

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-795-1993
Reserved On:-05.01.2024
Pronounced on:-02.02.2024

Harbans Lal Sharma

...Appellant

Versus

Punjab State Federation Cooperative House Building Societies and ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present :- Mr.S.S. Joshi, Advocate
for the appellant.

None for the respondents.

SUVIR SEHGAL, J.

1. Plaintiff - appellant is before this Court by way of the instant second appeal challenging concurrent finding of fact recorded by both the Courts below.
2. Pleaded case of Harbans Lal Sharma, plaintiff - appellant is that he joined the office of the defendant – respondents on 11.07.1980 as an Office Assistant and he submitted his resignation, on health ground, which was accepted vide order dated 31.08.1989. On 24.10.1989, he wrote to defendant No.1 for release of gratuity which was followed by registered notice dated 30.11.1989. By office order dated 06.12.1989 defendant No.1 admitted the claim for gratuity but did not release it. Another letter was sent, but by communication dated 29.06.1990 defendant – respondent No.1 informed that he is not entitled to gratuity.

Whereupon, plaintiff - appellant filed a suit for declaration to the effect that he is entitled to gratuity w.e.f. 31.08.1989 along with future interest at the rate of 15% per annum, in the alternative, declaration was sought to the effect that the letter dated 31.08.1989, whereby his resignation was accepted, is illegal, null and void.

3. Upon being served, defendant – respondents filed a written statement taking various preliminary submissions, including an objection that the suit is barred as the plaintiff has not served statutory notice under Section 79 of the Punjab Cooperative Societies Act, 1961. On merits, it was admitted that the resignation was accepted on 31.08.1989, however, it is denied that he was forced to submit his resignation. Claim for gratuity was specifically denied on the ground that plaintiff – appellant had not worked for the requisite period. Replication was filed by the plaintiff – appellant reiterating his stand. After framing of issues and leading of evidence by the parties, trial Court by judgment and decree dated 25.02.1992 dismissed the suit. Aggrieved, plaintiff – appellant filed a first appeal, which was dismissed by the learned Additional District Judge, Barnala on 05.03.1993. Thereafter, Plaintiff - appellant has approached this Court by way of present appeal.

4. By relying upon the Punjab State Cooperative Housing Federation Service Rules, 1976 (for short- “the Rules”), counsel for the appellant has contended that as the plaintiff – appellant had resigned on health ground, he is entitled to gratuity at the scale prescribed and provided in the Rules. He urges that a request was made to the respondents to keep the resignation pending so as to enable the plaintiff

– appellant to complete the requisite period and become eligible for grant of gratuity, but it was not acceded to.

5. I have considered the submissions made by counsel for the appellant – plaintiff.

6. Rule 2 and 3 of the Rules are relevant for the purposes of determining the submissions made and are reproduced hereunder

“2. Definitions:-

In these rules unless the context otherwise requires:-

a) *“Registrar” means the Registrar, Cooperative Societies, Punjab.*

b) *“Qualifying service” means 10 yers satisfactory continuous service in the Federation.*

c) *“Pay” means the average of the salary inclusive of other remunerations drawn as salary during the last 10 months.*

3.(a) *On retirement an employee may be allowed gratuity equal to one month’s pay for each completed year of qualifying service subject to a maximum of 15 months but if an employee of the Federation has put in satisfactory service of over 25 years an extra amount by way of additional gratuity @ one month’s pay for each completed year of satisfactory service beyond 25 years may be paid to the employee of the Federation.*

b) *On death of an employee while in service of the Federation one month’s pay for each completed year of satisfactory service on (sic or) a fraction there of subject to maximum of 15 month pay be paid to his/her, widow/widower, sons, and minor and unmarried daughters.*

c) *On an employee becoming at any time during his service physically or mentally incapable as decided by competent authority approved by the Administrative Committee to continue service prior to the age of his superannuation may be paid gratuity as in 3(a) above.*

d) *On resignation by an employee on reasons of health certified by a competent authority approved by the Administrative Committee, he will be entitled to gratuity on the scale prescribed and provided in Rule 3(a) supra, for the purpose ascertaining the truth or otherwise of the charge or charges. If it is decided to hold an enquiry, employee concerned shall be permitted to produce or cite witnesses on his behalf and examine the relevant documents.”*

7. Rule 2 (b) provides that qualifying service would mean 10 years satisfactory continuous service and Rule 3 (a) lays down that on retirement, an employee will be entitled to gratuity equivalent to one month's pay for each completed year of qualifying service. In other words, this rule requires a minimum of 10 years service to be eligible for grant of gratuity. Rule 3(d) of the Rules provides that in the case of resignation of an employee on health grounds, which are duly certified by a competent authority approved by the Administrative Committee, such an employee would be entitled to gratuity on the scale prescribed in Rule 3(a) *ibid*.

8. Adverting to the facts of the present case, it is evident that the plaintiff – appellant had joined the service in July, 1980 and resigned in August, 1989. Therefore, he has less than 10 years of service to his

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credit. He is, therefore not entitled to the grant of gratuity under the Rules. In his cross-examination, plaintiff – appellant, who appeared as PW1 has admitted that he has less than 10 years of service with the defendant - respondents. Furthermore, in order to get the benefit of Rule 3(d) of the Rules, the plaintiff – appellant, besides producing a certificate of ill health duly certified by a competent authority, is required to fulfill the conditions laid down in Rule 3(a) *ibid*. In other words, even to get advantage of this Rule, he is required to possess minimum of 10 years of service. However, the service rendered by the plaintiff – appellant falls short of the requisite period. Reliance placed on order dated 06.12.1989 Ex.P8 would also not help the plaintiff – appellant as the order provides that the plaintiff – appellant be paid gratuity admissible to him as per rules.

9. As discussed above, the rules necessitate putting in of a minimum of a decade's service, which is the appellant has not have. Undisputedly, resignation of the plaintiff – appellant was accepted on 31.08.1989 and communicated to him. Subsequent request to keep his resignation pending is of no consequence. Once a resignation has been accepted, it cannot be withdrawn. It is a settled position of law that an employee has a locus to withdraw the resignation as long as it is not accepted. Once the resignation has been accepted and communicated, an employee is estopped by his own action and cannot be permitted to withdraw it as the relationship between the employer and employee comes to an end.

10. In view of the above discussion, this Court is of the view that there is no illegality or infirmity in the judgments and decrees

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passed by the Courts below, which deserve to be affirmed.

11. Finding no merit in the appeal, it is hereby dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

02.02.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No