

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102) CM-2423-C-2016 in/and
RSA-892-2016 (O&M)
Date of Decision : 13.02.2023

State of Haryana through Collector, District Rewari and others

...Appellants

Versus

Ram Avtar Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ravi Dutt Sharma, Deputy Advocate General, Haryana
with Ms. Vibha Tewari, Assistant Advocate General, Haryana
for the appellants.

Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)
CM-2423-C-2016

Present application has been filed seeking condonation of delay
of 201 days in filing the appeal.

Keeping in view the averments made in the application, which
is duly supported by an affidavit, the same is allowed and delay of 201
days in filing the appeal is condoned.

RSA-892-2016 (O&M)

The present regular second appeal has been filed by the
appellants-defendants challenging the judgment and decree of the trial court
dated 31.03.2014 vide which the suit filed by the respondent-plaintiff was

decreed and the respondent-plaintiff was held entitled to one increment of higher responsibilities on his promotion as Primary Head Teacher w.e.f. 26.07.2003 with all benefits of arrears along with interest @ 6% as well as interest on the late payment of the pension and retiral benefits from the date of retirement till the payment of the same. The respondent-plaintiff was further held entitled for the benefit of LTC and deputation allowances for the period he remained on deputation since 1990 till the date of his retirement along with interest. The appellants-defendants further challenged the order dated 29.04.2015 passed by the lower appellate court by which the appeal preferred by the appellants-defendants was dismissed.

Learned counsel for the appellants-defendants submits that the grant of benefit of one increment by treating the post of Primary Head Teacher as a promotional post, is liable to be withdrawn keeping in view the judgment passed by the Co-ordinate Bench of this Court in CWP No. 22066 of 2012 titled as ***Ganga Ram Punia and others Vs. State of Haryana and others*** and other connected cases, decided on 17.08.2015, where the claim of the similarly situated employees qua the same relief has already been denied by Co-ordinate Bench of this court hence, the grant of said benefit by the trial court as well as by the lower appellate court is contrary to the judgment in ***Ganga Ram Punia's case (supra)***, and, therefore, the judgments of the courts below on the said aspect are liable to be modified.

Learned counsel for the respondent-plaintiff does not dispute that keeping in view the judgment in ***Ganga Ram Punia's case (supra)***, the relief granted by the trial court, as upheld by the lower appellate court with regard to the grant of one increment by treating the post of Primary Head

Teacher as a promotional post with higher responsibilities, cannot be granted.

Keeping in view the said aspect, the judgments of the courts below are modified to the extent that the respondent-plaintiff is not entitled for the one increment by treating the promotion as a Primary Head Teacher envisaging higher responsibilities.

Learned counsel for the appellants-defendants submits that the grant of the benefit of LTC and deputation allowance for which the respondent-plaintiff has been held entitled for since 1990 till the date of retirement is contrary to the evidence on record as, there is no order by which, the respondent-plaintiff was sent on deputation in the same department. Learned counsel for the appellants-defendants submits that during the entire tenure, the respondent-plaintiff continued working in the Education Department and was only posted in the office of the District Education Officer, which posting cannot be treated as on deputation hence, no such deputation allowances is admissible to him and the courts below have wrongly construed that the posting of the respondent-plaintiff in the office of the District Education Officer was on deputation.

Learned counsel for the respondent-plaintiff has not been able to show any document, which has come on record to show that the respondent-plaintiff was sent to work in the office of the District Education Officer, which was a deputational post. Rather, learned counsel for the respondent-plaintiff conceded that the respondent-plaintiff remained in the same department i.e. throughout his career.

That being so, the findings, which have been recorded by the

courts below that the respondent-plaintiff was on deputation, while he was posted in the office of the District Education Officer, is contrary to the evidence on record. In the absence of any document of posting the respondent-plaintiff in the office of the District Education Officer, by way of deputation, the mere posting cannot be treated as a deputation hence, the findings recorded by the courts below qua the said fact are perverse and cannot be sustained hence, the same are accordingly set-aside. Consequently, the respondent-plaintiff would not be entitled for any deputation allowance, as being directed by the courts below and the suit qua the said benefit also stands dismissed.

Learned counsel for the appellants-defendants argues that the the respondent-plaintiff has been granted the benefit of LTC starting from the year 1990, especially when the suit was filed in the year 2012. Learned counsel submits that the LTC can only be granted if the benefit has been claimed and the same is only to be reimbursed by the department while an employee is in service. Without availing the LTC, no benefit can be allowed in favour of the employee and the said benefit lapses due to non-availing of the said benefit.

Learned counsel for the respondent-plaintiff conceded that no LTC was ever availed by the respondent-plaintiff while in service. Further, no rule has been placed on record by the respondent-plaintiff to claim that even without availing the LTC while in service, the employer is to reimburse the LTC benefit. The courts below without appreciating the said fact, have allowed the said relief, which direction has been given without noticing the rules governing the service.

It may be noticed that after the retirement, as per the service rules, for a block of 4 years the retiree is entitled for availing the LTC or one month salary as the case may be. Hence, though the respondent-plaintiff is not held entitled for the LTC for the period he remained in service but after retirement, he will be entitled for the LTC for every block of 4 years and in case, he has not availed the same, he will be reimbursed by one month salary, which rule has been conceded by the learned counsel for the appellants-defendants.

For the late payment of the retiral benefits, the respondent-plaintiff has been held entitled for the interest @ 6% per annum. Keeping in view the facts and circumstances of the present case and the evidence, which has come on record, no interference is called for qua the said finding as the respondent-plaintiff has rightly been held entitled for interest on the delayed release of pensionary benefits @ 6% per annum from the date, the same became due till the actual release of the same.

Keeping in view the facts and circumstances mentioned herein-above, the judgment and decree of the courts below are modified to the extent that the respondent-plaintiff is held entitled for interest on the delayed release of pensionary benefits from the date, the pensionary benefits became due till the actual release of the same @ 6% per annum. Further, the respondent-plaintiff will also be entitled for LTC after the retirement for every block of 4 years. In case, he has not availed the reimbursement of the LTC, he will be paid one month pension, if permissible under the rules governing the service. The judgment of the trial court dated 31.03.2014 is modified accordingly. Decree sheet be prepared.

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

CM-8107-C-2018

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

February 13, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No