

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

LPA-617-2023 (O&M)
Date of Decision: 16.05.2023

Mohan Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. S.K. Sharma (Budhlada Wale), Advocate,
for the appellant.

ARUN PALLI, J.

1) This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 11.01.2023, vide which the writ petition preferred by the appellant has been dismissed.

2) The appellant was appointed as Tracer on **01.10.1974** in Economic and Statistical Organization, Punjab. He retired from service, upon attaining the age of superannuation, on **31.08.2002**. Before joining on a civil post, he had served the Armed Forces (**04.03.1963 to 24.06.1973**), during National Emergency. The relief that he had prayed for in the petition was that authorities be directed to finalise his pension after counting his military service. However, the said petition was dismissed, for a period of more than 21 years had elapsed since the retirement of the appellant.

3) We have heard learned counsel for the appellant and perused the records.

4) Concededly, even earlier, the appellant had approached this Court, vide CWP-17861-2016, praying for the same relief, which was disposed of vide order dated 22.09.2016, requiring the department to address his grievance. Respondent No.3, vide order dated 28.04.2017, rejected his claim, for he was discharged from the Armed Forces on 24.06.1973, and entered the Government Service on 01.10.1974, and thus, remained out of service for 01 year, 03 months and 07 days. Whereas, in terms of the notification dated 20.07.1965, (bearing No.GSR 160/Const/Art 309/65) and Rule 4(iii) (3) of the Punjab Government National Emergency (Concession) Rule, 1965, military service, rendered during the Emergency, could be counted for pension, only if the time gap between the date of discharge from the Armed Forces and the date of appointment to any service or post under the Government did not exceed one year. The appellant accepted the said order and chose not to assail it any further.

5) There is yet another dimension to the matter. Based upon the same cause of action, the appellant had also filed a declaratory suit (Civil Suit No. 219 of 14.06.2003), seeking the same relief, which was dismissed by the trial court, vide judgment and decree dated 02.05.2006. Even the appeal preferred against the said decree failed and was dismissed by the appellate court on 11.11.2006. Concededly, the said judgment and decree was never challenged, and thus, the same attained finality *inter se* the parties. For, the dispute that has sought to be raked up in the present proceedings was directly and substantially in issue in the said suit, it cannot be fathomed, as to how the petition filed by the appellant was even maintainable in law. The emphasis sought to be laid by the learned counsel upon the observations recorded by the appellate court, while dismissing his appeal, would also not advance his case either:

“Appeal filed by the appellant fails and the same is ordered to be dismissed, with costs. However, the concerned Department is still at liberty to take up the matter with the Government for getting necessary condonation if the department decides that there are such exceptional circumstances, which exist in the case of the plaintiff/appellant.”

- 6) Firstly, nothing is indicated if the appellant ever pursued the matter with the Government, post decree dated 11.11.2006. Even otherwise, as indicated earlier, pursuant to the directions issued by this Court, the matter was examined by the authorities and vide a detailed order dated 28.04.2017, the claim of the appellant was rejected. Interestingly, upon examining the reliefs claimed for in the petition, we find that the appellant, after 06 years, has chosen to assail even the order dated 28.04.2017. Thus, the only and the inevitable conclusion that we could reach: the writ petition preferred by the appellant, besides being not maintainable, was apparently speculative in nature and lacked bonafides.
- 7) In conspectus of the above, we are dissuaded to interfere with the impugned order and judgment. The appeal, being bereft of merit, is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

16.05.2023
AK Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No