

Neutral Citation No. 2023:PHHC:039061

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

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RSA No. 3090 of 2017 (O&M)
Date of decision : 29.02.2024

Dalip Singh

... Appellant

Vs.

Zila Parishad, Moga and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. V.K. Shukla, Advocate
for the appellant.

Ms. Suman Kumari, Advocate for
Mr. Mandeep K. Sajjan, Advocate
for respondents No.1 to 3.

Mr. Amit Chaudhary, DAG, Punjab
for respondent No.4.

SUVIR SEHGAL J. (ORAL)

1. Plaintiff-appellant is in second appeal, assailing the judgment and decree dated 06.02.2017 passed by learned Additional District Judge, Moga.

2. Pleaded case of the plaintiff is that he joined service as Veterinary Pharmacist with Zila Parishad, Ferozepur on 17.04.1963 and was shifted to District Faridkot and served at Faridkot w.e.f. 17.02.1975

to 01.07.1996. When Moga was established as a district, his services were allocated to the new district and he served there from 01.07.1996 to 30.06.2001, when he retired on attaining the age of superannuation. His service was confirmed w.e.f. 17.04.1971. Contributory Provident Fund (CPF) was deducted from his salary while he was working under defendants No. 1 to 3 and was deposited with defendant No.4. No deduction was made from his salary from 17.04.1971 to 31.03.1987 (hereinafter referred to as 'the disputed period') except for one month, and after retirement his pension was not fixed as per rules and he is drawing a lesser pension. Claiming that he is entitled to get pension after counting the period from 17.04.1971 to 31.03.1987 as qualifying service for pensionary benefit along with interest, he filed a suit for declaration and mandatory injunction. Plaintiff expressed his willingness to pay his share of CPF for the period in dispute.

3. Upon notice, defendant No.1 appeared and filed its written statement taking various preliminary objections including maintainability of the suit. It was denied that deduction of CPF was made from the salary of the plaintiff when he was working with defendant No.1 and there was no question of depositing it with defendant No.4. Remaining averments made in the suit were declined.

4. Other defendants were proceeded against ex-parte. However, on an application moved by defendant No.3-respondent No.1, it was permitted to join the proceedings. Plaintiff filed a replication reasserting his claim. On the basis of the pleadings of parties, trial Court framed issues and after the parties led evidence, suit was accepted by judgment and decree dated 21.04.2014 and the plaintiff was held entitled to count

the disputed period for the purposes of grant of pension on deposit of his share towards CPF along with interest. Plaintiff was also found entitled to arrears along with interest. Upon appeal preferred by defendant No.3-respondent No.1, first appellate Court reversed the judgment and decree passed by the trial Court. This judgment is under challenge in the present appeal.

5. Referring to The Punjab Panchayat Samitis and Zila Parishads Employees Pension and Provident Fund Rules, 2000 (for short 'the Rules') counsel for the appellant has contended that the plaintiff-appellant is entitled to count the entire period of confirmed service as qualifying service for the purposes of computation of pension. It is his argument that the first appellate Court has erred in recording the finding that the suit is barred by time, while observing non-release of the pensionary benefits is a continuing cause of action. He has placed reliance upon the judicial precedents to buttress his submissions.

6. On the other hand, counsel representing the respondents has supported the judgment and decree under appeal and have submitted that there is no illegality in the findings recorded by the learned Additional District Judge, Moga.

7. After hearing counsel for the parties and considering their submissions, this court is of the view that the findings recorded by the first appellate Court that the suit is barred by limitation, deserves to be reversed.

8. Drawing a distinction between a continuing wrong and recurring/successive wrong, Hon'ble Supreme Court in *Union of India*

and others Versus Tarsem Singh, (2008) 8 SCC 648 has observed as under:-

"7. To summarize, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of

recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. *In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."*

9. Co-ordinate Benches of this court in ***State of Punjab Versus Surjan Singh***, 1997(1) RSJ 776 and ***State of Punjab Versus Amar Singh, Constable*** 1990(1) PLR 312 have held that it is a settled principle of law that pension and pensionary benefit is a kind of property of Government servant and is not a bounty on the basis of which the department assumes its discretion to deny such benefit to the employee. Pension and pensionary benefits are a recurring cause of action and consequently not hit by limitation of three years.

10. Still further, plaintiff-appellant had led evidence in the shape of letters dated 26.06.1980 and 20.02.1982, Mark A and B respectively, requesting the defendant-respondents to allot him CPF account. Both

these letters could not be exhibited as the witnesses of the defendant did not produce the personal file of the plaintiff-appellant. Therefore, there was material on the record, although not duly proved to show that the plaintiff-appellant had not slept over his claim and had moved the respondents requesting them for deduction of the amount but the respondents did not act. It, therefore, cannot be said that there was any delay on the part of the plaintiff-appellant or that he slept over his claim. At this stage, it would be apposite to refer to a judgment of this Court in ***Rashpal Kaur Versus State of Punjab and others***, 1997(3) RSJ 181. A Division Bench of this Court has held that the Government cannot plead the bar of limitation when the department itself had defaulted in taking any positive action.

11. Furthermore, record shows that issue of limitation did not arise from the pleading nor was it framed by the trial Court. Issue no.3 framed by the trial Court was as to whether the suit of the plaintiff is maintainable or not, in the present form. However, the defendants-respondents did not lead any evidence on this issue nor it was pressed at the time of arguments before the trial court. Lower Appellate court therefore, erred in going into the question of limitation and in recording a finding on it against the plaintiff-appellant. Accordingly, the finding recorded by the learned Additional District Judge, on question of limitation is reversed. As the first appellate court has not adverted nor discussed the Rules, this court is of the opinion that the matter deserves to be remanded for fresh adjudication.

12. For the reasons given hereinabove, impugned judgment and decree dated 06.02.2017 passed by the first Appellate Court is set aside

and the appeal is remitted to the court of learned District Judge, Moga, for decision afresh, after hearing the parties. Learned District Judge, Moga may hear the appeal itself or assign it to any court of competent jurisdiction.

13. Appeal is disposed of.
14. Parties are directed to appear before the learned District Judge, Moga on 29.04.2024 for further proceedings.

29.02.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

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