

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

(124)

RSA-31-2023 (O&M)

Date of Decision : January 09, 2023

**Haryana Dairy Development Co-operative Federation Ltd and others
.. Appellants**

Versus

Raghbir Singh

.. Respondent

(124-A)

RSA-32-2023 (O&M)

**Haryana Dairy Development Co-op. Federation Ltd and others
.. Appellants**

Versus

Raghbir Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Samarth Sagar, Advocate, for the appellants.

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 involve the same question of law on similar facts.

CM-107-C-2023 in RSA-31-2023

As prayed for, the application is allowed.

Present Regular Second Appeal has been filed against the order of the lower Appellate Court dated 02.09.2022 by which, the judgment of the trial Court has been set aside and the suit filed by the respondent-plaintiff has been allowed so as to grant him the benefit of first higher standard pay scale w.e.f. 16.11.1995 and second ACP scale w.e.f. 16.11.2005 with the consequential relief of pay and retiral benefits including the gratuity, leave encashment, pension etc., along with arrears of pay with interest @ 9% per annum.

Before advertng to the ground being raised by the appellants to challenge the judgment of the lower Appellate Court, it may be noticed here that the respondent-plaintiff was initially appointed with the Haryana Dairy Development Corporation, which Corporation was subsequently converted into Haryana Dairy Development Cooperative Federation Ltd. i.e. appellant herein.

The appellant herein promoted the respondent-plaintiff as Plant Operator w.e.f. 16.11.1995. With effect from 01.04.1995, the appellant introduced a scheme for grant of first and second higher standard pay scale to the employees, who did not get any financial up-gradation for a period of 10 years and 20 years respectively. Keeping in view the fact that respondent-plaintiff was promoted as a Plant Operator on 16.11.1985 and he was working on the said post continuously for a period of 10 years and the required period of 10 years was completed on 16.11.1995, he was granted the first financial higher standard pay scale on completion of 10 years with effect from 16.11.1995.

While the respondent-plaintiff was still working on the said post of Plant Operator, the State of Haryana revised the pay scale of its

employees in the year 1999 but w.e.f. 01.01.1996 which pay revision was adopted by the appellants also so as to revise the pay scale of its employees including that of respondent-plaintiff. As per the appellants, the second ACP scale was granted to the respondent-plaintiff in the year 2000 wrongly which benefit was withdrawn later on as the respondent-plaintiff had not completed 10 years of service after the grant of first higher standard pay scale, which was made available to him on 16.11.1995.

Respondent-plaintiff kept on demanding the grant of second ACP w.e.f. 01.12.2005 when he completed 10 years of service after the grant of first higher standard pay scale but the same was not accepted by the appellants on the ground that the respondent-plaintiff had not completed 10 years of service after the revision of his pay scale which was done in the year 1999. As the benefit was not extended to the respondent-plaintiff qua the 2nd Assured Career Progression Scheme benefit, in February 2008, he filed a civil suit with a prayer that he was entitled for the first standard pay scale w.e.f. 16.11.1995 and second ACP scale w.e.f. 16.11.2005 and was further entitled for re-fixation of his pay and also the re-fixation of his retiral benefits including gratuity, leave encashment, pension etc., with all arrears of pay allowances and arrears of retiral benefits along with 12% interest per annum.

The said suit was contested by the appellants on the ground that the respondent-plaintiff had already been granted the benefit of higher standard pay scale w.e.f. 16.11.995 and the same was never withdrawn at any given point of time. The claim of the second ACP scale w.e.f. 16.11.2005 was being contested by the respondent on the ground that keeping in view Rule 5 (1) (b) of the Haryana Civil Service (Assured Career

Progression) Rules, 1998, which decide the eligibility for the grant of ACP scales, the appellants had not completed 10 years service after the revision of pay scale.

Further, the objection was raised that the suit was not maintainable keeping in view the fact that only declaration was sought and no consequential relief of the said declaration, due to which keeping in view the Section 34 of the Specific Relief Act, 1963, the suit was not maintainable as well as on the ground of limitation keeping in view the relief sought as by February 2008, the relief claimed were more than three years old and hence, could not have been claimed.

The trial Court keeping in view the evidence led decided the suit vide order dated 29.11.2016, issue No. 1 to 4 were decided in favour of the plaintiff and issue No.5 which related whether the suit of the plaintiff is maintainable in the present form was decided against the plaintiff. Though the trial Court also came to the conclusion that the plaintiff is entitled for the benefit being claimed but keeping in view the prayer made in the civil suit as only declaration was sought without there being a claim for consequential relief of the said declaration, the suit was not maintainable hence, keeping in view the finding of issue No.5, the suit of the plaintiff was dismissed.

Against the said order, the plaintiff filed an appeal, which appeal came to be decided on 02.09.2022. The lower Appellate Court after examining the fact concurred with the trial Court that keeping in view the facts mentioned in the suit and the evidence which has come on record, the appellant was entitled for the relief being claimed for i.e. the grant of first higher standard pay w.e.f. 16.11.1995 and the second ACP scale w.e.f.

16.11.2005 with consequential benefits of fixation of pay and re-fixation of retiral benefits along with arrears of pay @ 6% per annum. The cross objections filed by the appellant in the appeal were dismissed.

The lower Appellate Court held that the finding of the trial Court qua issue No.5 is not correct for the reason that not only the declaration that the plaintiff is entitled for the first higher standard pay scale w.e.f. 16.11.1995 and the second ACP pay scale w.e.f. 16.11.2005 but there is a prayer for the release of the consequential benefits with regard to the re-fixation of the pay and pension along with other allowances along with arrears for which the plaintiff becomes entitled for along with interest. Hence, the consequential relief was also part of the prayer of the plaintiff and therefore, deciding of issue No.5 against the plaintiff by the trial Court was not accepted by the lower Appellate Court and the same was over turned so as to allow the suit filed by the respondent-plaintiff. The present Regular Second Appeals have been filed against the judgment of the lower Appellate Court dated 02.09.2022.

I have heard learned counsel for the appellants and have gone through the record with his able assistance.

The first argument which has been raised by the learned counsel for the appellants is that the reversal of the finding by the lower Appellate Court qua issue No.5 is contrary to Section 34 of the Specific Relief Act 1963. As per learned counsel for the appellants, only the declaration was sought for the grant of first higher standard pay scale w.e.f. 16.11.1995 and second ACP scale w.e.f. 16.11.2005 but there is no consequential relief of the arrears in terms of the said fixation, therefore, the

trial Court rightly held that the suit filed by the appellants is not

maintainable.

In order to appreciate the said argument, the prayer of the respondent-plaintiff in the suit needs to be mentioned so as to adjudicate whether only the suit for declaration was sought or even the consequential relief of arrears of pay along with the re-fixation of salary was also demanded. The prayer of the plaintiff in the suit is as under:-

“ Suit for declaration to the effect that the plaintiff is entitled for First Higher Standard pay scale w.e.f. 16.11.1995 and the IInd A.C.P. Scale w.e.f. 16.11.2005 and resultantly, the plaintiff is further entitled to get his pay re-affixed and also to get his retiral benefits including gratuity, leave-encashment, pension etc. re-affixed and to get all arrears of pay, allowances and all arrears of retiral benefits alongwith 12% per annum interest thereon accruing on account of grant of First Higher Standard pay scale w.e.f. 16.11.1995 and IInd A.C.P. Scale w.e.f. 16.11.2005.”

A bare perusal of the above would show that the first relief sought by the plaintiff is for declaration to the effect that the plaintiff is entitled for first higher standard pay scale w.e.f. 16.11.1995 and second ACP scale w.e.f. 16.11.2005 and the remaining relief is the consequential relief of the declaration, which plaintiff has sought for is for re-fixation of his pay upon the grant of first benefit as well as for re-fixation of his retiral benefits as the details of consequential relief have been given in the prayer clause itself. Even the arrears upon re-fixation for which he becomes entitled for in case the declaration claim is allowed, have also been claimed along with interest, therefore, it is incorrect that the consequential relief of the declaration has not been sought for by the plaintiff in the civil suit.

Learned counsel for the appellants submits that the word

'recovery' of the consequential benefits is missing from the prayer, therefore, it cannot be held that the consequential relief claimed is or arrears upon re-fixation.

Assumption of the appellants that unless and until the word recovery is mentioned, the prayer as being made by the appellants does not involve the demand of arrears in pursuance to the re-fixation is incorrect. In fact, the consequential relief of the arrears along with interest is also part of the prayer, hence, the said prayer duly satisfy the requirement of Section 34 of the Specific Relief Act 1963. Therefore, the facts and the relevant law including the prayer made by the appellant was not rightly interpreted by the trial court and the said mistake of the trial Court has rightly been rectified by the lower Appellate Court in appeal in holding that the respondent-plaintiff is entitled for relief as the suit was duly maintainable in the facts and circumstances of the present case.

The second argument raised by the learned counsel for the appellant is that the Courts below have not appreciated Rule 5 (1) (b) in a correct prospective so as to deny the benefit of second ACP to the appellants as being claimed from 16.11.2005. As per the appellants, in the last ten years from the date of the claimed benefit, the employees should not have got either promotion or a benefit of higher pay scale including the revision.

Rule 5 (1) (b) of Haryana Civil Service (Assured Career Progression) Rules, 1998 is as under:-

“ 5. Eligibility for Grant of ACP Scales:-

(1) Every Government servant who, after a regular satisfactory service for a minimum period of 10 years, if the

minimum period is not otherwise prescribed to be different than 10 years either in these rules or by the Government for any class or categories of Government servant from time to time, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other even through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995,

shall for the purpose of drawal of pay, be eligible for placement into the First ACP scale with reference to him.”

A bare perusal of the above would show that there has to be a difference of 10 years between the award of the ACP and the last financial up-gradation even if the up-gradation is due the revision of the pay scale. The pay of the plaintiff-respondents was revised w.e.f. 01.01.1996.

Though, learned counsel for the appellants is correct that the grant of second ACP from 16.11.2005 by the Courts below is prior to the completion of 10 years as last up-gradation of the pay due to revision of pay scale was done in 1999, but nothing has been placed on record to show that even from completion of 10 years of service, the respondent-plaintiff was not entitled for the grant of second ACP which he completes on 31.12.2005. Assertion of the appellant-defendants that pay was revised in 1999 and 10 years would have completed by 2009, is incorrect as pay scale was revised in 1999 but with effect from 01.01.1996 and 10 years is to be counted from

01.01.1996, which respondent-plaintiff completed on 31.12.2005.

Learned counsel for the appellants argues that the same is not the prayer of the plaintiff and therefore, the same cannot be granted. The said argument cannot be accepted as nothing has been shown to this Court that even as per Rule 5 (1) (b), after the revision of the pay scale from 01.01.1996, on completion of 10 years service in the cadre of Plant Operator, the respondent-plaintiff was not entitled for the grant of second ACP w.e.f. 01.01.2006 especially when the judgment of the trial Court granting the said benefits has never been appealed by the appellants.

That being so, the relief granted by the Courts below with regard to the second ACP is modified to the extent that the respondent-plaintiff will be entitled for the second ACP not w.e.f. 25.11.2005 but w.e.f. 01.01.2006 onwards as concededly he was in service as on 01.01.2006.

Keeping in view the above, except for the change of the date of the grant of second ACP, for which the respondent-plaintiff has been held entitled for w.e.f. 01.01.2006 instead of 16.11.2005, the judgment of the lower Appellate Court is maintained as learned counsel for the appellants has not been able to point out any fact or law or the rule so as to deny the respondent-plaintiff the said benefit of second ACP from 01.01.2006. The judgment of the lower Appellate Court is accordingly modified that the respondent-plaintiff will be entitled for the benefits of first higher standard pay w.e.f. 16.11.1995 and the benefit of second ACP scale w.e.f. 01.01.2006 along with the consequential benefit of the revision of his pay and pensionary benefits including the arrears as well as the interest @ 6% per annum till the date of payment.

The present Regular Second Appeals are disposed of in above

terms.

It may be noticed here that the argument of the learned counsel for the appellants that they had withdrawn the benefit of first ACP wrongly granted in the year 2002, no finding is needed as no relief for the said withdrawn was ever extended to the respondent-plaintiff while passing the order.

Learned counsel for the appellants submits that the first higher standard pay scale which was granted to the appellant on 16.11.1995 was never withdrawn at any given point of time. That being so, in case any execution is filed by the appellants, the appellants will be free to raise the said argument for the appreciation of the Court that the said relief already stands extended to the plaintiff, in case dispute arises.

As the present Regular Second Appeals have been decided without notice to the respondent-plaintiff, in case respondent-plaintiff feels prejudice, he will be free to approach this Court by filing appropriate application.

CM-108-C-2023 and CM-109-C-2023

As the main regular second appeals are disposed of, present applications also stand disposed of.

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

January 09, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No