



Sr. No.244

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3156-2019 (O&M)

Date of Decision : 17.03.2025

Sukhwinder Kaur

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Narinder Sharma, Advocate for
Mr. C.L.Sharma, Advocate,
for the appellant.

Mr. Brijesh, AAG, Punjab.

LAPITA BANERJI, J. (Oral)

Under challenge in the present regular second appeal is a judgment and order dated April 1, 2019 passed by the Additional District Judge, Bathinda. The learned Additional District Judge, reversed the judgment and order dated October 30, 2014 passed by the Civil Judge (Sr.Division) Bathinda by dismissing the suit of the plaintiff.

2. The brief facts of the appeal are stated hereinunder:-

- i) The plaintiff-appellant is the widow of the deceased employee, one Darshan Singh who died on April 1, 2006.
- ii) The deceased employee worked as a 'Pump Operator' on muster roll basis since November 11, 1986.
- iii) The deceased employee was regularized on April 11, 2004. Unfortunately, he passed away on 11.04.2006 while on duty.

3. It was the contention of the plaintiff that under the State Government's Notification dated October 13, 2010 wherein an employee died-in-harness and such death is attributable to the reasons directly or substantially connected with performance of his official duties and relatable to such



performance, an ex gratia payment equal to 24 times of the revised basic pay could be granted to the dependents of the deceased employee with minimum payable amount of Rs.2 lakh and maximum amount of Rs.4 lakh.

4. The plaintiff claimed ex gratia payment along with interest calculated @ 18% per annum but the said prayer was rejected. The plaintiff's claim for family pension was also rejected by the State of Punjab. Hence, the plaintiff had no recourse but to file Civil Suit No.141 of 2012, for recovery of ex-gratia amount and release of pensionary benefits.

5. The defendants No.1 and 2-State appeared and filed written statements and contended that the suit was bad for non-joinder of necessary parties and as such was liable to be dismissed. Furthermore, it was contended that the suit was hopelessly barred by the laws of limitation. Therefore, the respondent-defendant No.4 correctly rejected the claim of family pension of the plaintiff. The defendant No.4—filed a separate written statement and contended that the service of deceased employee was regularized on April 11, 2004 and as per the Notification dated March 2, 2004 the employees who were appointed on or after January 1, 2004 were to be governed by the “*Newly Defined Policy of Contributory Pension Scheme*”. Therefore, the plaintiff being dependent of the deceased employee who had been regularized after January 1, 2004 was not entitled to “*family pension*”.

6. Learned trial Court had held that DW-1 appearing on behalf of the employer-State admitted in her cross-examination that the deceased employee had continued in service until his regularization. Therefore, the period of past service was to be counted for grant of pensionary benefits. Accordingly, family pension was granted to the plaintiff along with interest @8% per annum on arrears. The trial Court also held that the grant of pensionary benefits constituted a recurring cause of action. Therefore, the



plaintiff's suit was held to be not time barred, despite being filed in 2012, even though her husband had passed away in 2006.

7. Consequently, the trial Court vide judgment and order dated October 30, 2014 granted pensionary benefits and ex gratia payment to the plaintiff along with interest @ 8% per annum on the principal amount.

8. The said decree was challenged by the State-employer. Vide impugned order dated April 1, 2019, the judgment and decree passed by the trial Court was set aside. The First Appellate Court relied on the decision of the Apex Court in Civil Appeal No.3595-3612 of 1999 decided on 10.04.2006 passed in "*State of Karnataka and others Vs. Uma Devi and others.*" Learned Additional District Judge vide the impugned judgment held that after regularization, the plaintiff's husband became a member of the "*Newly Defined Contributory Pension Scheme*" and his dependents were neither entitled to pension or ex-gratia payment as he was regularized after April 1, 2004. Furthermore, the plaintiff had been given an appointment on compassionate ground. The issue of limitation was urged before the First Appellate Court. First Appellate Court relied on the Notification No.8/1/2004-3FP-11-2078 dated 02.03.2004 and clarified that the employees who were appointed on or after January 1, 2004 would be governed by the "*Contributory Pension Scheme*". Even though, the period spent by the deceased employee working as a daily wage employee has been directed to be counted for the purpose of pensionary benefits by various Apex Court's judgments, it was held that since deceased employee was regularized on April 11, 2004 he was not eligible for pension and his dependents were not eligible for ex-gratia payment/family pension due to the coming into effect of "*Contributory Pension Scheme*".



9. The learned Additional District Judge relied on Article 309 of the Constitution of India to come to the conclusion that the plaintiff's husband could not claim regularization from the date of his engagement as a daily wager since he was not appointed to a regular post at the time of his initial engagement. Therefore, he came to the conclusion that the past service of daily wager could not be counted for grant of pensionary benefits and the contributory pension scheme come into effect.

10. Learned Additional District Judge held that the trial Court committed a grave error by holding that the suit was not barred by limitation and the defendants failed to discharge their onus on the point of limitation. He held that there was no continuous cause of action as the plaintiff was not entitled to family pension. Therefore, it was held that the plaintiff had no *locus standi* to file the suit and the suit was dismissed and the impugned judgment and decree passed by the lower Court, was set aside.

11. Learned counsel appearing on behalf of the appellant-plaintiff submits that the impugned order suffers from error of law on the face of record. The plaintiff's husband was not a new entrant. He was working as a work charged employee and, therefore, such period was to be counted for grant of pensionary benefits.

12. Learned State counsel submits that there was no error in passing the impugned judgment. In any event, interest could not have been granted to the plaintiff-appellant for more than 38 months' prior to the date of filing of the suit on July 28, 2012 as admittedly the husband of the appellant-plaintiff died on April 11, 2006 and the plaintiff approached the Court belatedly.

13. This Court has heard the learned counsel for the parties and perused the material on record. Admittedly, the plaintiff's husband worked as a work charged employee since November 11, 1986. The Apex Court in



several judgments had held that period spent as a work charged, casual, daily wage would be counted towards the pensionary benefits.

14. A beneficial reference may be made to a judgment of Division Bench of this Court passed in CWP-2371 of 2010 decided on 31.08.2010 in ***Harbans Lal Vs. State of Punjab and others***. The said judgment has also been upheld in the Apex Court. It is clear that the period spent by a work charged, casual or a daily wage earner would be counted towards the pensionary benefits. The Apex Court has also held that non-granting of pensionary benefits is a recurring cause of action. A beneficial reference may be made to a judgment of Hon'ble Supreme Court in Civil Appeal No. 5151-5152 of 2008 in "***Union of India and others Vs. Tarsem Singh***" reported in (2008) 8 SCC 648. Relevant extract is reproduced hereinafter:-

"5. To summarise, 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, the principles relating to recurring/successive wrongs will apply. As a consequence, 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."



15. In view of the aforesaid judgments, this Court is of the considered opinion that the First Appellate Court erred in dismissing the suit of the plaintiff-appellant. Accordingly, the impugned judgment dated October 30, 2014 is set aside relying on the decision of the Apex Court in *Tarsem Singh (supra)*. The interest granted by the trial Court @ 8% per annum on the arrears of family pension is restricted to 38 months prior to the date of filing of the suit on July 28, 2012. The employer-State is directed to disburse the amount of arrears within four months from the date of this order.

16. With the directions aforesaid, Regular Second Appeal 3156-2019 is **disposed of**.

17. Pending applications, if any, are also accordingly disposed of.

(LAPITA BANERJI)
JUDGE

March 17, 2025

vandana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No