



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-4111-1999 (O&M)
Date of decision : 07.05.2024

Haryana State and othersAppellants

V/S

Amar Singh RaghavaRespondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Saurabh Mohunta, D.A.G., Haryana
for the appellants.

Mr. Sujeet Kumar, Advocate for
Mr. Amar Vivek, Advocate for the respondent.

NAMIT KUMAR, J. (ORAL)

1. The appellant-State has filed the instant regular second appeal against judgment and decree dated 30.04.1999, whereby learned Additional District Judge, Hisar, while allowing the appeal filed by the respondent/plaintiff has set aside the judgment and decree dated 01.05.1997 passed by learned Civil Judge (Senior Division), Hisar dismissing the suit filed by the respondent/plaintiff. Parties to the lis are hereinafter shall be referred to by their original position in the suit.
2. Brief facts of the case are that the plaintiff filed a suit for declaration claiming retiral benefits and salary for the period from 01.09.1992 to 17.09.1992. During the pendency of the suit, the retiral dues of the plaintiff have been released except withholding a sum of Rs.5,000/- from the gratuity of the plaintiff. The stand taken by the defendants before the trial Court with regard to the claim of the plaintiff for release of salary from 01.09.1992 to 17.09.1992 was that



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after he was granted stay by the Hon'ble High Court in CWP No.12544 of 1992, he neither joined the parent department nor the department where his services were transferred. The suit filed by the plaintiff was dismissed by the trial Court by recording the following findings :-

“xx xx xx xx xx

6. *Pension and leave encashment having already been paid and it having been admitted that the pension is also being received now continuously by the plaintiff, the matter regarding salary from 1.9.92 to 17.9.92 remains to be seen. It has come in the statement of the plaintiff himself that he was relieved by his parent department on 31.8.92 for joining in the office of defendant No. 4 and that he had joined on 18.9.92 in the forenoon in the Irrigation department. He had filed the writ petition in between and had obtained the stay order and had thereafter joined in the Irrigation department. He had been relieved for joining in the office of the Accountant General but he obtained the stay order and joined back in the Irrigation department on 18.9.92. It is thus, clear from his own statement that he did not work from 1.9.92 to 17.9.92 because he neither joined in the office of defendant No.4 nor joined back in the original department. Even if he had filed a writ petition he should have joined in the office of defendant No.4 immediately on being relieved from the previous department. Since he did not join anywhere and remained away from work for seventeen days he was rightly not paid any salary for that period. He states that he had lateron applied for leave for that period and he did not receive any intimation regarding sanction or rejection of his leave. Gopi Ram, PW1, has stated that application for leave was received and was forwarded to the Chief Engineer and no further intimation has been received. Unless the leave is sanctioned, the plaintiff is not entitled to get any salary for the said period of seventeen days because he admittedly remained absent from duty and applied for leave lateron. This matter would also be decided as per the result of the writ petition filed by the plaintiff and his leave would be sanctioned rejected and salary for the said period would be paid in case leave is sanctioned, by the department under*



which he would be held to be the employee at the relevant time.

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RELIEF:

The suit is dismissed with no order as to cost.”

3. Aggrieved against the abovesaid judgment and decree dated 01.05.1997 passed by the trial Court, the plaintiff preferred an appeal before the lower Appellate Court. The said appeal was accepted by the lower Appellate Court vide judgment and decree dated 30.04.1999 by recording the following findings :-

“xx xx xx xx xx

13. Thus, it is clear from the documents that the benefits of the plaintiff were stopped by the Department on one pretext or the other. He has been granted the pension provisionally but after a delay. The gratuity was also stopped by the defendants and even a sum of Rs.5000/- has not been paid to the plaintiff till today. The plaintiff has also not granted the earned leave of 17 days which he applied as that letter is pending before the Chief Engineer for a long period and naturally the plaintiff was having more than 600 earned leave to his credit at the time of his retirement. Thus the plaintiff is entitled to the full pay for the earned leave of 17 days applied by him from 1.9.1992 to 17.9.1992. The Chief Engineer cannot withheld the earned leave applied by the plaintiff which was due. It was the right of the plaintiff to avail the earned leave when it is due. It is not the case of the defendant that earned leave was applied by the plaintiff without any cause and the earned leave was not due. The plaintiff was entitled for the encashment of only 240 days earned leave and thus the remaining earned leave he could have availed during his service tenure and the defendant cannot reject the earned leave so applied by him without any cause. With-holding of gratuity of Rs.5000/- is also illegal. The plaintiff is thus entitled to the pension, gratuity leave encashment, salary of 17 days earned leave from the date of his retirement papers were submitted by the Department to the head office and the delay for the payment made by the Department itself.



There was no fault of the plaintiff in submitting the papers for his retirement and thus the plaintiff is entitled to the total gratuity of Rs.5000/- also. The plaintiff is further entitled to the interest @ Eighteen P.A. for all the delayed payment of pension, gratuity earned leave 17 days from the date of due. Hence, the finding recorded by ld. trial court for not granting the interest to the plaintiff is hereby reversed. So, this issue is decided in favour of the plaintiff and against the respondents.

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RELIEF:

15. In view of my finding on the above issues, the appeal succeeds and the same is hereby accepted with costs. Decree-sheet be prepared accordingly and the file be consigned to the records. However, trial court file be returned.”

4. Aggrieved against the abovesaid judgment and decree dated 30.04.1999 passed by the lower Appellate Court, the defendants have preferred the instant regular second appeal.

5. Learned State counsel submits that the interest granted to the respondent/plaintiff by the lower Appellate Court @ 18% per annum on the delayed retiral dues is on higher side and is liable to be reduced. He further submits that since the plaintiff remained absent from service from 01.09.1992 to 17.09.1992, therefore, he is not entitled for any salary for the said period. Plaintiff was supposed to join duties even if the writ petition filed by him was pending and stay granted therein. Later on, he applied for the leave of said period but the same was not sanctioned.

6. On the other hand, learned counsel for the respondent/plaintiff has supported the findings recorded by the lower Appellate Court by submitting that since the retiral dues of the respondent/plaintiff were delayed by the respondents, therefore, he has

rightly been granted the interest.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. The instant appeal was admitted on 10.02.2000 and operation of the impugned judgment and decree was stayed by this Court vide order dated 28.02.2000.

9. Admittedly, the petitioner remained absent from service for the period from 01.09.1992 to 17.09.1992 as he neither joined the department where his services were transferred nor reported to his parent department. Since the petitioner had not worked from 01.09.1992 to 17.09.1992, therefore, he is not entitled for the salary for the said period.

10. Further, all the retiral dues of the respondent/plaintiff have already been released but after a considerable delay, however, in wake of the facts narrated above, the respondent/plaintiff is held entitled for interest @ 8% per annum, instead of 18%, from the date of accrual till the date of payment. Consequently, the judgment and decree dated 30.04.1999 passed by the lower Appellate Court is modified to that extent.

11. The present appeal is disposed of in the above terms.

12. Pending application, if any, shall stands disposed of accordingly

07.05.2024	(NAMIT KUMAR)
<i>kothiyal</i>	JUDGE
Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No