

2024:PHHC:172460

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5521-2015 (O&M)
DECIDED ON: 05.12.2024

STATE OF HARYANA AND ORS.

.....APPELLANTS

VERSUS

BIMLA SHARMA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Virk, Sr. DAG, Haryana
for the appellants

Mr. R.D. Yadav, Advocate
for respondent No.1.

SANDEEP MOUDGIL, J (ORAL)

CM-13266-C-2015

Prayer in this application is for condonation of delay of 513 days in filing the present appeal.

Though notice was issued to the non-applicant in the application seeking condonation of delay which was preferred under Section 5 of the Limitation Act on 07.12.2015 but till date no reply whatsoever has been filed opposing the said prayer.

This Court having gone through the pleadings and oral submissions made in the application, condones the delay of 513 days in filing the present appeal.

The application stands disposed of.

RSA-5521-2015

The regular second appeal under Section 100 of Code of Civil Procedure has been preferred against the judgment and decree dated 17.02.2014 passed by Additional District Judge, Narnaul, whereby the appeal of the defendants was dismissed and judgment and decree dated 21.08.2013 passed by Civil Judge (Junior Division), Narnaul was upheld while decreeing the suit for declaration in favour of plaintiff-respondent holding him entitled to a payscale of Rs.5500-9000 w.e.f. 01.01.1996 along with 1st ACP in the payscale of Rs.6500-9900 as well as 2nd ACP in the grade of Rs.6500-10500 w.e.f. 01.01.2000 along with interest at the rate of 8 per cent per annum for both i.e. the payscale of Rs.5500-9000 and for the 1st ACP w.e.f. 01.01.1996 as well as for 2nd ACP w.e.f. 01.01.2000.

A perusal of the order sheets as has been pointed out by the counsel for respondent-plaintiff that it is already recorded in the order dated 11.08.2016 passed by the predecessor Bench that appellants-defendants have already re-fix pay as well as granted ACP except interest meaning thereby the judgment and decree passed by the trial Court stands duly executed.

The said judgment and decree was modified by the High Court in its order dated 11.08.2016 holding the plaintiff-respondent not entitled for interest.

Today, the circumstance emerged before this Court during the course of hearing that on 25.09.2019 as well, the appellant-State has made a statement that order dated 11.08.2016 passed by this Court also stands complied with since the amount falling due to the plaintiff-respondent stands paid and the matter is pending only on account of the absence of counsel for the respondent since then.

However, similar statement was reiterated on 05.09.2024 and the following order was passed:-

*“Upon instructions, State counsel has placed on record a copy of order dated 29.07.2016, to submit that in compliance of the judgment and decree passed by the Courts below, an amount of Rs.56,492/-, has been disbursed to the plaintiff-respondent, subject to outcome of RSA-5521-2015. He requests a deferment to assist the Court.
List on 03.10.2024.”*

Thereafter on two occasions, on the request of either of the parties, the matter could not be argued.

However, today learned State counsel for the appellant would further state that even the interest part has already been paid to the respondent-plaintiff calculating it from the date it became due till the date of its realization irrespective of confining it to 38 months. However, it was subject to the outcome of the present appeal.

When countered with the ratio laid down in “***State of Punjab and others versus Rafiq Masih (white washer etc)***”, 2015(4) SCC 334, learned State counsel candidly admitted the case of the plaintiff-respondent to be squarely covered with the finding that recovery from employees belonging to Group C and Group D service cannot be made even if the excess amount has been released.

Even the trial Court in its judgment and decree has taken note of the fact that the plaintiff-respondent was appointed as Junior Mistress Tailoring on adhoc basis on 23.06.1976 whose service were regularized on 01.01.1980 with the further promotions as Head Mistress in ITI(W), Rewari on 09.12.2005 before she retired on attaining the age of superannuation on 28.02.2009 while granting the

relief by decreeing the suit the trial Court also relied upon Smt. Bansi Bala versus State of Haryana and others bearing CWP No.15256 of 1995 whereby the question involved in the instant suit already stands adjudicated holding that job profile of a tailoring teachers/mistress in Education Department is identical and same to that of tailoring mistress in the Industrial Training Institute (ITI). It is further proved on record vide Ex. P-7 the statement of fixation of pay under the Haryana Civil Services (ACP Rules) 1998 as applicable from 01.01.1996, the plaintiff was awarded the revised payscale of Rs.5450-8000 whereas under the revised pay Rules of 1998 an employee of master cadre in the State of Haryana working in the functional scale of Rs.1400-2600 was granted the revised functional payscale in the 1st ACP of Rs. 6500-9900 but said relief was discriminately not found favor with the plaintiff.

It is under the revised pay rules which are on record as Annexure P-8 formulated before the trial Court the basis for granting decree for the relief sought to the plaintiff-respondent.

Today a notification dated 23.02.2016 was also produced before the Court which is taken on record as Document A being an admitted document issued by the State Government through its findings Department in compliance to the decision made by Hon'ble Apex Court in Rafiq Masih's case (supra) stipulating that recovery from employees belonging to Class 3 and 4 service or Group 'C and D' cannot be effected qua the excess amount.

In the light of additional fact put forth before this Court none other than by the State of Haryana-appellant that the judgment and decree passed by the trial Court stands executed and relief as directed is granted to which Mr. R.D.

Yadav, learned counsel for respondent No.1-plaintiff is in consonance, nothing is left for this Court to adjudicate any further.

Hence, I do not find any infirmity or perversity with the judgment and decree dated 21.08.2013 passed by the trial Court as well as judgment and decree dated 17.02.2014 passed by Additional District Judge, Narnaul.

Hence, the present regular second appeal fails being devoid of any merit. Accordingly, the same stands dismissed with no order as to costs.

05.12.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>