



RSA-4627-2001 (O&M)

-1-

205

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

RSA-4627-2001 (O&M)

Date of Decision: 30.04.2025

State of Punjab and another

.....Appellants

Vs.

Smt. Shakuntla Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Rohit Bansal, Senior Deputy Advocate General, Punjab,
for the appellants.

None for the respondents.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal is preferred by the State of Punjab against the judgment and decree dated 03.12.1998 passed by the learned Civil Judge (Junior Division), Amritsar, whereby, the respondents filed a civil suit for declaration to the effect that respondent No.1/plaintiff being widow of late Joginder Pal son of Santa Ram, who died on 15.04.1972 as an employee of the appellants, is entitled to benefits of family pension, gratuity, Provident Fund, leave encashment and other retiral benefits along with interest at the rate of 18% per annum was decreed in her favour as well as the judgment and decree dated 22.05.2001 passed by the learned Additional District Judge, Amritsar, whereby, the appeal filed by the appellants challenging the judgment and decree dated 03.12.1998 passed by the learned Civil Judge (Junior Division), Amritsar, was dismissed and the said judgment and decree



RSA-4627-2001 (O&M)

-2-

was modified to the extent of reducing rate of interest from 18% to 12% per annum.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that the husband of respondent No.1 (Joginder Pal) joined the appellants as L.A. at C/R Laboratory, Nangal, w.e.f. 19.02.1956 on work-charge basis. Thereafter, he was promoted as Fitter w.e.f. 10.05.1963 again on work-charge basis. Thereafter, he was promoted as Foreman again on work-charge basis and was working as Foreman on work-charge basis till his death on 15.04.1972. Joginder Pal died on 15.04.1972. Respondent No.1 his wife made a representation to the appellants for release of all retiral benefits of her husband and for her entitlement to family pension. Since, she received no response from the appellants, therefore, she filed a civil suit in the year 1994, which was decreed in her favour vide judgment and decree dated 03.12.1998 passed by the learned Civil Judge (Junior Division), Amritsar. The appellants filed an appeal against the judgment and decree dated 03.12.1998 passed by the learned Civil Judge (Junior Division), Amritsar. The learned Additional District Judge, Amritsar, dismissed the appeal vide its judgment and decree dated 22.05.2001 and modified the judgment and decree dated 03.12.1998 by reducing the rate of interest from 18% to 12% per annum. Hence, the present regular second appeal.

3. Learned State counsel for the appellants contends that both the courts while granting relief to the respondents did not appreciate that



RSA-4627-2001 (O&M)

-3-

Joginder Pal, husband of respondent No.1, was a work-charge employee and was never regularized, therefore, the respondents would not be entitled to family pension. He further contends that the suit was also barred by limitation.

4. Despite service, none has put in appearance on behalf of the respondents.

5. Vide order dated 01.08.2002, the impugned judgment was stayed by the Co-ordinate Bench of this Court while passing the following orders:-

“C.M is allowed and delay of 63 days in filing the appeal is condoned.

It is reported that respondents No.1, 2 and 4 have been personally served, but none is present on their behalf. Hence, they are proceeded against ex parte. Respondent No.3 has been served through his brother. Thus, he has got the knowledge of proceedings of this case. He is also not present and is proceeded against ex parte. It is further reported that respondents No.5, 7 and 7 are married women but they have been served through their brother-Rakesh Kumar. Thus, they have got the knowledge of the proceedings, but none is present on their behalf. Hence, they are proceeded against ex parte.

To come up for arguments on 17.10.2002.

Meanwhile, operation of the impugned judgment is stayed.”

A perusal of the above referred to order dated 01.08.2002 shows that the respondents were proceeded against ex parte.



RSA-4627-2001 (O&M)

-4-

6. I have heard learned counsel for the appellants and perused the whole record of this case.

7. A perusal of the record shows that the learned trial Court framed following issues:-

- “1) Whether the plaintiff is entitled for the declaration prayed for? OPP.*
- 2) Whether the plaintiff is entitled for the mandatory injunction prayed for? OPP.*
- 3) Whether the suit is not maintainable? OPD.*
- 4) Whether the suit is time barred? OPD.*
- 5) Whether the notice U/s 80 CPC is not legal and valid? OPD.*
- 6) Relief.”*

8. Admittedly the husband of respondent No.1 throughout worked on work-charge basis and was never regularized. Even no representation was ever filed by the husband of respondent No.1 for his regularization. He died on 15.04.1972 and till his death, he continued to work as work-charge employee and was never regularized. Since, the husband of respondent No.1 was never regularized, therefore, he was not entitled to any retiral benefits. Further, husband of respondent No.1 died on 15.04.1972, whereas the civil suit was instituted on 28.11.1994 i.e. almost after a period of 22 years.

9. Learned Civil Judge (Junior Division), Amritsar, relied upon Rules 3.17 and 3.17-A of the Punjab Civil Services Rules Volume II and decreed the suit in favour of the respondents without appreciating the fact that Rules 3.17 and 3.17-A are applicable to the employees, who are regular



employees and holding a permanent post on the date of retirement. Civil suit was decreed in favour of respondents on the ground that husband of respondent No.1 rendered more than 16 years of service as work-charge employee and for grant of pension, qualifying service of 10 years is required. Learned Civil Judge (Junior Division), Amritsar, did not appreciate that work-charge employees are not entitled to any pension and therefore, there is no question of considering qualifying service for pension. Further, Issue No.4 i.e. Whether the suit is time barred?, is again decided against the appellants and in favour of the respondents without taking into consideration the fact that the suit was filed after a delay of almost 22 years. Learned Additional District Judge, Amritsar, as well, dismissed the appeal filed by the appellants on the same grounds.

10. A perusal of the record further shows that both the Courts totally ignored the issue of limitation and the fact that the husband of respondent No.1 was never regularized and only regular employees are entitled to the pension/retiral benefits. Therefore, once the husband of respondent No.1 was not entitled to any pension, then, the respondents could not be held entitled to family pension and other retiral benefits.

11. Hon'ble the Supreme Court in **Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Surji Devi, (SC) 2008(1) SCT 656**, held that the statutory provisions debar grant of family pension in favour of the family members as the deceased employee, who was a work-charge employee was never



regularized. The relevant portion of the judgment referred to above, is reproduced as under:-

*“14. The scheme relating to grant of Family Pension was made under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Volume 2 vis-a-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension. Husband of the respondent was a work-charge employee. His services had never been regularized. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularization scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law. [See **Maruti Udyod Ltd. v. Ram Lal and Others**, (2005) 2 SCC 638, **State of Bihar & Ors. v. Amrendra Kumar Mishra**, 2006 (9) SCALE 549, **Regional Manager, SBI v. Mahatma Mishra**, 2006 (11) SCALE 258, **State of Karnataka v. Ameerbi & Ors.** 2006 (13) SCALE 319 and **State of M.P. and Ors. v. Sanjay Kumar Pathak and Ors.** [2007 (12) SCALE 72]. The statutory provisions, as noticed hereinbefore, debar grant of family pension in favour of the family members as the deceased employee if was a work-charge employee and not a permanent employee or temporary employee. The period during which an employee worked as a work-charge employee could be taken into consideration only when his services are regularized and he becomes permanent and not otherwise.*

Furthermore, there exists a distinction between a pensionable and non- pensionable establishment. Shri Krishan being a member of a non- pensionable establishment, Family Pension



RSA-4627-2001 (O&M)

-7-

was not admissible. It is not a case where an employee had been given an option to opt for one or the other schemes. Once a person had opted for non-pensionable scheme, the question of his being entitled to pension or for that matter his family members becoming entitled to family pension did not and could not arise. The High Court only followed Kanta Devi (supra) without noticing the distinctive features thereof. As it is not necessary, we have not gone into the question as to whether Kanta Devi (supra) was correctly decided. Apart from the fact that the fact therein was different, evidently the questions which have been raised before us were not raised therein. The High Court, therefore, committed a serious error in applying Kanta Devi (supra) to the fact of the present case.”

12. In view of the above discussion and the law laid down by Hon’ble Supreme Court in ***Uttar Haryana Bijli Vitran Nigam Ltd.’s*** case (supra), the present appeal is allowed. The judgment and decree dated 03.12.1998 passed by the learned Civil Judge (Junior Division), Amritsar, as well as the judgment and decree dated 22.05.2001 passed by the learned Additional District Judge, Amritsar, are set aside and the suit of the respondents is dismissed with no order as to costs.

13. Decree sheet be drawn.

14. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

30.04.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No