

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

**RSA-502-2024 (O&M)
Date of decision: 04.04.2024**

DEPUTY COLLECTOR KAITHAL AND ORS

..... Appellants

versus

PIRTHI SINGH

.....Respondent

CORAM : HON'BLE MR.JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harish Nain, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present appeal, the challenge is to the judgment and decree of the lower Appellate Court by which, the judgment and decree of the trial Court dated 10.11.2021 has been set aside and the suit filed by the respondent-plaintiff has been allowed.
2. Certain facts needs to be noticed for the correct appreciation of the issue in hand.
3. The respondent-plaintiff joined Janta Higher Secondary School, Kaul, District Kurukshetra as a JBT Teacher on 04.11.1987 and as per the respondent-plaintiff, he was a confirmed employee. On 31.05.1990, the said school was taken over by the Government of Haryana and accordingly, the services of the respondent-plaintiff were also taken over and he continued to discharge his duties upto the date he attained the age of superannuation on 31.05.2004. The qualifying service of the respondent-plaintiff was taken from 01.06.1990 till 31.05.2004 for computing his pensionary benefits which was objected by the respondent-plaintiff, as the service rendered by the respondent-plaintiff from 04.11.1987 to 31.05.1990 was excluded from the zone of 'qualifying service'.

4. Feeling aggrieved against the said decision, the respondent-plaintiff filed a civil suit with the prayer that the service rendered by him from 04.11.1987 till 31.05.1990 be taken as a qualifying service for the purpose of computing the pensionary benefits. The said suit was dismissed by the trial Court vide judgment and decree dated 10.11.2021.

5. Feeling aggrieved against the said decision of the trial Court, the respondent-plaintiff filed an appeal which came to be decided on 30.10.2023 and the judgment and decree of the trial Court dated 10.11.2021 was set aside and the suit filed by the respondent-plaintiff was allowed to the effect that the service rendered by the respondent-plaintiff from 04.11.1987 to 31.05.1990 is a valid service to be taken into account as qualifying service for the purpose of computing pensionary benefits. The said judgment and decree of the lower Appellate Court is under challenge in the present regular second appeal.

6. Learned counsel appearing on behalf of the appellant-State submits that though the respondent-plaintiff was a regular employee of the school at the time the same was taken over on 01.06.1990 but was not working against the sanctioned post, hence, as at the time when the school was taken over by the Government of Haryana w.e.f. 31.05.1990 the respondent-plaintiff was not working against the sanctioned post hence, keeping in view the rules governing the service he was not entitled for the benefit of the service rendered from 04.11.1987 to 31.05.1990.

7. Learned counsel for the appellant further submits that as the respondent-plaintiff had retired from service on attaining the age of superannuation on 31.05.2004 and the civil suit was filed only in the year 2017 hence, the same should have been rejected on the ground of delay itself. Learned counsel for the appellants further submits that in any case, in order to get the benefit of the service rendered in the aided institution from 04.11.1987 to

31.05.1990, the respondent-plaintiff should have deposited the CPF before retirement, which was actually deposited by the respondent-plaintiff in the year 2013 which shows that at the time of retirement, the respondent-plaintiff had not deposited the CPF qua the service in question so as to claim the benefit of service rendered from 04.11.1987 to 31.05.1990; and as the respondent-plaintiff failed to deposit the said CPF upto the date of retirement, he is not entitled for counting of the service period in question as a qualifying service for computing the pensionary benefits.

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

9. With regard to the argument qua the delay in filing the suit, it may be noticed that the claim in the suit is with regard to the pension by taking into consideration the service rendered by respondent-plaintiff from 04.11.1987 to 31.05.1990. It is a settled proposition of law that non-grant of valid pension to an employee is a continuous wrong and the same cannot be dismissed on the ground of delay or laches. Reference is made to the judgment of Hon'ble the Supreme Court of India in ***Civil Appeal No. 4100 of 2022 titled as Shri M.L. Patil (dead) through LRs Vs. State of Goa and Another, decided on 20.05.2022***, which reads as under:-

“Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent –State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in

observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.”

10. Keeping in view the above, the suit filed by the respondent-plaintiff seeking the entitled pensionary benefit, cannot be dismissed on the ground of delay. Hence, the judgment of the lower Appellate Court is not perverse and the same has rightly been decided on merit.

11. Further, with regard to the argument of the learned State counsel that the respondent-plaintiff was not working against a sanctioned post at the relevant time, hence, he cannot be granted the benefit of the service period from 04.11.1987 to 31.05.1990, it may be noticed that the respondent-plaintiff was a regular and confirmed employee of the school in question at the time when the said school was taken over by the State Government and it is a matter of fact that a confirmed and regular employee can only work against a regular post. The appellant-State is taking the objection that the respondent-plaintiff should have proved that he was working against a sanctioned post.

12. Once, even during the hearing of the appeal the appellant conceded that the respondent-plaintiff was a regular and confirmed employee at the time

when school was taken over by the Govt. and confirmation of an employee can only be against a regular post, the finding recorded by the lower Appellate Court qua the said fact needs no interference by this Court.

13. The last argument which has been raised by learned counsel for the appellant-State is that the respondent-plaintiff did not deposit the CPF for the period in question upto the date of his retirement or even thereafter when the same was demanded and the said amount was only deposited in the year 2013, hence, the service for the period in question cannot be taken into account as qualifying service, cannot be accepted. Once, the benefit of the service in question was not been extended to the respondent-plaintiff and the same was being disputed by the respondent-plaintiff and in the interregnum, the respondent-plaintiff has already deposited the CPF (his share) in the year 2013, denying him the benefit of service on the ground that he had not deposited the same upto the date of his retirement, cannot be allowed. Once, as per law, the respondent-plaintiff was entitled for the service rendered by him in the school prior to being taken over by the Government of Haryana to be taken into account as a qualifying service the said benefit has rightly been allowed by the Court below.

14. No other argument has been raised.

15. Keeping in view the above, as no perversity in the order passed by the lower Appellate Court has been pointed out and rather, the case was sought to be re-argued on merits, which is impermissible in the RSA, no ground is made out for interference by this Court and appeal in hand is accordingly dismissed.

16. Pending application(s), if any, also stand disposed of.

(HARSIMRAN SINGH SETHI)

JUDGE

04.04.2024

Anu

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No