



RSA-3014-2006 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(214)

RSA-3014-2006 (O&M)

Date of decision:- 10.05.2024

State of Punjab and others

... Appellants

Versus

Swaran Lata Sehdev and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Amrita Garg, AAG, Punjab
for the appellants.

Mr. Ravindra Jain, Advocate
for the respondents.

SUVIR SEHGAL, J. (ORAL)

1. Defendants are in second appeal before this Court challenging the judgment and decree passed by the First Appellate Court.
2. Pleaded case of the plaintiffs-respondents is that they are the heirs of Sh. Maharaj Kishore Sehdev, who was serving as Subject Matter Specialist in the office of Agriculture Officer, Hoshiarpur and unfortunately expired on 30.01.1997. On his death, they became entitled to GPF, Family Pension, leave salary, Ex-gratia, GIS etc. However, there was a delay in the release of these benefits. They were also entitled to Rs.3,50,000/- as gratuity, but after making some deduction, an amount of Rs.2,25,193/- was paid. Plaintiffs claimed interest on the delayed payment and filed a suit for recovery of Rs.9,92,520/-, inclusive of interest.



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3. Upon being served, defendants filed a written statement making various preliminary submissions. On merits, it was submitted that the plaintiffs had filed a writ petition bearing CWP-13863-1997, which was dismissed on 04.02.1998 and SLP filed by them was withdrawn from the Supreme Court on 07.12.2001. Smt. Laxmi Devi, mother of the deceased, filed a civil suit for declaration that she is entitled to all the benefits. Plaintiffs were impleaded as defendants in the civil suit, which was withdrawn on 11.10.2001. It was further submitted that the plaintiff filed a complaint before the Consumer Disputes Redressal Forum, U.T., Chandigarh, but it was dismissed on 01.06.2000. A stand has been taken that plaintiff No.1 submitted the necessary affidavit on 07.11.2001 and plaintiffs did not co-operate with the defendants, who cannot be blamed for the delay. An amount of Rs.1,24,806.75/- was deducted from the gratuity as the deceased had embezzled the amount and an enquiry had been held against him, wherein the charges were proved.

4. Plaintiffs did not file any replication and issues were framed on the pleadings of the parties. After they led evidence, Trial Court by judgment and decree dated 31.03.2005 dismissed the suit by holding that there was no delay on the part of the defendants and the suit was barred under Order 2 Rule 2 CPC because of the suit filed by the deceased's mother. Plaintiffs, preferred an appeal, which was accepted by the learned District Judge, Chandigarh by judgment dated 08.05.2006. Findings recorded by the Trial Court were reversed and the plaintiffs were found to be entitled to interest @ 6% per annum on the delayed payment as also to



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the recovery of the amount deducted from the gratuity payable to the deceased. Suit was decreed with proportionate costs for recovery of Rs.4,14,044/-. In the above backdrop, defendants are before this Court in the instant second appeal.

4. I have heard counsel for the parties and considered their respective submissions.

5. Swaran Lata (PW-1), widow, stepped into the witness box and submitted an affidavit, Ex.P-1 T/A, along with documents Ex.P-1 to Ex.P-19, and has established that although her husband expired in January, 1997, but his service dues were released after November 2000. She has also succeeded in proving that gratuity was released in October, 2001, GPF in February, 2002 and she started getting family pension from February, 2001. Documents on the record further show that after the deceased had expired, a letter dated 01.02.2001 was sent to the defendants by registered post informing them of the death and requesting them to release the service benefits. It has been established that she sent the Death Certificate and her affidavit by registered post on 20.02.1997, which was again sent on the asking of the defendants on 07.08.1997. Defendants have not been able to lead any evidence to show the reason for the delay in processing the documents. Although, a suit was filed by the deceased's mother, but no order was passed by the Civil Court restraining the defendants from releasing the amount.

6. In so far as the deduction from the gratuity is concerned, Yadvinder Singh (DW-1) could not produce any order passed by the

defendants effecting recovery from the deceased. No record of the enquiry claimed to have been held was produced in evidence and the defendants could not establish that any show cause notice was issued to the deceased or that he was given a hearing before passing the recovery order. Affirming the view taken by a Full Bench of this Court in *UCO Bank and others Versus Anju Mathur, 2013 (3) SCT 272*, Supreme Court in *Jyotirmay Ray Versus The Field General Manager, Punjab National Bank and others, 2024 (1) SLR 143* has held that provisions of Payment of Gratuity Act, 1972 have superiority over other enactments and prior to passing an order of forfeiture an opportunity of hearing has to be afforded to the employee. This Court, therefore, does not find any infirmity or illegality in the judgment passed by the First Appellate Court, which is upheld.

7. While admitting this appeal on 20.08.2008, this Court directed that 50% of the decretal amount be released to the respondents. The balance amount is ordered to be disbursed within a period of three months from the date of delivery of certified copy of this judgment, failing which, it will carry interest @ 6 per annum for the delayed period.

8. Appeal is disposed of.

9. Pending application(s), if any, stands disposed of.

10.05.2024

Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No