

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

RSA-383-2021 (O&M)
Decided on : 26.04.2024

UNION OF INDIA AND OTHERS

...appellants

Versus

DARSHAN KUMAR

... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. S. K. Sharma, Advocate for the appellants.

Ms. Ekjot Sandhu, Advocate for the respondent.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present regular second appeal, the challenge is to the judgment and decree of the Courts below by which, the respondent-plaintiff has been held entitled for invalidated pension and direction has been given to the appellants-defendants to release the arrears alongwith interest @ 6 % per annum.

Learned counsel for the appellants argues that keeping in view the judgment of Hon'ble Supreme Court of India in Union of India and another v. Bashirbhai R. Khiliji, (2007), 6 SCC 16, in case, the employees concerned has suffered the disability before completion of minimum period of 10 years of service, invalidated pension cannot be granted to such employees which judgment has been ignored by the Courts below while granting the said benefit to the respondent-plaintiff and hence, the judgments and decree of the Courts below are perverse to the settled principle of law as settled by Hon'ble Supreme Court of India in Bashirbhai R. Khiliji's case (supra).

Learned counsel for the respondent-plaintiff on the other hand submits that the judgment in Bashirbhai R. Khiliji's case (supra) is

reconsidered by the Hon'ble Supreme Court of India while deciding the special *SLP (civil) No. 20339 of 2011 titled as Union of India and others v. P. A. Thomas, decided on 14.03.2019* and expressed doubt upon the views in *Bashirbhai R. Khiliji's case (supra)*, after which, an amendment has been carried out in the Central Civil Services (Pension) Rules, 1972 vide notification dated 04.01.2019 to grant the invalidated pension to the disabled employees even if, the disabled employees, sought to be retired, is entitled for invalidated pension, even if he/ she has not completed 10 years of service.

Learned counsel for the respondent-plaintiff further submits that after the amendment in Pension Rules, 1972 the *Hon'ble Madras High Court while passing judgment in W. P. No. 26318 of 2009 titled as R. Gunasekaran v. The officer-in-charge, Bureau of Naviks, Cheetah Camp, Mankhund, Mumbai-88 and others. decided on 24.02.2020,* held that the said amendment in Central Civil Services (Pension) Rules 1972, is only a clarification for the reasons that prior to the amendment to the Rules 2019, as per settled principle of law, in case, an employee was found fit at the time of recruitment and suffered disability during the service career is entitled for the invalidated pension even in the absence of 10 years of service, hence, the judgments and decrees of the Courts below are perfectly in-consonance with the settled principle of law.

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

The only argument which has been raised by learned counsel for the appellant is that the judgments and decree of the Courts below are perverse to the judgment of the Hon'ble Supreme Court of India in *Bashirbhai R. Khiliji's case (supra)*. From the fact which has been stated above, the correctness of the said judgment has already been doubted by

the Hon'ble supreme Court of India while passing orders in **Civil appeals No. 20339 of 2011 titled as Union of India and others v. P. A. Thomas, decided on 10.05.2018.**

The relevant order dated 10.05.2018 is as under:-

“The issue arising in this case is with regard to the correctness of either of the views expressed in Union of India vs. Bashirbhai R. Khiliji¹, and C. Jacob vs. Director of Geology & Mining & Anr.²

We have heard the learned counsels for the parties.

Insofar as the concerned employee in the present case is concerned, it is stated by Shri Aman Lekhi, learned Additional Solicitor General that all benefits, as claimed, have been conferred to him.

A larger question arises in the case besides the one with regard to the correctness of either of the views expressed in Union of India vs. Bashirbhai R. Khiliji (supra) and C. Jacob vs. Director of Geology & Mining & Anr. (supra). Rule 38 of the Central Civil Services (Pension) Rules, 1972 has been amended on 30.09.2016. By virtue of the amendment made persons who suffer disabilities while in service, if given the benefit under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, ‘Disabilities Act’) would henceforth be governed under the

provisions of Section 47 of the Disabilities Act subject to production of a disability certificate from the competent authority as prescribed under the Act. However, Rule 38(2), as amended, provides that if such employees to whom the provisions of Section 47 of the Disabilities Act are not applicable and such person retires from service on account of bodily or mental infirmity which permanently incapacitates him for service, he may be granted invalid pension or service gratuity in accordance with Rule 49 of the Pension Rules depending upon the length of his qualifying service on the date of retirement. The matter needs clarification and in our considered view, by the Government. If on 3 sustaining incapacity while in employment alternative employment under Section 47 of the Disabilities Act is guaranteed in cases of permanent incapacity should grant of invalid pension be contingent on completion of any particular length of service. Rather would such length of service be relevant for computation of quantum of invalid pension. The learned Additional Solicitor General has submitted that the matter may be adjourned for a period of three months to enable the concerned authority in the Union of India to deal with the matter and pass appropriate orders/clarifications as may be considered

necessary. List the matter after three months.

(NEETU KHAJURIA)

COURT MASTER (ASHA SONI)

BRANCH OFFICER”

Thereafter, the 1972 Rules have been amended vide notification dated 04.01.2019 to say that invalidated pension will be admissible to the disabled employees even before the completion of the 10 years of service, in case, the disease is suffered by employee concerned in the course of the employment.

Further, the said amendment to 1972 Rules has already been taken into consideration by the Hon’ble Madras High Court to hold that the said amendment is only a clarification in nature keeping in view the fact that prior to the said amendment, as per the settled principle of law as settled by the Hon’ble Supreme Court of India in various judgments, an employee who suffered disability on account of service condition, is entitled to invalidated pension in case the said employee was found fit at the time of recruitment even if the said employee has not completed 10 years of service at the time of invalidation from service.

Learned counsel for the appellants has not been able to dispute the said principle of law as settled by the Hon’ble Supreme Court of India. By taking into consideration the fact stated herein before and principle of law and the amendment done by the Union of India in the rules itself, it cannot be said that judgments and decrees of the Courts below are perverse to the settled principle of law.

At this stage, learned counsel for the appellants submits that while granting the relief to the respondent-plaintiff, it has not been mentioned by the Courts below that while calculating the entitlement of the

respondent-plaintiff for the invalidated pension for the day of invalidation, the amount already paid, will be adjusted.

Learned counsel for the respondent-plaintiff submits that while implementing the relief granted by the Courts below, the appellants can adjust the amount already paid to the respondent-plaintiff. **That being so, the judgment and decrees of the Courts below are upheld only with the modification that while calculating the arrears admissible to the respondent-plaintiff, the amount already paid to him will be adjusted.**

As no perversity in the judgments and decrees of the Courts below is pointed out by the learned counsel for the appellants, no ground is made out for any interference in the present regular second appeal, hence, the same stands dismissed.

Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

26.04.2024
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Whether speaking/reasoned: *Yes/~~No~~*
Whether Reportable: *~~Yes~~/No*