

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(266)

CM-2374-C-2022 in/and
RSA-1970-1995
Date of Decision : February 22, 2023

Jarnail Singh

.. Appellant

Versus

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shubham Saroha, Advocate, for the applicant-appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2374-C-2022

Present application has been filed to bring on record the legal heirs of appellant Jarnail Singh, who unfortunately died during the pendency of the present appeal.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, Assistant Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondents and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit coupled with the facts learned counsel for

the respondents raises no objection, the application is allowed. Legal heirs of appellant Jarnail Singh, the details of whom are given in paragraph 7 of the application, are brought on record. Amended memo of parties is also taken on record.

At this stage, learned counsel for the appellant submits that the present RSA is of the year 1995 and only relates to the claim of interest on the delayed release of the retiral benefits, hence, the same may kindly be heard and decided at an early actual date.

Learned counsel for the respondents submits that she has no objection in case the RSA is taken on Board for hearing today itself.

Keeping in view the joint request of learned counsel for the parties, RSA is taken up adjudication today itself.

RSA-1970-1995

Present Regular Second Appeal has been filed impugning the judgments of the Courts below by which, only on the pension, interest has been granted only for the delayed release of pension and not on the delayed release of gratuity. The claim of the appellants in the present appeal is that not only on the delayed release of the pension, even the delayed release of gratuity should carry interest keeping in view the facts and circumstances of the present case.

Certain facts needs to be mentioned herein for the ready reference.

The appellant Jarnail Singh was compulsorily retired on 15.03.1987 on attaining the age of superannuation. After the retirement, his pensionary benefits were not released on the ground that at the time of

retirement, two charge-sheets were pending against him. It is a conceded fact that both the charge-sheets were dropped by the Department, copy of which orders have already been brought on record as Ex.D-17 and D-18 dated 15.01.1990. After the dropping of the charge-sheets, the pensionary benefits were released in favour of the appellant but without interest. Feeling aggrieved against the action of the Department in not granting the interest on the delayed release of the pensionary benefits, the appellant-plaintiff filed a civil suit claiming interest on the delayed release of the pensionary benefits.

In response to the suit, the Department raised an objection that the appellant-plaintiff was retired compulsorily on attaining the age of 55 years and at the time of retirement, two departmental proceedings were pending against him, hence, the gratuity and other benefits including the pension were withheld, which was within the jurisdiction of the Department.

Keeping in view the evidence, which has come on record, the trial Court dismissed the suit on the ground that once the disciplinary proceedings were pending against the appellant-plaintiff at the time of retirement, he was not entitled for the grant of interest on the delayed release of pensionary benefits as the said benefits were released to him after conclusion of the said disciplinary proceedings.

Feeling aggrieved against the judgment and decree of the trial Court dated 29.09.1994, the appellant filed an appeal before the lower Appellate Court, which came to be decided on 30.03.1995. The lower Appellate Court set aside the judgment and decree of the trial Court and held that on the delayed release of the pension, the appellant will be entitled

for interest @ 18% but no interest was granted on the delayed release of the gratuity amount, on the ground that the Department was justified in withholding the gratuity keeping in view the pendency of two charge-sheets against the appellant at the time of retirement.

Feeling aggrieved against the judgment of the lower Appellate Court dated 30.03.1995 to the extent of denial of interest on delayed release of gratuity, the present Regular Second Appeal has been filed.

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

The argument which has been raised by the learned counsel for the appellant is that the gratuity admissible to the appellant was withheld due to the pendency of the two charge-sheets, which were pending at the time of his retirement but once, both the charge sheets were dropped, no prejudicial action could have been taken against the appellant so as to deny him the benefit of interest.

Learned counsel for the respondents controvert the said claim on the ground that once the Department had jurisdiction to withhold the gratuity due to the pendency of the departmental proceedings and the withheld amount was released in favour of the appellant as soon as proceedings came to an end, the benefit of interest on the gratuity has rightly been declined by the lower Appellate Court.

The question which arise in the present appeal is whether, the action of the Department can prejudice to an employee in case, the allegations alleged in the charge-sheet are not proved by the Department. In the present case, the allegations were alleged by the Department, which

were pending enquiry at the time of retirement of the appellant. The said allegations were not proved by the Department, hence, no prejudice qua serving of a charge-sheet upon the appellant, could be caused to him.

Said question has already been settled by this Court in ***CWP No.24852 of 2018 titled as Om Parkash Yadav vs. State of Haryana and others, decided on 17.03.2022.*** The relevant paragraph of the said judgment is as under:-

7. *“Once the Department alleged allegations against the petitioner and on the basis of those allegations, the amount for which the petitioner became entitled upon his superannuation was withheld, and thereafter, the Department failed to substantiate those allegations, hence, the issuance of the charge sheets or pendency of the same at the time of retirement cannot be a reason to cause prejudice to the petitioner. The acts which are attributable to the respondents cannot cause prejudice to an employee by firstly withholding his pensionary benefits on the basis of pendency of the charge sheets issued by the Department alleging certain allegations and thereafter, by denying him grant of interest on the delayed payments, despite the fact that the employee was found innocent as the Department concerned failed to prove those allegations.*

8. *Keeping in view the facts and circumstances of this case, once the petitioner is found innocent of the allegations alleged and has suffered prejudice only due to the actions of the respondent-Department as the petitioner was prevented from availing his pensionary benefits upon his retirement for a sufficient long period of time and also petitioner could not use those financial benefits to his benefit, the petitioner becomes entitled for the grant of interest on the delayed payments to mitigate the prejudice/hardship suffered by him, which is in consonance of settled principle of law.”*

In the present case, once evidence has already come on record that the disciplinary proceedings due to which, the gratuity was withheld, were dropped, the appellant is held entitled for interest on the delayed release of gratuity also. Hence, the judgment of the Court below dated 30.03.1995 is modified that not only on the delayed release of pension, but the appellant will also be entitled for interest on the delayed release of the gratuity and the same will carry interest as already awarded by the lower Appellate Court.

The present Regular Second Appeal is allowed in above terms.

February 22, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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