

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

(244)

RSA-2530-2018

Date of Decision : April 12, 2023

Harish Chander**.. Appellant****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. K.S. Banyana, Advocate, for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present Regular Second Appeal, the challenge is to the judgment and decree of the trial Court dated 05.04.2004 by which, the suit of the appellant-plaintiff was allowed to the effect that the order dated 19.11.2008, compulsory retiring the appellant-plaintiff was held to be bad but no service benefits for the period the appellant-plaintiff remained out of service till the date of his retirement was extended to him and the order passed by the lower Appellate Court dated 27.11.2017 by which the judgment and decree of the trial Court was upheld.

Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

While the appellant-plaintiff was working as Assistant Sub Inspector in the year 2007, adverse remarks were conveyed to the appellant from the period 17.06.2007 to 02.08.2007, which period was less than three months. Thereafter, on an appeal filed by the appellant-plaintiff, the

Inspector General of Police vide order dated 06.01.2008 expunged the said adverse remarks.

On 19.11.2008, on attaining the age of 55 years, the appellant-plaintiff was given three months' notice for pre-maturely retiring him. Keeping in view the said notice, on expiry of the said three months, the appellant-plaintiff was compulsorily retired from service on attaining the age of 55 years.

The said show cause notice dated 19.11.2008 for compulsory retirement was challenged by the appellant by filing a civil suit, which civil suit was allowed by the trial Court on 05.04.2014 and the notice dated 19.11.2008, in pursuance to which the appellant-plaintiff was pre-maturely retired, was held to be bad and was set aside. While setting aside the pre-mature retirement of the appellant-plaintiff, it was mentioned that the appellant-plaintiff will be treated to have retired on attaining the age of 58 years and will be entitled for fixation of pay as well as retiral benefits along with arrears of pension along with interest @ 6% per annum.

Feeling aggrieved against the decision of the trial Court in non-granting the benefit of arrears of salary for the period the appellant-plaintiff remained out of the service from the year 2008 till February 2012, the appellant-plaintiff preferred an appeal. In the appeal, no benefit has been extended by the lower Appellate Court and the judgment of the trial Court dated 05.04.2004 has been upheld. Hence, the present Regular Second Appeal.

Learned counsel for the appellant argues that once the order dated 19.11.2008 in pursuance to which the appellant-plaintiff was pre-maturely retired, has been set aside, the appellant-plaintiff will be deemed

to be in service for all intents and purposes and therefore, non-grant of service benefit for the period the appellant-plaintiff remained out of service due to an illegal act on the part of the respondent-State, is without any valid justification, hence, the judgment of the trial Court, which has been upheld by the lower Appellate Court needs to be modified for the grant of service benefits including the salary, increments and fixation of his salary accordingly.

Learned counsel for the respondents-State submits that once a relief though claimed in the suit has been declined by the trial Court, the same is perfectly valid as the pay of the appellant has already been fixed notionally upto the date of retirement and even the arrears of enhanced pension has already been extended to him along with interest, hence the present appeal may kindly be dismissed.

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

It may be noticed that the respondent-State had accepted the judgment of the trial Court by which the order dated 19.11.2008 prematurely retiring the appellant-plaintiff has been set aside. That being so, the question arises whether once in lieu of a particular order, on the basis, of which the appellant-plaintiff was not allowed to perform the duties from the year 2008 onwards till February 2012 has been set side, can he be denied the benefit of arrears of pay for the said period.

In the present case, nothing has come in the judgment of the trial Court as to why the arrears for the period the appellant-plaintiff remained out of service, has been denied to him. Though, it is a settled principle of law that the arrears can be denied but the same can only be done

for a justifiable cause/reason.

In the present case, no reason has come forward as to why the appellant-plaintiff should not be given the service benefits for the period he was not allowed to discharge the duties due to the order dated 19.11.2008, which has already been declared illegal by the competent Court of law and has been set aside. It is the respondent-State which prevented the appellant-plaintiff to discharge the duties of the post by passing an illegal order, which order has already been set aside. Once due to arbitrary action of the State, appellant-plaintiff could not perform duties, upon setting aside the order dated 19.11.2008, it is the duty of the Court to ensure that no prejudice is suffered by the appellant-plaintiff on account of the said illegal order. If arrears of salary are denied despite setting aside the order dated 19.11.2008, appellant-plaintiff will suffer prejudice, which needs to be compensated by respondent-State which restrained the appellant-plaintiff from discharging the duties.

Even during the arguments, nothing has been brought to the notice of this Court, which would prevent the Courts from passing an order granting him the service benefits for the period the appellant-plaintiff remained out of service due to passing of an arbitrary and illegal order dated 19.11.2008.

Keeping in view the above facts, the denial of the service benefits by the trial Court for the period the appellant-plaintiff remained out of service in pursuance to the order dated 19.11.2008, upto the date of the retirement is modified. The appellant-plaintiff is held entitled for the service benefits including salary for the period he remained out of service by deeming fiction that he was continuing in service. The appellant-plaintiff

will also be entitled for the increments for the period he remained out of service.

At this stage, learned counsel for the appellant submits that the notional benefits have already been granted to the said effect but actual benefits have not been allowed.

Keeping in view the said fact, the appellant-plaintiff is not entitled for notional benefits but is entitled for actual benefits for the period he remained out of service along with arrears.

Learned counsel for the appellant-plaintiff submits that keeping in view the instructions given by the appellant, who himself is present in Court, he will not claim interest on the arrears of the salary. That being so, the order passed by the Courts below is modified to the extent that the appellant-plaintiff will be entitled for all the service benefits for the period he remained out of service upto the date of his retirement including increments.

Let the arrears for which the appellant-plaintiff become entitled for under this order, be calculated within a period of three months and be released to him thereafter after fixing his salary.

The present Regular Second Appeal is allowed in above terms.

April 12, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No