

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

(235)

RSA-453-2017 (O&M)

Date of Decision : March 15, 2023

State of Haryana Through Collector, Bhiwani and others

.. Appellants

Versus

Ram Kishan

.. Respondent

(235-A)

RSA-3373-2017 (O&M)

Ram Kishan

.. Appellant

Versus

The Haryana State Through Collector, Bhiwani and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the appellants in RSA No.453 of 2017 and
for the respondents in RSA No.3373 of 2017.

Mr. Manoj Chahal, Advocate, for the respondent,
in RSA No.453 of 2017 and
for the appellant in RSA no.3373 of 2017.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, two Regular Second Appeals, the details of which have been given in the heading of the order, are being disposed of as both the appeals arise out of the same judgment of the lower Appellate Court dated 26.10.2016.

CM-8140-C-2017 in RSA-3373-2017

Present application has been filed for condonation of delay of 90 days in filing the appeal i.e. RSA No.3373 of 2017.

Keeping in view the facts mentioned in the application, the same is allowed and delay of 90 days in filing the appeal is condoned.

RSA-453-2017 and RSA-3373-2017

Certain facts may be noticed so as to appreciate the controversy in the correct perspective.

Plaintiff-Ram Kishan was appointed as a Jeep Driver initially on adhoc basis on 15.04.1980, which services were regularized w.e.f. 15.04.1982. It may be noticed that the plaintiff prior to the joining of the Department, had joined the Military services during emergency and keeping in view the said fact, on the joining of the Department after being retired from Military service, he was given nine increments for the Military services rendered so as to fix his pay. The plaintiff attained the age of superannuation on 28.02.2003 and upto the said date, he had 22 years, 10 months and 14 days of qualifying service for which, he was given the pensionary benefits.

After a period of 9 years of retirement, a civil suit was filed by the plaintiff that after the discharge from the Military service, he was entitled for counting of the said service for the grant of ACP and the pensionary benefits, which benefits were not extended to him during his service career. In reply to the suit, the State filed a reply that at the time of joining of the Department, the plaintiff was given nine increments for the service rendered by him in the Military so as to fix his pay and the Military service cannot be taken into account for the grant of ACP, which benefit can

only be given keeping in view the actual number of years of service rendered in a particular cadre by an employee and that too in case, the said employee fails to get promotion, which is not the case qua the plaintiff.

Keeping in view the evidence which came on record, the trial Court dismissed the suit by observing that all the benefits for which the plaintiff was entitled for, have already been extended to him.

Feeling aggrieved against the decision of the trial Court, the plaintiff filed an appeal which appeal came to be decided on 26.10.2016. While deciding the appeal, the lower Appellate Court held that the service rendered by the plaintiff in the Military should be taken into account for granting the ACP benefits and the same be given to him within a period of three months of the passing of the judgment along with interest @ 6%.

It may be noticed that the lower Appellate Court in paragraph 13 recorded a fact that the plaintiff restricted his claim only to the grant of 2nd ACP and consequential benefits thowing, on account of fixation thereof.

Though, the benefit being claimed in the appeal was already granted by the lower Appellate Court but still the plaintiff chose to file the present appeal raising a grievance that his pensionary benefits have not been calculated by giving him the benefit of the Military service which he rendered whereas, the State has filed the appeal challenging the direction given by the lower Appellate Court to grant the plaintiff the benefit of ACP by taking into account his Military service.

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

Learned counsel for the plaintiff, who has filed RSA No.3373 of 2017, submits that keeping in view the undertaking recorded on behalf

of the plaintiff by the lower Appellate Court in paragraph 13 of the judgment, present appeal may kindly be disposed of having been not pressed any further.

Ordered accordingly.

Qua the appeal filed by the State of Haryana, the question which arise in the present appeal is whether or not the Military service rendered by the plaintiff is to be taken into account for grant of benefit under the Assured Career Progression Scheme as being directed by the lower Appellate Court by the impugned judgment and decree.

Before proceedings further, it may be noticed that the benefit of Assured Career Progression Scheme is available to an employee, who is stagnate on a feeder post despite having eligibility of promotion but the said promotion has not been extended to him/her due to non-availability of the post in the promotional cadre.

In the present case, the direction given by the lower Appellate Court is to count the Military service rendered by the plaintiff as a valid service to grant the benefit under the Assured Career Progression Scheme. If the said direction is accepted, the same can lead to absurd situation such that the employee who had rendered eight years of Military service, upon joining a post under the State will become eligible for ACP even on the day he/she gets initial appointment by treating that employee to be stagnating. This interpretation of the rules is not envisaged by the authorities.

The benefit of the Military service has already been extended to the plaintiff by giving him nine increments on the date of his appointment in the Department so as to fix his salary, which fact is conceded. Hence, the direction given by the lower Appellate Court is without appreciating the

consequences of the said direction. Hence, the same cannot be sustained in the eyes of law.

Even otherwise, the grant of ACP is for the regular service rendered by an employee concerned. Even the adhoc service rendered by the same employee on the same post cannot be taken into account for the grant of ACP as per the settled principle of law. Once, the adhoc service rendered by an employee cannot be taken into account in the same cadre prior to the date of regularization, the grant of benefit of Military service rendered in another Department, cannot be taken into account for the grant of ACP, hence, the direction given by the lower Appellate Court is without appreciating the scheme/rules concerning the grant of benefits under the Assured Career Progression Rules.

Keeping in view the above, the direction given by the lower Appellate Court to count the Military service for the grant of ACP is held to be bad and the same is accordingly set aside and the appeal filed by the State is accordingly allowed.

Both the appeals are disposed of in the terms mentioned hereinbefore.

CM-954-C-2017 in RSA-453-2017

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

A photocopy of this order be placed on the file of other connected case.

March 15, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No