

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(216)

RSA-2454-2013 (O&M)

Date of Decision : February 07, 2023

Om Parkash

.. Appellant

Versus

Haryana State Agricultural Marketing Board and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manasvi Sharma, Advocate, for the appellant.

Mr. S.K. Mahajan, Advocate, for respondent No.1.

Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for respondent No.2.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present Regular Second Appeal, the challenge is to the judgment and decree passed by the trial Court dated 03.03.2012 by which the suit filed by the appellant-plaintiff seeking the pensionary benefits was dismissed as well as to the order passed by the lower Appellate Court dated 19.02.2013 by which the appeal preferred by the appellant was also declined.

To appreciate the controversy in correct prospective, certain facts needs to be mentioned.

The appellant-plaintiff joined as Auction Recorder in the Haryana State Agricultural Marketing Board on 16.01.1971. Thereafter, in February 1972, he was promoted as Fee Collector. At the time when the appellant-plaintiff joined the Department, the post on which the appellant-plaintiff was working was a not pensionable post. The respondent-Board issued a scheme for introducing pension for the employees of the respondent-Board on 24.07.1989. As per the said notification dated 24.07.1989, the employees who were to be recruited after the issuance of the said notification, will automatically become eligible to be admissible to the pension scheme but the employees who are already in service on the date of issuance of the notification dated 24.07.1989 were given liberty to opt for the pension scheme but within a period of three months of the issuance of the said notification.

As there are large number of employees, who are working in the Board, and were posted in field offices, the respondent-Board issued instructions that as per the notified pension scheme dated 24.07.1989, the employees who are already in service, have to opt for the same, the said scheme dated 24.07.1989 be got notified from all the employees concerned so that in case they intend to avail the benefit of said notification, the same be extended to them.

It is a case of the appellant-plaintiff that the said scheme was never got notified from him keeping in view the instructions dated 13.09.1989, a copy of which has already been brought on record as Ex.D-3 as well as P-10.

In the month of February 2006, the appellant got promoted as

Accountant and it is alleged by the appellant that at the time when he was serving as an Accountant, he came to know about the pension scheme dated 24.07.1989 and he applied for the same immediately in the month of January 2007 before he was to superannuate. No action was taken by the Department to extend the said benefit to the appellant and ultimately the appellant-plaintiff retired on 31.05.2007 but without the benefit of the pension scheme as notified by the respondents vide Ex.D-2 dated 24.07.1989 on the ground that the appellant-plaintiff failed to apply for the said scheme within a period of three months as envisaged in the said scheme.

After the retirement, the appellant approached the authorities concerned for the grant of benefit of pension which consideration remained pending and ultimately, no pensionary benefits were allowed in the favour of the appellant keeping in view the notified pension scheme dated 24.07.1989 which led to the filing of the civil suit by the appellant-plaintiff seeking the declaration to the effect that he is entitled for the pensionary benefits in respect of the service rendered by him keeping in view the notification dated 24.07.1989.

The respondents appeared and raised an objection that once the plaintiff was in service as on 24.07.1989 i.e. on the date when notification was issued, it was his duty to apply for the said scheme within a period of three months of the notification of the said scheme and as concededly, the plaintiff did not subscribe for the said pension scheme within the time frame prescribed, no benefit of the said scheme can be given to him even though, four months before the retirement, in January 2007, he had made a request

for subscribing the pension scheme notified on 24.07.1989.

The evidence was led wherein, it was brought on record that the scheme notified on 24.07.1989 prescribes the period of three months for applying for the same in respect of the employees already in service and further that vide letter dated 13.09.1989 Ex.D-3/P-10, the said notification was to be got notified from all the employees concerned so that they can avail the benefit of the same, hence, the trial Court dismissed the suit filed by the plaintiff vide judgment and decree dated 03.03.2012 on the ground that the plaintiff himself was working as an Accountant at the time of his retirement and it can be safely presumed that he was having the knowledge of the notification dated 24.07.1989 and therefore, once he never applied for the pension scheme within a period of three months of the notification, as envisaged in the said scheme, raising a claim for the grant of pension by applying at the fag end of his service career, was not permissible.

The judgment and decree passed by the trial Court dated 03.03.2012 was assailed before the lower Appellate Court and the appeal filed by the appellant-plaintiff was rejected by the lower Appellate Court on 19.02.2013 accepting the judgment and decree of the trial Court dated 03.03.2012 to be correct keeping in view the evidence which has come on record, hence, the present Regular Second Appeal has been filed.

Learned counsel for the appellant argues that though it is a conceded position that as per the notification dated 24.07.1989 by which the pension scheme was brought in operation by the respondent-Board, the existing employees were required to apply for the said scheme within a period of three months but the said scheme was never notified to the

appellant-plaintiff, which was one of the requirement of the instructions issued by the respondent-Board itself, issued on 13.09.1989.

Learned counsel for the appellant submits that finding of the Courts below that the appellant being an Accountant is supposed to know the issuance of the said notification, is on the basis of the presumption only and is not based upon the actual facts and evidence, which has come on record. Learned counsel for the appellant further submits that nothing has come on record that keeping in view the Ex.D-3 dated 13.09.1989, the notification dated 24.07.1989 was ever or not noted from the appellant-plaintiff at any given point of time till he applied for the same in January, 2007, hence, the findings being recorded by the Courts below that the appellant had the information about the instructions dated 24.07.1989 is on the basis of presumption only and are liable to be set aside.

Learned counsel for the respondents submits that once a notification was issued on 24.07.1989 and that being a public document, it can be safely said that it is to the knowledge of all concerned.

Learned counsel for the respondents concedes a factum that as per the letter dated 13.09.1989 Ex.D-3/P-10, a decision was taken by the Board after the promulgation of the notification dated 24.07.1989 that the said notification be got noted from all the concerned employees so that in case they intend to apply for the same, they can avail their valuable right.

Learned counsel for the respondents further submits that once a finding has been recorded by the Court below that the appellant being an Accountant, cannot raise the plea of not having the knowledge of the notification dated 24.07.1989 as he himself was preparing the cases of the

other employees for the release of pensionary benefit.

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

The facts which have been stated hereinbefore are not in dispute. It is a matter of fact that the notification dated 24.07.1989 recite the factum that the employees who were already in service were required to apply in the said scheme in case they intend to do so within a period of three months from the issuance of the said notification. It is equally conceded by the parties concerned that in order to bring the said notification to the notice of the employees already working in the field, Ex.D-3 dated 13.09.1989 was issued by the respondent-Board that the pension scheme dated 24.07.1989 be got notified from each employee. Once, the respondent-Board itself had decided that the scheme has to be got noted from all the employees concerned then it was incumbent upon the respondents to get the same notified from the appellant also who was working in the field as a Fee Collector.

Learned counsel for the respondents has not been able to show any evidence which has been brought on record to show that the notification dated 24.07.1989 was got noted from the appellant-plaintiff keeping in view Ex.D-3 dated 13.09.1989 at any given point of time till the appellant himself applied in January 2017.

Once, the respondents have failed to discharge their own duty as envisaged under notification dated 13.09.1989 and it is a conceded position that notification dated 24.07.1989 was not got notified from the appellant, the findings which have been recorded by the Courts below are

not based upon the facts/evidence on record but is on the basis of assumption only that the appellant, who was working as an Accountant, ought to have known the pension scheme dated 24.07.1989. The findings are not to be recorded on the basis of assumption but on the basis of evidence which has come on record and learned counsel for the respondents has not been able to rebut the evidence which has come on record in the shape of Ex.D-3 that it was incumbent upon the respondent-Board to get the pension scheme notified from each employee and appellant was not notified about the said scheme at any stage, the findings that the appellant knew about the scheme when the same was formulated in the year 1989 and he failed to subscribe to the said scheme within a period of three months, which has been taken a ground for declining the benefit to the appellant-plaintiff by rejecting his suit as well as appeal thereafter, cannot be sustained in the eyes of law being contrary to the facts and without considering the actual evidence which has come on record.

Once, the appellant-plaintiff has been able to prove the fact that the notification dated 13.09.1989 was not complied with in his case so as to bring to his notice the pension notification in regard to pension scheme dated 24.07.1989, the appellant-plaintiff succeeded to show that as and when the said scheme came to his notice, he applied and that too before his retirement on 31.05.2007.

Further, even while recording the finding that the appellant was working as Accountant and he must have been dealing with the cases of the employees concerned for the grant of pension, the Courts below failed to notice a fact that the appellant-plaintiff got promotion as Accountant only in

the year 2006 whereas, the scheme was notified on 24.07.1989 approximately 17 years ago when the appellant was working in the field as a Fee Collector. Therefore, the material facts, which are already on record, have not been taken into account by the Courts below while arriving at a finding that the appellant-plaintiff is supposed to know the existence of the pension scheme notified on 24.07.1989 being an Accountant.

Further, the law on the said issue has also not been taken into account by the Courts below while dismissing the suit as well as the appeal filed by the plaintiff.

In somewhat similar circumstances, the Hon'ble Supreme Court of India in ***Civil Appeal No.4903 of 2009 titled as Dakshin Haryana Bijli Vitran Nigam vs. Bachan Sing, decided on 30.07.2009*** has held that it would be unreasonable and irrational to deny the pensionary benefits to an employee particularly when the Department failed to produce any record to show that the employee had knowledge about the instructions or the same was got notified from him. In ***Bachan Singh's case (supra)***, the facts were same where, the instructions clearly stated that the notification regarding the pension scheme be got noted from the employees concerned and the ***Bachan Singh's case (supra)*** had been able to prove that the said pension scheme was never got notified from him. The Hon'ble Supreme Court of India held the said employee entitled for the pensionary benefits even if he had not applied within the time frame prescribed under the pension scheme. Relevant paragraph 26 and 27 of the said judgment are as under:-

“26. In view of the law as has been articulated in a large number of cases where this court has observed that any discriminatory action on the part of the Government would be

liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.

27. In our considered opinion, the view taken by the Division Bench of the High Court in the impugned judgment is indeed a rational, just and fair view and no interference is called for.”

Learned counsel for the respondents has not been able to differentiate the claim of the appellant in the present appeal with that of ***Bachan Singh's case (supra)*** so as to deny the benefit of the said judgment to the appellant-plaintiff in the present case.

Keeping in view the above, it is held that the judgment and decree passed by the trial Court dated 03.03.2012 which has been upheld by the lower Appellate Court vide order dated 19.02.2013 are liable to be set aside being perverse to the facts and evidence on record as well as the settled principle of law stated hereinbefore and are accordingly set aside. The suit filed by the plaintiff is decreed.

It is made clear that the appellant will be treated under the pension scheme for the grant of pensionary benefits as notified by the respondent-Board on 24.07.1989.

Learned counsel for the appellant has undertaken that in case, any amount which needs to be deposited under the said scheme but has not been deposited by the appellant-plaintiff so far, the same will be deposited

along with interest @ 12% and the amount which is computed by the respondent-Department to be deposited by the appellant be deducted from the arrears which the appellant is entitled for under this order.

Learned counsel for the respondents raises no objection to the said proposal.

Ordered accordingly.

It is also made clear that after computing the entitlement of the appellant under the pension scheme dated 24.07.1989, the arrears will be computed and paid from the date of retirement but the amount already paid to the appellant upon his retirement, will be adjusted and the remaining amount will be paid to the appellant-plaintiff.

The appellant-plaintiff will also be entitled for the arrears of pension along with interest @ 9% per annum.

The present Regular Second Appeal is allowed in above terms.

February 07, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes