

CM No. 16671-C-2016 in/and
RSA No. 6355 of 2016

2024:PHHC:045649

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(283)

CM No. 16671-C-2016 in/and
RSA No. 6355 of 2016
Date of Decision : 04.04.2024

Rama Nand Chugh

...Appellant

Versus

Haryana State Warehousing Corporation and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shalender Mohan, Advocate and
Ms. Aarti Sharma, Advocate for the appellant.

Mr. Lekhraj Sharma, Advocate,
Mr. Kabir Gautam, Advocate,
Mr. Abhishek Sharma, Advocate,
Mr. Sharma Raj Kumar Mangal Sain, Advocate and
Mr. Abhikant Vats, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

CM No. 16671-C-2016

Present application has been filed for seeking condonation of
delay of 654 days in re-filing the appeal.

Keeping in view the averments made in the application,
which are duly supported by an affidavit, the application is allowed and
delay of 654 days in re-filing the appeal is condoned.

RSA-6355 of 2016

1. The present regular second appeal has been filed challenging
the judgment and decree of the trial court dated 30.08.2012 as well as

judgment and decree of the lower appellate court dated 06.10.2014 by which the appellant-plaintiff has not been granted the interest on the delayed release of the pensionary benefits.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff retired from service on attaining the age of superannuation on 30.04.2008. At the time when the appellant-plaintiff retired, a charge-sheet dated 22.03.2007 as well as another memorandum dated 23.06.2005 were pending consideration with the department. After the retirement of the appellant-plaintiff, another notice for recovery was served on 12.01.2009 due to which, pensionary benefits of the appellant-plaintiff such as leave encashment, gratuity and commutation pension was withheld.

4. It may be noticed that the charge-sheet dated 22.03.2007 was decided and a punishment of cut in pension @ 5% for three months was imposed on 31.12.2008. Qua the memorandum dated 23.06.2005, the said proceeding was disposed of with a simple warning to the appellant-plaintiff vide order dated 10.09.2009. With regard to the notice of recovery dated 12.01.2009, vide order dated 05.10.2011, a recovery of ₹21,764/- was imposed on the appellant-plaintiff. Thereafter, the leave encashment, commutation of pension and gratuity were released on 16.11.2011, 21.02.2012 and 02.05.2012 respectively.

5. The appellant-plaintiff challenged the punishments imposed upon him by filing a civil suits and the punishment dated 31.12.2008 by

which, 5% cut in pension for a period of three months was set-aside by a competent court of law vide judgment dated 22.10.2012. Similarly, the punishment of warning was also set-aside by the competent court of law on 22.10.2012. With regard to the recovery of ₹21,764/- as imposed vide order dated 05.10.2011 was also set-aside as the appellate authority had accepted the appeal filed against the said recovery.

6. Learned counsel for the appellant-plaintiff submits that after the punishments imposed upon him qua the charge-sheet, which were pending against the petitioner or issued after the retirement, the appellant-plaintiff has been exonerated, the appellant-plaintiff is also entitled for interest, which benefit has wrongly been denied by the respondents-defendants on the ground that the position is to be seen on the date of retirement and not thereafter, hence, the judgments and decrees of the courts below by which, the benefit of interest has been declined, are perverse to the settled principle of law.

7. Learned counsel for the respondents-defendants, on the other hand, submits that once the disciplinary proceedings were pending against the appellant-plaintiff on the date of retirement, the department was within the jurisdiction to withhold the certain pensionary benefits, which jurisdiction was exercised by the department and upon the culmination of those proceedings, the pensionary benefits were released to the appellant-plaintiff, hence, the question of grant of interest on the delayed release of the pensionary benefits does not arise and the judgments and decrees of the courts below are perfectly valid and legal.

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

9. No doubt, as per the rules governing the service, an employee, who is facing disciplinary proceedings, the department is well within its jurisdiction to withhold certain pensionary benefits. In the present case also, withholding of the pensionary benefits of the appellant-plaintiff is not without jurisdiction but whether the appellant-plaintiff is entitled for interest on the delayed release of pensionary benefits in the facts and circumstances of the present case, is to be evaluated on the basis of the facts, which have come on record.

10. It has already come on record that the punishments imposed after culmination of the disciplinary proceedings were held to be bad and the said punishment was set-aside either by the competent court of law or by the appellate authority of the department. That being the factual position, the appellant-plaintiff has been exonerated by the competent court of law qua the punishments imposed vide order dated 31.12.2008 and 10.09.2009. Qua the recovery order dated 05.10.2011, the appeal was accepted by the department itself. These facts means that the appellant-plaintiff has been exonerated of the allegations, which were pending against him at the time when the appellant-plaintiff retired.

11. Once, the appellant-plaintiff has been exonerated of the allegations alleged against him, he cannot be denied the benefit of interest so as to compensate the withholding of the pensionary benefits. It is only in case the employee is held guilty in the departmental proceedings,

which are pending at the time of retirement, the department is not liable to grant the interest but in case, in those departmental proceedings, which were pending at the time of retirement, the employee concerned gets exonerated, in order to compensate the withholding of the benefit, the employee becomes entitled for interest. The said facts have been ignored by the courts below while passing the impugned judgment so as to deny the benefit.

12. In the present case, qua all the disciplinary proceedings, which were pending against the appellant-plaintiff at the time of retirement or even initiated after the retirement, the appellant-plaintiff has been exonerated. That being so, the appellant-plaintiff is entitled for interest on the payments, which were released to him by the respondents-defendants on 06.11.2011, 21.02.2012 and 02.05.2012 qua leave encashment, commuted pension and gratuity respectively.

13. The judgments and decrees of the courts below are set-aside being perverse to the facts and evidence, which have come on record. The suit filed by the appellant-plaintiff is allowed and he is held entitled for interest on the payments, which were released to him qua leave encashment, commuted pension as well as gratuity from the date, the same were liable to be released i.e. 01.05.2008 till the actual payment of the same by grant of interest @ 6% per annum for the period mentioned above. Let the respondents pay the amount of interest calculated to the appellant-plaintiff within a period of eight weeks from the date of receipt of copy of this order.

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14. Appeal is allowed in above terms.

April 4th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No