages cannot be granted but the pension cannot be equated with the grant of back wages so as to be denied the benefit of arrears, hence, under all circumstances, he will be entitled for the arrears of pension, which cannot be taken away from him.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. It is a matter of fact that it is only upon the conviction in the year 2003, the services of the respondent-plaintiff were terminated under Article 311 of the Constitution of India by the appellants-defendants. Keeping in view the fact that the conviction was under the Prevention of Corruption Act, 1988 and reflected upon the moral of the respondent-plaintiff, the appellants-defendants did not had any other choice but to dismiss him from service. The action, which the department had taken, was not their own but was taken keeping in view the facts and circumstances that under Article 311 (2), a convicted employee cannot be allowed to

continue in service, especially, with regard to the allegation, which reflect upon morals of an employee and in the present case, the conviction was under the Prevention of Corruption Act, 1988, which no doubt reflects upon the morals of an employee.

13. The question, which arise is whether, upon acquittal by the competent court of law in the year 2015, the arrears of pay for the period, the respondent-plaintiff remained out of service as well as arrears of the pension needs to be withheld or not. As per the judgment of ***Raj Narain's case (supra)***, after considering the law on the issue the Hon'ble Supreme Court of India held that it is only in the case where the prosecution is found to be malicious, the back wages for the period employee remained out of service will be admissible, otherwise, once a department is under obligation to comply with the law, according to which law, the department has no other option but to dismiss the said employee from service, hence, upon reinstatement upon acquittal in respect of the allegations, the employee cannot seek the benefit of arrears of salary for the period he/she remained out of service for which criminal proceedings were initiated. Applying the said ratio of the settled principle of law, no benefit of arrears from 16.01.2004 till 31.08.2008 can be extended to the respondent-plaintiff being the arrears of pay for the service period.

14. Now the question will arise whether the arrears of pension will be admissible upon acquittal. The pension is an earned benefit in respect of the total service rendered by an employee. Upon being acquitted and that too honourably, the employee cannot be debarred even from the arrears of the pension. The arrears of pension can only be restricted in exceptional

circumstances. Here, the facts are that the respondent-plaintiff has been acquitted by the competent court of law, which judgment has attained finality, hence, though the arrears of salary will be denied to him but the arrears of pension cannot be denied to him. The Hon'ble Supreme Court of India has held that delay in claiming the pensionary benefits will not be a ground to deny the arrears of pension. The reliance can be placed upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 4100 of 2022 titled as ***Shri M.L. Patil (Dead) through LR.s. Vs. The State of Goa and another***, decided on 20.05.2022. The relevant paragraphs 3 and 4 of the said judgment are as under :-

“3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent –State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the

revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.

4. In view of the above and for the reasons stated above, the present Appeal Succeeds in Part. The impugned judgment and order passed by the High Court to the extent of denying any arrears of pension and holding that the appellant shall be entitled to the pension at the revised rates only from 1st January, 2020 is hereby quashed and set aside. It is held and ordered that the appellant-4 original writ petitioner shall be entitled to pension at the revised rates from the date he attains the age of 60 years. Now the arrears accordingly shall be paid to the appellant within a period of four weeks from today. Present Appeal is Partly Allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs.”

15. Further question is whether the grant of interest is permissible in the facts and circumstances or not, learned counsel for the respondent-plaintiff very fairly submits that on the arrears of pensionary benefits, no interest will be claimed by the respondent-plaintiff upto the date of his acquittal i.e. 2015 but after 2015, as more than 7 years have passed and he has not received any benefit, the interest be allowed from the date of his acquittal on the arrears of the pensionary benefits.

16. Keeping in view the above, especially that no valid justification has come for withholding the pensionary benefits after the acquittal of the respondent-plaintiff in the year 2015, the respondent-plaintiff will be entitled for interest on the arrears of pension and pensionary benefits from 01.10.2015 onwards @ 6% per annum.

17. The present regular second appeal is allowed in above terms.

Decree sheet be prepared accordingly.

CM-3294-C-2022

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

April 13, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No