

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(262)

RSA No. 674 of 2015
Date of Decision : 17.02.2023

Vasdev Chauhan

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Nikhil Kumar Vashisht, Advocate for
Mr. Gaurav G.S. Chauhan, Advocate for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Ms. Deepanshu Gupta, Advocate and
Mr. Puneet Sharma, Advocate for respondent No. 3.

Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed by the appellant-plaintiff challenging the judgment and decree of the lower appellate court dated 08.07.2014 by which, the appeal preferred by the respondents-defendants in respect of the judgment and decree of the trial court dated 23.08.2012 has been accepted and the suit, which was allowed by the trial court vide judgment and decree dated 23.08.2012, has been dismissed.

Before coming to the grounds of appeal, certain facts needs to be stated so as to appreciate the controversy in the correct perspective.

The appellant-plaintiff joined as a Packer in the Department of Printing and Stationery, Punjab on 09.09.1963. While working in the

department of Printing and Stationery, Punjab, the work of the Text Book Depot, which was initially being maintained by the Department of Printing and Stationery, was transferred to the Punjab School Education Board hence, the appellant-plaintiff was sent to the Education Board on deputation w.e.f. 01.02.1975 upto 30.06.1976. Thereafter, the Govt. of Punjab decided to absorb the services of the appellant-plaintiff with the respondent-Board and the appellant-plaintiff retired from service on attaining the age of superannuation on 31.05.2004 from the respondent-Board. While computing the pensionary benefits, only the benefit of service starting from 01.07.1976 till 31.05.2004 was extended to the appellant-plaintiff but no benefit of service, which the appellant-plaintiff had rendered with the Department of Printing and Stationery, Punjab from 09.09.1963 to 30.06.1976 was extended. The appellant-plaintiff started corresponding with the respondents-defendants that his pensionary benefits have not been fixed in accordance with law as he has not been given the benefit of total qualifying service for which he is entitled for as per the rules governing the service and in order for redressal of the said grievance, the appellant-plaintiff filed a civil suit claiming the benefit of service rendered in the Department of Printing and Stationery, Punjab for period 09.09.1963 to 30.06.1976 as a qualifying service so as to compute the entitlement of the appellant-plaintiff qua the pensionary benefits afresh and to extend him arrears along with interest @ 18% per annum.

As, concededly, the service from 09.09.1963 to 30.06.1976 was also in the department of a Govt. of Punjab, which service was not denied by the respondents-defendants, the civil suit filed by the appellant-plaintiff

was allowed to grant him the benefit of service from 09.09.1963 to 30.06.1976 along with interest @ 18% per annum.

Feeling aggrieved against the decision of the trial court, the respondents-defendants filed an appeal. Even in the appeal, the lower appellate court concluded the fact that the service, which the appellant-plaintiff has rendered from 09.09.1963 to 30.06.1976 in the Department of Printing and Stationery, Punjab is a valid service to be taken as a qualifying service for computing the pensionary benefits but as the trial court had directed the counting of the said period of service for computing the pensionary benefits of the appellant-plaintiff for the grant of single pension, the same is acceptable. But as per the decree of the trial court, the same will amount to the grant of two pension, which is not admissible, but while passing the concluding para, the lower appellate court only allowed the appeal but without modifying the same that for the grant of single pension, service rendered by the appellant-plaintiff is valid. The said order dated 08.07.2014 of the lower appellate court is under challenge in the present regular second appeal.

Learned counsel appearing on behalf of the appellant-plaintiff argues that once both the courts below have already recorded a finding that the service rendered by the appellant-plaintiff in the Department of Printing and Stationery, Punjab from 09.09.1963 to 30.06.1976 is a valid service to be taken as a qualifying service for computing the pensionary benefits after the appellant-plaintiff retired on 31.05.2004 after attaining the age of superannuation from the respondent-Board, rather than setting-aside the judgment of the trial court compelling the same should have only been

modified that the Board will grant the benefit of the said service rendered with the Department of Printing and Stationery, Punjab from 09.09.1963 to 30.06.1976 as qualifying service while computing the pensionary benefits and the appellant-plaintiff be allowed the benefits accordingly hence, the order passed by the lower appellate court needs to be modified accordingly.

Learned counsel for the respondents-defendants submits that as there is no appeal preferred against the finding of the lower appellate court that the service rendered by the appellant-plaintiff from 09.09.1963 to 30.06.1976 has already been held to be a valid service to be taken into account as qualifying service while granting the pensionary benefits, the said prayer of the appellant-plaintiff cannot be disputed.

Learned State counsel also raises the same arguments.

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

The suit filed by the appellant-plaintiff was allowed by the trial court so as to give the appellant-plaintiff the benefit of service rendered by him from 09.09.1963 to 30.06.1976 in the Department of Printing and Stationery, Punjab along with interest and the consequential benefits. The appellate court also held the appellant-plaintiff entitled for the pensionary benefits by counting of the period of service in question i.e. 09.09.1963 to 30.06.1976 rendered by the appellant-plaintiff in the Department of Printing and Stationery, Punjab as a qualifying service. That being so, the only error, which has occurred in the judgment dated 08.07.2014 of the lower appellate court is that the lower appellate court should have modified the judgment of the trial court to direct the respondents-defendants to take into account the

service rendered by the appellant-plaintiff from 09.09.1963 to 30.06.1976 in the Department of Printing and Stationery, Punjab as a qualifying service and to re-compute the pensionary benefits for which, the appellant-plaintiff is entitled for and to grant him the benefit of arrears and interest accordingly.

Once, facts are not disputed and even the claim of the appellant-plaintiff is not in dispute qua a particular period of service to be taken into account as a qualifying service, which entitlement is also covered by the rules governing the service i.e. Rule 3.17(a) of the Punjab Civil Service Rules and both the courts below have recorded the said finding in favour of the appellant-plaintiff qua the benefit of service from 09.09.1963 to 30.06.1976 as a qualifying service for computing the pensionary benefits, not granting of the said benefit while passing the judgment and decree of the lower appellate court dated 08.07.2014, cannot cause prejudice to the appellant-plaintiff. The judgment of the court below is accordingly modified that the respondent-board is directed to re-compute the pensionary benefits of the appellant-plaintiff by giving him the benefit of service, which he had rendered in the Department of Printing and Stationery, Punjab from 09.09.1963 to 30.06.1976 as a qualifying service and release the said benefits in favour of the appellant-plaintiff within a period of two months from the receipt of copy of this order.

It is made clear that the appellant-plaintiff will also be entitled for arrears from the date, he retired and will also be entitled for interest @ 6% per annum from the date the appellant-plaintiff retired till the actual payment of the same on the arrears, which will be computed under this

order. The decree sheet be prepared in accordance with the findings recorded hereinbefore.

The present regular second appeal is allowed in above terms and decree sheet be prepared.

February 17, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No