

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(252)

RSA-4667-2019 (O&M)

Date of Decision : April 11, 2023

XEN OP Sub Urban Division, UHBVNL, Sonipat and others
.. Appellants

Versus

Sumitra

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Jindal, Senior Advocate, with
Mr. Amandeep Singh Meho, Advocate, for the appellants.

Mr. Rajender Singh Malik, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-13323-C-2019

As prayed for, the application is allowed.

Delay of 01 day in filing the appeal is condoned.

CM-13324-C-2019

As prayed for, the application is allowed.

Delay of 22 days in re-filing the appeal is condoned.

RSA-4667-2019

Present Regular Second Appeal has been filed challenging the judgment and decree of the lower Appellate Court dated 15.05.2019 by which, the appeal filed by the respondent-plaintiff against the judgment and decree dated 31.01.2017 passed by the trial Court, has been set aside and the suit filed by the respondent-plaintiff has been allowed.

In order to appreciate the controversy in correct perspective, certain facts needs to be noticed herein.

Husband of the respondent-plaintiff namely Dharambir son of Shri Chander Singh was engaged by the appellants on daily wage basis in the year 1987. After some time, the services of the husband of the respondent-plaintiff were terminated along with number of other similarly situated employees, which action of termination of services was challenged by all of them before the Labour Court. Vide Award dated 04.12.2002, the termination of the services by the appellants of the husband of the respondent-plaintiff and other similarly situated workmen was held to be bad and the same was set aside and they were ordered to be reinstated in service with continuity but with only 40 % back wages to be calculated from the date of demand notice which was served by them on 20.01.1993. The Award dated 04.12.2002 attained finality after the same was upheld by the Hon'ble Supreme Court of India on 20.01.2005.

Keeping in view the Award in favour of the late husband of the respondent-plaintiff, he was reinstated in service along with other 44 co-workers in February 2005. After working for a period of approximately one month, the husband of the respondent-plaintiff unfortunately died on 05.03.2005.

After the death of the husband of the respondent-plaintiff, the services of other workers who were reinstated in service along with the late husband of the respondent-plaintiff, was regularized vide order dated 26.03.2008 but w.e.f. 02.09.1994. Keeping in view the said benefit granted to the similarly situated employees, the respondent-plaintiff raised a claim that on the date of the death of her husband i.e. on 05.03.2005, he be also treated as a regular employee keeping in view the benefit granted to the other similarly situated employees and she be granted the benefit of family

pension from the date of death of her husband.

As the benefit being claimed was not being extended to her, hence, she filed a civil suit claiming the said benefit.

Keeping in view the evidence which came on record, by interpreting the same, the trial Court dismissed the suit holding that once on date of the death, the husband of the respondent-plaintiff was not regular employee, she was not entitled for any benefits for which regular employee is entitled for i.e. the pensionary benefits.

Feeling aggrieved against the judgment and decree of the trial Court dated 31.01.2017, the respondent-plaintiff filed an appeal which came to be decided on 15.05.2019. The lower Appellate Court held that as the husband of the respondent-plaintiff was reinstated in service in February 2005 along with other 44 employees and the services of those employees, who joined with the late husband of the respondent-plaintiff, were regularized in the year 2008 but w.e.f. 1994 and keeping in view the continuity of the service granted by the trial Court, as the late husband of the respondent-plaintiff was deemed to be service in the year 1994, he was also entitled for the benefit of deemed regularization and on his death i.e in the year 2005, he should also be treated as a regular employee so as to extend the pensionary benefits to the respondent-plaintiff including the benefit under the 2006 Rules and also the benefit of Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules 2003/2006. The said judgment and decree of the lower Appellate Court is under challenge in the present Regular Second Appeal.

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

Learned senior counsel appearing on behalf of the appellants submits that once on the date of the death of the husband of the respondent-plaintiff in the year 2005, he was not a regular employee, no benefit of regularization of service along with family pension or 2003/2006 Rules as being claimed by the respondent-plaintiff could have been allowed in her favour by the lower Appellate Court. Learned senior counsel for the appellants further submits that for seeking the said benefits, the deceased employee has to be regular employee, which fact is missing in the present case as concededly, on the date of death of the late husband of the respondent-plaintiff, he was not a regular employee.

Learned counsel for the respondent-plaintiff submits that once by an Award of the Labour Court, which has attained finality upto the Hon'ble Supreme Court of India, the late husband of the respondent-plaintiff was reinstated in service with continuity of service starting from the year 1987 onwards along with 40% back wages coupled with the fact that similarly situated employees, who were also reinstated in service along with the late husband of the respondent-plaintiff in the year 2005, were given the benefit of regularization of their services from the year 1994, the grant of the said benefit by the lower Appellate Court in the favour of the husband of the respondent-plaintiff cannot be treated as arbitrary or illegal, hence, the appeal filed by the appellants may kindly be dismissed.

The question which arise in the present appeal is whether, in the facts and circumstances of the present case, the judgment and decree passed by the lower Appellate Court so as to treat the late husband of the respondent-plaintiff as a regular employee on the date of death i.e.

05.03.2005 is correct or not.

It is a conceded position that by the Award passed by the Labour Court dated 04.12.2002, which Award has already attained finality upto the Hon'ble Supreme Court of India, the late husband of the respondent-plaintiff and other similarly situated employees were reinstated in service with continuity from their initial date of appointment i.e. in the year 1987, hence husband of respondent-plaintiff was deemed to be in service in the year 1994. It is also a conceded position before this Court that the employees, who were reinstated in service along with the late husband of the respondent-plaintiff in the year 2005, were granted the benefit of regularization of their services from the year 1994 but the said order was passed after the death of the late husband of the respondent-plaintiff in the year 2005.

Once, the similarly situated employees have been treated as a regular employee from the year 1994, on reinstatement in service the late husband of the respondent-plaintiff also became entitled for the said similar benefit as he was in service in the year 1994 and was alive. A deeming fiction once have been granted by the appellants themselves to the similarly situated employees who were allowed to join along with the late husband of the respondent-plaintiff in February 2005 to the effect that they are to be treated as regular employee from the year 1994, only the said benefit has been extended by the lower Appellate Court by deeming fiction in favour of the late husband of the respondent-plaintiff as well. Once, the similarly situated employees have been given benefit of regularization of their services from 02.09.1994, the said benefit has rightly been extended in the favour of the late husband of the respondent-plaintiff.

Further, it is not a solitary case where the employee has died prior to the regularization of his service and the benefit of deemed regularization has been given. The appellants themselves, in the case of Ram Krishan, who was also dismissed from service along with the husband of the respondent-plaintiff and was reinstated in the year 2005 along with the late husband of the respondent-plaintiff, died on 23.03.2007 prior to the regularization of services of the other similarly situated employees which order was passed in the year 2008. In his case, the Department extended the benefit of deemed regularization from the year 1994 so as to give the pensionary benefits to the wife of late Ram Krishan. Once, a benefit has already been given in case of Ram Krishan, denial of the same to the respondent-plaintiff is discriminatory in nature.

The only argument being pressed was that after reinstatement, Ram Krishan had worked for a period of two years whereas the husband of the respondent-plaintiff died within a period of one month of reinstatement. The said difference is of no consequence especially when even in the case of Ram Krishan, he was granted the benefit of the regularization of his services subsequent to his death keeping in view the fact that the same was granted to the other similarly situated employees in the year 2008. That being so, the distinction being created between the respondent-plaintiff and in the case of Ram Krishan is not maintainable hence, cannot be accepted.

Learned senior counsel for the appellants submits that keeping in view the facts and circumstances of this case, the grant of all the benefits upon regularization of services from the year 1994 along with 12% interest needs to be modified as, the suit was filed by the respondent-plaintiff in the year 2016 much after the death of her husband and eight years after the

grant of benefit regularization of service in favour of the other similarly situated employees.

At this stage, learned counsel for the respondents submits that though, no arrears will be claimed by the respondent-plaintiff in respect of the regularization of the services of her late husband w.e.f. 02.09.1994 but all the service benefits after his death be extended by treating the late husband as a regular employee by fixing the pay of the late husband in regular scale from the date of regularization till his death and difference of the amount be paid to her.

Keeping in view the above, the judgment and decree of the lower Appellate Court dated 15.05.2019 is modified to the extent that though the late husband of the respondent-plaintiff will be treated as regular in service w.e.f. 02.09.1994 i.e the benefit which has been granted to the other similarly situated employees will be released to him as well and his pay will be accordingly fixed in regular pay scale but without any arrears upto the date of his death of the late husband of the respondent-plaintiff. After the death, the benefits which a regular employee is extended, will be extended to the respondent-plaintiff qua the service rendered by her late husband by fixing the salary of her late husband as a regular employee in regular pay scale and compute the service benefits in regular pay scale and service benefit which a family of a deceased employee is entitled for, will be paid by adjusting the amount already paid.

It is also made clear that from the date of the death of the late husband of the respondent-plaintiff, the respondent-plaintiff will also be entitled for pensionary benefits along with arrears but will only be granted

interest @ 6% per annum instead of 12%.

The present Regular Second Appeal is disposed of in above terms.

CM-13327-C-2019

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

April 11, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No