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

(248) **RSA-2180-2018 (O&M)**
Date of Decision : February 08, 2023

Haryana State Agriculture Marketing Board .. Appellant

Versus

Jai Parkash Jaglan .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Padamkant Dwivedi, Advocate, for the appellant.

Mr. Ravi Gakhar, Advocate, for
Mr. Jagdish Manchanda, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed against the judgment of the lower Appellate Court dated 08.11.2013 by which, the judgment and decree of the trial Court dated 13.05.2011 was modified but still, the respondent-plaintiff was granted promotion to the post of Mandi Supervisor with retrospective effect along with 12% interest per annum.

Learned counsel for the appellant submits that in the present appeal, the only grievance of the appellant is qua the quantum of interest which has been made admissible to the respondent-plaintiff at the rate of 12% per annum, which is much beyond the bank rate. Learned counsel for the appellant further submits that the interest can be granted by the Courts below under Section 34 of the Code of Civil Procedure coupled with the settled principle of law and in the present case, the grant of 12% interest per annum on the arrears is arbitrary and illegal and contrary to the Section 34 of the Code of Civil Procedure.

Learned counsel for the respondent 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 @ 12% per annum, 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 appellant has conceded the fact that appellant becomes entitled for the grant of interest upon delayed payment of pensionary benefits but grant of interest @ 12% per annum is exorbitant keeping in view the facts and circumstances of the present case as even Bank rate is not 12% per annum, which fact has been accepted by the respondents 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 12% 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 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 judgement of the Hon'ble Supreme Court of India in ***D.D. Tewari (supra)*** while awarding interest @ 12% per annum. Learned counsel for the respondent 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 13.05.2011 and 08.11.2013 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 pensionary benefits. The rate of interest for which, the respondent will be entitled for is @ 9% per annum instead of 12% per annum as awarded by the Courts below.

The present regular second appeal stands allowed in above terms.

Decree sheet be drawn accordingly.

CM-5941-C-2018

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

February 08, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No