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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on: 15.07.2024
Pronounced on: 24.07.2024

1. RSA No.761 of 2014 (O&M)

Subhash Chander Bajaj

....Appellant

Versus

Punjab State Electricity Board and another

....Respondents

2. RSA No.3705 of 2014 (O&M)

Punjab State Electricity Board and another

....Appellants

Versus

Subhash Chander Bajaj

....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Kapil Kakkar, Advocate
for the appellant (in RSA-761-2014)
and for the respondent (in RSA-3705-2014)

Mr. R.L. Sharma, Advocate
for the appellants (in RSA-3705-2014)
and for the respondents (in RSA-761-2014)

NAMIT KUMAR J. (Oral)

1. This judgment shall dispose of two cross-appeals i.e. RSA Nos.761 and 3705 of 2014, as common questions of law and facts are involved for adjudication.

2. These two cross-appeals i.e. RSA No.761 of 2014, has been filed by the plaintiff – Subhash Chander Bajaj and RSA No.3705 of 2014 has been filed by the defendant – PSEB (now PSPCL as mentioned above, against the judgment and decree dated 14.02.2011 passed by the learned Civil Judge (Jr. Division), Ferozepur as well as

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the judgment and decree dated 31.07.2013 passed by the learned Additional District Judge, Ferozepur. Parties to the lis hereinafter shall be referred to by their original position before the trial Court.

The grievance raised in RSA No.761 of 2014 filed by the plaintiff-appellant is qua denial of interest @ 18% per annum and restricting the arrears on the revised pay and allowances for the period of 38 months from the date of the filing of the suit. Whereas the claim raised in RSA No.3705 of 2014, filed by the Punjab State Electricity Board – defendant challenging the enhancement in the rate of interest @ 9% per annum on the delayed payment of retiral benefits, grant of promotional scale and arrears of pay upto 38 months. For the sake of convenience, facts are being culled out from RSA No.761 of 2014, titled as “Subhash Chander Bajaj vs Punjab State Electricity Board and another.”

3. The plaintiff filed a suit for declaration to the effect that he is entitled for time bound promotional pay-scale on completion of 23 years of service and also entitled for increments on account of his promotion as Junior Engineer-II (re-designated as Junior Engineer) and to consequent fixation, grant and release of his pay and allowances and its arrears and entitled for revision of pensionary benefits, along with interest @ 18% per annum on the arrears of pay and allowances as well as on the delayed grant and release of pensionary benefits of GPF, pension, gratuity and commuted pension from the date the abovesaid benefits became due till the date of actual payment. The suit filed by the plaintiff was decreed vide judgment and decree dated 14.02.2011 passed

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by the learned Civil Judge (Jr. Division), Ferozepur, to the following extent:-

“Relief

21. In view of my findings on the aforesaid issues, suit of plaintiff stands decreed with costs and for declaration to the effect that plaintiff is entitled to 23 years time bound promotional pay scale benefits and is also entitled to increments on account of his promotion as J.E.-II re-designated as J.E. and to consequent fixation, grant and release of his pay and allowances and its arrears and the plaintiff is also entitled to revision of retiral and pensionary benefits on above counts and its arrears and that the plaintiff is entitled to interest at the rate of 6% per annum on the arrears of pay and allowances of above counts as well as on the delayed grant and release of retiral and pensionary benefits of G.P.F., pension, Gratuity/D.C.R.G. and commute pension already paid to the plaintiff from the date all the above benefits became due till the date of its grant and release to the plaintiff. Decree sheet be prepared accordingly and the file be consigned to the record room.

*Announced:
14.2.2011*

*(Daljit Kaur)
Civil Judge (Jr. Divn),
Ferozepur.”*

4. The plaintiff and defendants filed separate appeals before the lower Appellate Court challenging the abovesaid judgment and decree dated 14.02.2011. The plaintiff claimed that he is entitled for grant of interest @ 18% per annum instead of 6% per annum and the defendants challenged the same as 23 years time bound promotional pay-scale and other benefits were granted to the plaintiff along with 6%

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interest. The learned Lower Appellate Court while partly allowing both the appeals modified the judgment passed by the learned trial Court, vide judgment and decree dated 31.07.2013 and enhanced the rate of interest from 6% to 9% per annum on the delayed payment of pensionary benefits as well as on the arrears payable to the plaintiff after sanctioning 23 years time bound promotional pay-scale and the increment on account of his promotion as Junior Engineer-II, however, restricted the arrears on the revised pay and allowances upto a period of 38 months preceding to the filing of the suit. The concluding part of the said judgment, reads as under:-

“15. No doubt, plaintiff took voluntary retirement on 31.1.2003 but the department was required to complete all the formalities for releasing the retiral benefits. Excluding the period of three months being utilized by the department for completing the formalities, the department was bound to release all the retiral benefits to the plaintiff till 30.4.2003. However, the department failed to make the payment of commute pension till 5.6.2003 and GPF amount till 1.4.2004, for which the plaintiff is legally entitled for interest. However, rate of interest at the rate of 6% per annum granted by the learned trial court is very low. Keeping in view the prevailing rate of interest in nationalized bank, I am of the view that interest of justice would meet if the interest is to be granted at the rate of 9% per annum on the delayed payment of retiral benefits as well as on the arrears to be payable to the plaintiff after sanctioning 23 years time bound promotional pay scale and the increment on account of his promotion as JE-II. With these modification with regard to rate of interest and

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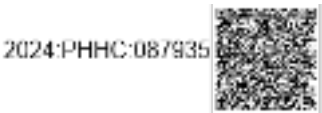


the fact that the plaintiff is entitled for arrears on the revised pay and allowance upto the period of 38 months preceding to the filing of the suit, both the appeals stands partly accepted. The parties are left to bear their own costs. Copy of judgment be placed on the connected appeal file. Decree sheets be prepared accordingly and appeal files be consigned to the record room.”

5. Learned counsel for the appellant/plaintiff submits that the learned trial Court has wrongly restricted the arrears on the revised pay and allowances upto the period 38 months and grant full arrears for the period the plaintiff was denied benefits and both the learned Courts below have erred in not granting the interest @ 18% per annum. In support of his contention, he has placed reliance upon the order dated 09.09.2008 passed in **RSA No.2726 of 2008**, titled as ***“Punjab State Electricity Board, Patiala and others vs Jiwan Singh”***.

6. Per contra, learned counsel for the respondents – PSEB (now PSPCL) has stated that the relief granted to the plaintiff by the Courts below viz-a-viz rate of 9% interest per annum on the delayed payment of retiral benefits, grant of 23 years promotional scale and arrears of pay upto 38 months preceding the date of filing of the suit is not tenable in the eyes of law and hence the same is required to be set-aside.

7. I have heard learned counsel for the parties and perused the record.



8. Admittedly, the plaintiff sought voluntary retirement from service on 31.01.2003 and after retirement, his retiral dues were released in the following manner:-

Account	Cheque No.	Dated	Amount (in Rs.)
Leave Encashment	415021	31.01.2003	1,33,931/-
DCRG	415082	31.03.2003	2,38,475/-
CPF	486275	31.03.2004	6,02,009/-
Commuted Pension	----	05.06.2003	2,43,972/-
GPF	----	01.04.2004	6,02,009/-

9. Since there is a delay in releasing the pensionary benefits of the plaintiff, therefore, he has rightly been held entitled for grant of interest @ 9% per annum by the learned Lower Appellate Court. This Court is not inclined to interfere with the said finding given by lower Appellate Court and the same is hereby affirmed. The plaintiff has also been held entitled for grant of time bound promotional pay-scale on completion of 23 years by observing that the department has wrongly denied the said benefit to the plaintiff. After evaluation of the record, this Court is in consonance with the reasoning given by the lower Appellate Court while dealing with the grant of 23 years promotional scale, which is reproduced as under:-

“12. The plaintiff has sought the relief of declaration that he is entitled to 23 years time bound promotional pay scale benefits and is also entitled to increment on account of his promotion as JE-II re-designated as JE and to consequent fixation, grant and release of his pay and allowances and its arrears and further, the plaintiff is also entitled to revision of retiral

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and pensionary benefits on above counts and its arrears and he is also entitled to interest at the rate of 18% per annum on the arrears of pay and allowances on above counts as well as on delayed grant and release of retiral and pensionary benefits of GPF, pension, gratuity from due date till the same was released to the plaintiff. The defendants have disputed the claim of the plaintiff on the ground that pensionary benefits were released to him immediately on receipt of relevant documents and there is no delay on the part of the department and as such, there is no question of payment of any interest on the said retiral benefits. All the promotional increments were released to the plaintiff during his service tenure. As regard 23 years promotional increment, the plaintiff did not fulfill the conditions and as such, he was not found entitled for the same.

13. Subhash Chander witness of the defendants admitted in his cross-examination that the plaintiff joined the department on 30.12.1968 and he was regularized on 24.11.1970. The plaintiff was promoted as JE-II in their department on 01.04.1992. Their department had not given time bound increment to the plaintiff in lieu of 23 years service, although he was entitled for the same. He further admitted that as per Certificate dated 23.04.1990 by virtue of which employees were held entitled to promotional increment on completion of 23 years regular service, there is no mandatory condition to pass any examination by the employee of the Board/department to get promotional increment. He also admitted that the plaintiff moved representation Ex.P-1 to the department on 07.09.2000. Their department recommended the name of the plaintiff for giving 23 years promotional increment as per Ex.P-2. The service record of the plaintiff for 23

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years promotional increment was sent by their department through XEN on 17.12.2000 vide memo Ex. P-3. He also admitted correspondence Ex.P-11 to Ex.P-15 made by the department in this regard. He further admitted that no promotion was given to the plaintiff from 16 to 23 years service. The department had also not given SDO scale to the plaintiff.

14. All the above admissions made by the witness of the defendants prove that the plaintiff was entitled for 23 years promotional increment on completion of his 23 years service. There was no requirement for passing any examination for grant of aforesaid 23 years promotional increment. Even the department recommended the case of the plaintiff for sanctioning 23 years promotional increment as is clear from the documents placed on the file. When the plaintiff was eligible for promotional increments on completion of 23 years regular service and his case was also recommended in this regard by the department itself, learned trial Court has rightly granted the relief of declaration that he is entitled to 23 years time bound promotional pay scale benefits and also entitled to increment on account of his promotion as JE-II re-designated as JE along with interest. However, keeping in view the question of limitation, the plaintiff is entitled to arrears on the revised pay scale only for a period of 38 months preceding to the date of filing of the suit.

XXXX XXXX XXXX XXXX

15. No doubt, plaintiff took voluntary retirement on 31.01.2003 but the department was required to complete all the formalities for releasing the retiral benefits. Excluding the period of three months being utilized by the department for completing the formalities, the department was bound to release all the retiral

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benefits to the plaintiff till 30.04.2003. However, the department failed to make the payment of commute pension till 05.06.2003 and GPF amount till 01.04.2004, for which the plaintiff is legally entitled for interest. However, rate of interest at the rate of 6% per annum granted by the learned trial court is very low. Keeping in view the prevailing rate of interest in nationalized bank, I am of the view that interest of justice would meet if the interest is to be granted at the rate of 9% per annum on the delayed payment of retiral benefits as well as on the arrears to be payable to the plaintiff after sanctioning 23 years time bound promotional pay scale and the increment on account of his promotion as JE-II. With these modification with regard to rate of interest and the fact that the plaintiff is entitled for arrears on the revised pay and allowance upto the period of 38 months preceding to the filing of the suit, both the appeals stands partly accepted. The parties are left to bear their own costs. Copy of judgment be placed on the connected appeal file. Decree sheets be prepared accordingly and appeal files be consigned to the record room.

*Announced in open Court.
31.07.2013*

*(Manju Rana)
Addl. District Judge,
Ferozepur.”*

However, since the suit was instituted by Subhash Chander Bajaj – plaintiff on 14.02.2011 i.e. after more than 8 years of his retirement, therefore, the lower Appellate Court has rightly restricted the arrears on the revised pay and allowances upto 38 months prior to filing of the suit. No interference is called for in the above finding recorded by it.

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10. The judgment cited by learned counsel for the appellant in Jiwan Singh's case (supra) is not applicable to the facts of the present case as in the said judgment though dealing with the issue of grant of 23 years promotional scale, nothing has been said about the rate of interest granted to the said person. The said judgment dated 09.09.2018 is reproduced hereunder:-

“The appellants challenge the order dated 1.2.2008 passed by the Additional District Judge, Ferozepur following the appeal filed by the plaintiff-respondent.

The plaintiff-respondent filed a suit, praying for a declaration that he is entitled to grant of benefit of increment of proficiency step up on attaining 23 years of service from 1.1.96. The appellants, contested the aforementioned prayer, primarily on the plea that as the respondent had not cleared the departmental examination, a condition precedent for promotion, he could not avail the benefit of the proficiency step up after completion of 23 years of service. The learned trial court, upheld the aforementioned contention and dismissed the suit.

Aggrieved by the dismissal of the suit, the respondent filed an appeal. The first appellate court allowed the appeal and reversed the judgment and decree passed by the trial court, on the basis of a judgment passed by this court in RSA No. 4046 of 2005 titled as Chaman Lal Vs. Punjab State Electricity Board and Others, decided on 3.4.2006, where in a similar situation, the benefit of increment on attaining 23 years of service was granted, despite the fact that the officer therein, had not passed the departmental examination.

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Counsel for the appellants submits that the rule requires passing of departmental examination is mandatory and as the respondent has failed to pass the departmental examination, the appellate court could not have granted the benefit of increment on attaining 23 years service.

I have heard learned counsel for the appellants and perused the impugned judgments.

As held by this court in RSA No.4046 of 2005, the assured progress scheme does not contain a provision that a person, who has not passed the departmental examination, would not be entitled to promotional increment on completion of 23 years service. While dealing with this aspect on the basis of the appeal filed by the appellants, the High Court as is apparent from the aforementioned judgment held against the Electricity Board. I find no reason to differ with the aforementioned judgment and, therefore, as no substantial question of law arises for consideration, the present appeal is dismissed, with no order as to costs.”

11. In this view of the matter, both the appeals are disposed of in the above terms.
12. All the pending miscellaneous applications, if any, are also disposed of.

24.07.2024
yakub

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No