

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

RSA No. 63 of 1995 (O&M)
Date of Decision : 18.01.2024

Punjab State Electricity Board

...Appellant-defendant

Versus

Jagmail Singh

...Respondent-plaintiff

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjit Singh Kalra, Advocate
for the appellant-defendant.

Mr. Prince Goyal, Advocate with
Mr. Ravinder Singh, Advocate for the respondent-plaintiff.

Harsimran Singh Sethi J. (Oral)

1. In the present regular second appeal, the judgments and decrees of the courts below dated 28.09.1991 and 02.08.1994 by which the claim of the respondent-plaintiff for the grant of benefit of military service has been allowed, have been assailed.
2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.
3. The respondent-plaintiff claimed the benefit of military service, which he had rendered from 19.04.1965 to 10.01.1968 and 03.12.1971 to 27.03.1977 towards increment and seniority. The said benefit was not being given to the respondent-plaintiff and the same was denied vide letter dated 04.03.1982, which was made the subject matter

of a civil suit. The said civil suit was allowed by the trial court vide judgment and decree dated 16.08.1983, copy of which is on record as Ex.

P4. The said civil suit became final as no appeal was preferred by the appellant-defendant.

4. Despite the fact that there was a judgment of the competent court of law granting the benefit of military service towards increment & seniority, the said benefit was not extended to the respondent-plaintiff on the ground that subsequent to the judgment and decree dated 16.08.1983, keeping in view the interpretation by the judgment of Hon'ble Supreme Court of India in *A.S. Parmar Vs. State of Haryana*, AIR 1986 S.C. 1183 for the grant of military benefit, the benefits as allowed vide judgment dated 16.08.1983 could not be allowed to the respondent-plaintiff.

5. Rather than getting the decree dated 16.08.183 (Ex. P4) executed, the respondent-plaintiff filed a civil suit claiming the consequential benefit of judgment and decree dated 16.08.1983 once again. The suit filed by the respondent-plaintiff for the grant of arrears of increments as per the judgment and decree dated 16.08.1983 (Ex. P4) was decreed by the trial court vide judgment and decree dated 28.09.1991 by recording a finding that once a suit filed by the respondent-plaintiff claiming the same benefit has already been allowed and the said decree dated 16.08.1983 (Ex. P4) has already attained finality, the subsequent interpretation of the rules in question by the Hon'ble Supreme Court of

India will *ipso-facto*, not give a right to the appellant-defendant to deny the benefit of the decree dated 16.08.1983, which remains un-assailed.

6. The judgment and decree of the trial court dated 28.09.1991 was assailed by the appellant-defendant before the lower appellate court and the lower appellate court also upheld the judgment and decree of the trial court, which decrees are challenged in the present regular second appeal.

7. Learned counsel appearing on behalf of the appellant-defendant argues that though, it is a conceded fact that there is a judgment and decree of the competent court of law dated 16.08.1983 (Ex. P4) granting certain benefits qua the military service to the respondent-plaintiff but keeping in view the subsequent judgment of Hon'ble Supreme Court of India in ***A.S. Parmar's case (supra)***, the same cannot be implemented.

8. The said argument of the counsel for the appellant-defendant cannot be accepted.

9. First of all, once there is a decree by a competent court of law and the same remains un-assailed and the said decree granted certain benefits to the respondent-plaintiff, it was incumbent upon the appellant-defendant to implement the same and in case, they feel aggrieved against the said decree, they could have challenged the same before the appropriate forum. Once, it is a conceded fact that the benefit granted under the judgment and decree dated 16.08.1983 (Ex. P4) attained finality, there cannot be any objection to the grant of relief as admissible

to the respondent-plaintiff under the judgment and decree dated 16.08.1983 (Ex. P4), which benefits have rightly been allowed by the courts below while passing the impugned judgments and decrees.

10. Learned counsel for the appellant-defendant further submits that once the judgment and decree dated 16.08.1983 (Ex. P4) was a simple decree based upon a particular judgment, which judgment has been interpreted subsequently by the Hon'ble Supreme Court of India in ***A.S. Parmar's case (supra)***, the judgment and decree granting benefit to the respondent-plaintiff does not remain a valid decree.

11. The said argument is also fallacious. Once an inter-party judgment has been given much before the judgment in ***A.S. Parmar's case (supra)***, and even after the judgment in ***A.S. Parmar's case (supra)***, the said judgment and decree dated 16.08.1983 was never assailed by the respondent-plaintiff, raising an argument that in view of the judgment of the Hon'ble Supreme Court of India in ***A.S. Parmar's case (supra)***, the judgment and decree dated 16.08.1983 (Ex. P4) which is between the parties concerned, will lose its significance, cannot be accepted. Till the judgment and decree passed by the competent court of law remains valid, the same has to be executed in the manner required for.

12. Learned counsel for the appellant-defendant further submits that after the judgment of the Hon'ble Supreme Court of India, the appellant-defendant-State had issued Instructions dated 21.04.1987, according to which, it was mentioned that keeping in view the judgment of Hon'ble Supreme Court of India in ***A.S. Parmar's case (supra)***, any

benefit already extended to an Ex-servicemen, should be withdrawn even without giving notice, hence, non-implementation of the judgment and decree dated 16.08.1983 (Ex. P4) was perfectly valid keeping in view the Instructions dated 21.04.1987.

13. This argument of the learned counsel for the appellant-defendant cannot be accepted for the reason that no judgment of a competent court of law can be overruled by the issuance of an Instructions by the Government and that too unilaterally. In case, the Government was aggrieved in any manner that the benefit granted to the respondent-plaintiff vide judgment and decree dated 16.08.1983 was not valid keeping in view the subsequent Instructions, the only way out was to assail the said decree. Whereas, in the present case, it is a conceded position that the decree dated 16.08.1983 (Ex. P4) attained finality, which fact has been rightly interpreted by the courts below in the impugned orders, hence the same cannot be faulted with in any manner.

14. The last argument, which has been raised by the learned counsel for the appellant-defendant is that the interest, which has been granted by the courts below, is @ 12% per annum on the amount, which the respondent-plaintiff becomes entitled for under the decree, which is excessive and the same needs to be reviewed keeping in view Section 34 of the CPC.

15. Learned counsel for the appellant-defendant very fairly submits that keeping in view the provisions of Section 34 of CPC, the

judgments and decrees of the courts below be modified qua the grant of interest to 6% per annum.

16. Keeping in view the above, the judgments and decrees of the courts below are modified to the extent of grant of interest @ 6% per annum instead of 12% is allowed in favour of the respondent-plaintiff.

17. The present regular second appeal is disposed of in above terms.

January 18th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No