

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-1738-2022 (O&M)
Date of Decision :08.02.2023

Sukhdev Singh

...Appellant

Versus

Punjab State through its Secretary Food Civil
Supplies & Consumer Affairs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Sobti, Advocate for the petitioner.

Mr. Gurvinder Singh, AAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

Present regular second appeal has been filed challenging the judgment and decree dated 13.07.2022 passed by the Lower Appellate Court by which, the judgement and decree dated 30.10.2019 passed by the trial Court by which, the suit filed by the appellant/respondent was allowed, has been set aside.

Certain facts need to be noticed herein for correct appreciation of the controversy in question.

Appellant/plaintiff joined the services of the respondent-department on 17.12.1990 and he continued working as such in the respondent-department and ultimately retired on attaining the age of superannuation on 31.03.2012 while working on the post of District Food Supplies Controller. After the retirement of the appellant/plaintiff, all the ~~retiral~~ retirement benefits for which, the appellant-plaintiff was entitled for, were not

released to him on the ground that there are departmental proceedings pending against him keeping in view the charge sheet dated 26.12.2011 (Ex.D-3) issued against him. The said charge sheet was taken to its logical end and the same was dropped by the respondent-department vide order dated 28.11.2018 as nothing incriminating was found against the appellant/plaintiff. Thereafter, as the pensionary benefits for which, the appellant/plaintiff was entitled for, were not released to him despite there was no impediment, he filed a civil suit for mandatory injunction directing the respondent-department to release all his retiral benefits such as gratuity, leave encashment and full pension along with interest.

The said suit was contested by the respondent-department and keeping in view the evidence which had come on record that the charge sheet pending against the appellant/plaintiff was dropped by the respondent-department vide order dated 28.11.2018 (Ex.D-3), the suit filed by the appellant/plaintiff was decreed by the trial Court vide order dated 30.10.2019 with the direction to the respondent-department to release all the pensionary benefits of the appellant/plaintiff along with interest @ 9% per annum on the arrears.

Feeling aggrieved against the said judgment and decree dated 30.10.2019 of the trial Court, the respondent-department preferred an appeal before the Lower Appellate Court, which appeal came to be decided vide order dated 13.07.2022. The Lower Appellate Court held that once the retiral benefits for which, the appellant/plaintiff was entitled for, have been released to him by the respondent-department and keeping in view the rules governing the service as there was departmental proceedings pending against the appellant-plaintiff at the relevant time i.e. retirement, the

respondent-department was well within its jurisdiction to withhold the pensionary benefits of the appellant/plaintiff and upon conclusion of the said departmental proceedings, the pensionary benefits have already been released to appellant/plaintiff, the suit filed by the appellant/plaintiff had been rendered infructuous. Judgment and decree dated 30.10.2019 of the trial Court granting interest on the delayed release of pensionary benefits was set aside. Hence, the present regular second appeal.

Learned counsel for the appellant/plaintiff argues that as the pensionary benefits for which the appellant/plaintiff was entitled for upon his retirement in the year 2012 were withheld by the respondent-department due to the pendency of the charge sheet issued in the year 2011 and the said pensionary benefits were not released immediately upon retirement, the appellant/plaintiff is entitled for the grant of interest on the delayed release of pensionary benefits especially, when the charge sheet was dropped by the respondent-department in November, 2018.

Learned counsel for the respondent-department submits that once all the pensionary benefits have already been extended to the appellant/plaintiff, question of grant of interest does not arise as the respondent-department was well within its jurisdiction to withhold the pensionary benefits keeping in view the pendency of the departmental proceedings.

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

It is a settled principle of law, keeping in view the rules governing the service that in case any charge sheet is pending against an employee, the department is well within its right to withhold certain

pensionary benefits of the employee till conclusion of the said charge sheet. It is also settled principle of law that in case an employee is exonerated in those departmental proceedings, he should not suffer prejudice due to the pendency of the said departmental proceedings.

In the present case, though at the time of retirement of the appellant/plaintiff in the year 2012, there was a charge sheet pending against him and keeping in view the same, certain pensionary benefits were rightly withheld by the respondent-department but once the respondent-department failed to substantiate the allegations alleged in the said charge sheet against the appellant/plaintiff and the charge sheet was dropped by the respondent-department in November, 2018, appellant/plaintiff should not suffer any prejudice due to the false allegations being made by the respondent-department against the appellant/plaintiff due to which pensionary benefits of the appellant/plaintiff were withheld.

The said question of law is no longer res integra keeping in view the judgment passed by this Court in CWP-6567-2020 titled as **Ram Mehrar vs. Haryana Vidyut Parsaran Nigam Limited (HVPNL) and others** decided on 20.07.2022. Relevant paragraphs of the judgement are as under:-

“It is a conceded position that when the petitioner retired from service on 30.09.2015, there were criminal as well as departmental proceedings pending against the petitioner and the respondents were well within their right to withhold certain pensionary benefits admissible to the petitioner after retirement but after those proceedings ended, there was no valid justification to retain the same especially when the petitioner was exonerated of

the allegations before the Criminal Court as well as in the departmental proceedings.

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.”

Learned counsel for the respondent-department has not been able to differentiate the said judgment qua the entitlement of the appellant/plaintiff for interest on the delayed release of the pensionary benefits. Keeping in view the said fact and the settled principle of law, the judgment of the Lower Appellate Court dated 13.07.2022 which has been passed without considering the prejudice which the appellant/plaintiff has suffered due to the pendency of the departmental proceedings as the benefits for which, he was entitled for, released upon his retirement in 2011, were withheld upto 2019 and he could not use the same only because department issued a charge sheet which allegations department failed to prove. Findings recorded by the Lower Appellate Court cannot be sustained in the eyes of law especially, when the same is contrary to the settled principle of law

settled in **Ram Mehar (supra)**. Consequently, the judgment and decree dated 13.07.2022 passed by the Lower Appellate Court is set aside and judgment and decree dated 30.10.2019 passed by the trial Court is restored and the present regular second appeal is accordingly allowed.

CM-5705-C-2022

Application is also disposed of.

February 08, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No