

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

103

RSA-2741-1997 (O&M)
Decided on :24.01.2024

State Of Punjab and OthersAppellants

Versus

Baljit Kaur . . . Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rohit Ahuja, DAG, Punjab.

Mr, Harinder Sharma, Advocate for the respondent.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present regular second appeal, the challenge is to the judgments and decrees passed by the Courts below by which, the suit filed by the respondent-plaintiff seeking the benefit of the period from 09.04.1978 to 19.02.1981 is to be treated as the qualifying service for pensionary benefits including the increments and promotions, has been allowed.
2. Certain facts needs to be mentioned for correct appreciation of the issue in hand.
3. The respondent-plaintiff joined as a JBT teacher in the year 1962. She was confirmed on the said post in the year 1965. In 1976, the respondent-plaintiff applied for a long leave for a period of two years started from 1976 to 1978, which was sanctioned. Rather than joining back upon expiry of leave, the respondent-plaintiff applied for further leave of one year i.e. from 09.04.1978 to 09.04.1979.

4. It may be noticed that nothing has come on record that the said leave from 09.04.1978 to 09.04.1979 was allowed by the appellant-defendant. As per the pleadings, on 10.07.1980, the respondent-plaintiff reported for duty whereas, she was not allowed to join and ultimately in compliance of the order dated 23.12.1980 passed by learned Senior Sub-Judge, Ludhiana, the respondent-plaintiff was allowed to join back the service on 19.02.1981, however, the benefit of service period starting from 09.04.1978 till 19.02.1981 was not given for any purpose such as increments and the period in question was not treated as a period spent on duty. The said period was treated as an extra ordinary leave period.

Thereafter, the respondent-plaintiff filed a civil suit for claiming the benefit that the said period starting from 09.04.1978 to 19.02.1981 be treated as a period spent on duties for all intents and purposes including the increments and to treat the said period as qualifying service, which civil suit came to be allowed by the trial Court vide judgment and decree dated 27.04.1994.

5. Feeling aggrieved against the said decision of the trial Court, appellant-State filed an appeal which appeal also came to be dismissed vide judgment and decree dated 31.01.1997 passed by the Lower Appellate Court. The both judgments and decrees passed by the Courts below have been impugned in the present regular second appeal.

6. While issuing notice of motion, the judgment and decree of the Courts below were stayed.

7. Learned counsel for the appellant-State argues that once it has already come on record that the period in question was treated as an extra ordinary leave period, no benefit of increment can be granted and the said period cannot be treated as a duty period as well as qualifying service

keeping in view the Rule 4.7 of The Punjab Civil Services Rules (Rules relating to Pensions, Provident Funds and General Insurance Scheme), governing the grant of extra ordinary leave.

8. Learned counsel for the respondent-plaintiff has not been able to rebut the fact that as per the evidence which has come on record, the period in question has been treated as an extra ordinary leave period.

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

10. The Courts below while passing the impugned orders had missed the Rule 4.7 of the **Punjab Civil Services Rules (Rules relating to Pensions, Provident Funds and General Insurance Scheme)** which governs the grant of extra ordinary leave and what benefits are not admissible to an employee for the period of extra ordinary leave. Said Rule 4.7 is reproduced as under:-

Rule 4.7 of The Punjab Civil Services Rules (Rules relating to Pensions, Provident Funds and General Insurance Scheme).

“4.7. The time passed by a Government employee on leave of all kinds except extraordinary leave, other than that extraordinary leave counted towards increment under rule 4.9 (b) of Volume I (Part I), shall count as service qualifying for pension.”

10. A bare perusal of the above Rule would show that the extra ordinary leave period can not be counted towards the benefit of increment or for qualifying service. That being the Rule, the judgments passed by the Courts below granting the said benefit have been passed ignoring the relevant rules governing the service.

11. Learned counsel for the respondent-plaintiff has not been able to dispute the fact that keeping in view the Rules 4.7 which govern the service, extra ordinary leave period, the benefits of which period is being asked for by the respondent-plaintiff in the civil suit are not admissible.
12. No other arguments are raised.
13. Keeping in view the above, the judgments and decree of the Courts below are perverse keeping in view the Rules governing in service which aspect has not at all been considered while passing the judgments and decrees by the Courts below, the present regular second appeal stands allowed and the judgments and decrees of the Courts below are hereby set-aside and the suit filed by the respondent-plaintiff is dismissed.
- 14 Pending miscellaneous application, if any, shall also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

24.01.2024

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