IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109) **CM-914-C-2023 in/and**
RSA-3449-2009
Date of Decision : 13.02.2023

State of Punjab and others
...Appellants

Versus

K.L. Joshi
...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab
for the appellants.

Mr. Mukesh Kumar Bhatnagar, Advocate
for the applicant-respondent.

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Harsimran Singh Sethi J. (Oral)

CM-914-C-2023

Present application has been filed for fixing the RSA No. 3449 of 2009 to an early actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Gurvinder Singh, learned Assistant Advocate General, Punjab, who is present in court, accepts notice on behalf of appellants-State and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the above, application is allowed and the RSA No. 3449 of 2009 is taken up for hearing today.

RSA No. 3449 of 2009

The present regular second appeal has been filed challenging the judgment and decree dated 04.01.2007 passed by the trial court by which, the suit filed by the respondent-plaintiff seeking release of the pensionary benefits along with interest and for setting-aside the recoveries, which were being done from the respondent-plaintiff, was decreed, which judgment and decree of the trial court was upheld by the lower appellate court vide judgment and decree dated 21.01.2009.

Learned counsel for the appellants-defendants argues that the present appeal is not being pressed on merits but is only being contested qua the quantum of interest granted by the lower appellate court on the delayed payment of retiral benefits, which is not commensurate to the settled principle of law, when read with Section 34 of the Code of Civil Procedure. Learned counsel for the appellants-defendants argues that the grant of interest @ 10% per annum is on excessive side, which needs to be modified as nothing has come on record that the bank rate of lending money was at 10% per annum so as to award interest @ 10% per annum on the delayed release of retiral benefits by appellants-defendants.

Learned counsel for the respondent-plaintiff submits that keeping in view the facts and circumstances of the present case, the lower Appellate Court deemed it fit to grant the respondent-plaintiff the interest @ 10% per annum on the delayed payment of retiral benefits, which may kindly be upheld.

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

Though, learned counsel for the appellants-defendants has conceded the fact that respondent-plaintiff becomes entitled for the grant of interest upon delayed payment of pensionary benefits but grant of interest @

10% per annum is exorbitant keeping in view the facts and circumstances of the present case as even Bank rate is not 10% per annum, which fact has been accepted by the respondent-plaintiff as well.

As per Section 34 of the CPC, the interest can be granted by the Courts, which is as under:-

> "Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, 1 [with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.
> 2[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions."

A bare perusal of the above section would show that the rate of interest should be according to the Bank rate as admissible for lending the loan. Nothing has been brought to the notice of this Court that the bank rate of interest is 10% per annum which has been awarded by the Courts below hence, the same needs to be modified.

The Hon'ble Supreme Court of India while deciding **Civil Appeal No.7113-2014** titled as **D.D. Tewari (D) through LRs vs. Uttar**

Haryana Bijli Vitran Nigam Ltd. And others decided on 01.08.2014 has held that wherever the interest is being granted by the Court, the same should be 9% per annum on the amount due on the pensionary benefits, which is justifiable. Relevant paragraphs of the said judgment is as under:-

> "4.It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.
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> 5. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the

> case, we do not propose to do that in the case in hand.

Thereafter, the same question of law has also been decided by this Court in ***RSA-2963-2014*** tilted as ***Financial Commissioner & Principal Secretary to Government of Haryana vs. Randhir Singh Yadav*** decided on 11.01.2023.

Learned counsel for the respondent-plaintiff has not been able to dispute the fact that Courts below have not taken into consideration Section 34 of the CPC as well as the judgment of the Hon'ble Supreme Court of India in ***D.D. Tewari (supra)*** while awarding interest @ 10% per annum. Learned counsel for the respondent-plaintiff has also not been able to rebut the settled principle of law settled by the Hon'ble Supreme Court of India in ***D.D. Tewari (supra)***.

No other argument has been raised.

Keeping in view the above, judgments dated 04.01.2007 and 21.01.2009 passed by the Trial Court and Lower Appellate Court respectively are upheld qua the merits of the case but are modified qua the rate of interest on the delayed release of pensionary benefits. The rate of interest for which, the respondent-plaintiff will be entitled for is @ 9% per annum instead of 10% per annum as awarded by the Courts below.

The present regular second appeal stands disposed of in above terms.

Decree sheet be drawn accordingly.

February 13, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

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