LAJPAT RAI MEHTA

v.

SECRETARY TO GOVERNMENT OF PUNJAB, DEPARTMENT OF IRRIGATION & POWER, CHANDIGARH

(Civil Appeal No. 7309 of 2008)

DECEMBER 16, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

SERVICE LAW:

Pension and other retiral benefits – Basis for calculation – HELD: Should be the last pay drawn – In the instant case, employee remained on unauthorized leave from 30.4.1981 till 30.9.1994, the date of his superannuation – After 30.4.1981, he having not worked cannot be held to have earned increments or benefits on revision of scale of pay – Constitution of India, 1950 – Articles 136 and 142.

CONSTITUTION OF INDIA, 1950:

Articles 136 and 142 – Jurisdiction under – Exercise of – Conduct of party – Employee remaining on unauthorized leave for 13 years – Calculation of pensionary benefits – Court while exercising its discretionary jurisdiction is entitled to see the conduct of parties so as to enable it to adjust equities – It is also duty of Court to see that public exchequer should not unnecessarily be depleted despite the fact that State has failed and/or neglected to initiate disciplinary proceedings against employee – Equity.

The plaintiff-appellant joined the service under the State Government in 1959. He remained on long leave from 1976 to1980. From 8.4.1981, he proceeded on earned leave for 23 days and thereafter remained on unauthorized leave till he retired from service on 30.9.1994. Thereafter, the appellant filed a suit for declaration that he was entitled to retrial benefits of

A pension etc. The trial court dismissed the suit but the first appellate court decreed the suit. When the decree was put to execution, the State filed an objection u/s 47 CPC contending that retrial benefits of the appellant would be calculated on the basis of the last pay drawn by him in B 1981. The objection was rejected by the executing court but allowed by the High Court in the revision petition filed by the State.

In the instant appeal filed by the plaintiff, it was contended for the appellant that he having been allowed C to retire with effect from 30.9.1994, that date should form the basis for calculating his retrial benefits.

Dismissing the appeal, the Court

HELD: 1.1. The suit centered round the question as to whether the appellant would be entitled to the D pensionary benefits keeping in view the fact that he had worked for the qualifying period specified therefore, and the question as to the basis on which the pensionary benefits would be calculated did not arise for consideration therein. The declaratory relief granted by E the appellate court could not have extended to grant of other benefits to which the appellant was not otherwise legally entitled. The rules prevalent for calculation of pensionary benefits were, therefore, required to be followed. [Para 10] [663-D-E-H; 664-A]

F 1.2. Indisputably, the appellant was on unauthorized absence from 30.4.1981 to 30.9.1994. He had not worked for 13 years. The last pay was drawn by him in the year 1981. He was not drawing any salary on the date of his superannuation. The pensionary benefits, therefore, should be calculated only on that basis. Thereafter, he, G having not worked, cannot be held to have earned increments or benefit in the revised scale of pay. [Para 10 and 13] [663-D; 664-A-B]

1.3. Remaining on unauthorized leave for such a long time is a misconduct. As the State omitted to take H

any disciplinary proceedings against the appellant, he obtained the benefit of grant of pension. The appellate court declared his entitlement to obtain the pensionary benefits only because he was allowed to superannuate on 30.9.1994. In any event in view of the conduct of the appellant, this Court would not exercise its discretionary jurisdiction in his favour. This Court under Article 136 and/or 142 of the Constitution need not grant relief to a litigant, although it may be lawful for it to do so. The Court while exercising its discretionary jurisdiction is entitled to see the conduct of the parties so as to enable it to adjust equities. It is also the duty of the Court to see that the public exchequer should not unnecessarily be depleted despite the fact that the State has failed and/or neglected to initiate disciplinary proceedings against the appellant. [para 11, 12 and 13] [663-G; 664-C-E]

C.K. Prahhalada & Ors. v. State of Karnataka & Ors. **2008 (8) SCALE 600 and** *Tanna and Modi v. CIT, Mumbai* **2007 (8) SCALE 511, relied on.**

Case Law Reference:

2008 (8) SCALE 600	**relied on**	**para 13**
2007 (8) SCALE 511	**relied on**	**para 13**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7309 of 2008.

From the final Judgment and Order dated 31.7.2007 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision Petition No. 2764 of 2006.

Vikas Mahajan and Bhaskar Y. Kulkarni for the Appellant.

Ajay Pal for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. This appeal is directed against a judgment and order dated 31.7.2007 passed by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh *in Civil Revision* Petition No.2764 of 2006 whereby and whereunder the Civil

A Revision Application filed by the respondents herein was allowed setting aside an order dated 9.2.2006 passed by learned Civil Judge, Junior Division, Amritsar.

3. Appellant herein joined the Irrigation and Power Department of the State of Punjab as a Draftsman in March B 1959. He was later on promoted to the post of Head Draftsman. It appears that the appellant had remained on long leave in the years 1976 to 1980. On or about 8.4.1981, although he proceeded on earned leave for 23 days, admittedly remained on unauthorized leave thereafter. He was not allowed to join his C services later on. He did not join his duties till he retired from service on 30.9.1994. He filed a suit for permanent injunction restraining the State from interfering with his discharge of duties. The said suit was dismissed. Thereafter he filed another suit for declaration that he was entitled to retrial benefits for the post of Head Draftsman in the shape of pension, general D provident fund, ex gratia payment, leave encashment, group insurance schemes etc.

4. Indisputably, the scale of pay of the employees of the State of Punjab were revised in terms of the recommendations of the Fourth Pay Commission with effect from 1.1.1986 by a E notification dated 21.7.1988. The aforementioned suit of the appellant was dismissed holding that he was not entitled to any retrial benefit. The appellate court, however, reversed the said finding of the learned trial judge by a judgment and order dated 8.8.2000, opining :

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> "I have reached at the conclusion that the learned lower court has erred in declining the pensionary benefits to the appellant/plaintiff assuming that the absence of an employee from duty is automatic. Findings on issue No.1, 2 and 3 are set aside and the appellant/plaintiff is ordered G to be given pensionary benefits for the qualifying service, he has put in while in service, under the respondents. The question like leave encashment benefit shall be duly taken care of by the respondents. If he did not have any earned leave at his credit, that benefit of course be declined to H him.

The suit filed by the appellant before the lower court is, therefore, decreed and he is declared entitled to pensionary benefits, as if he has put in the required qualifying service excluding the period of his absence." A

5. An application for execution of the said decree was filed before the Executing Court. Respondent filed an objection therein under Section 47 of the Code of Civil Procedure contending that the retiral benefits of the appellant would be calculated on the basis of the last pay drawn by the appellant in 1981. The said objection was rejected. As noticed hereinbefore, the Civil Revision Application filed by the State thereagainst has been allowed by reason of the impugned judgment. B C

6. Before us, the State has placed a letter dated 19.9.2003 issued by the Irrigation Department and addressed to the Chief Engineer (Canals) Irrigation Works, Punjab giving guidelines for computation of the retiral benefits of the appellant which reads as under : D

"1. Sh. Lajpat Rai Mehta, D.H.D. may be paid pensionary benefits after excluding the absence period, although i.e. before or after 5/1981. He may not be paid benefits for absence period. E

2. He may be paid pensionary benefits on the average emoluments drawn by him during ten months before 30.4.1981.

3. The retiree will be admissible for pension after the date of his superannuation i.e. 30.9.1994. F

4. The matter may be investigated that why no action has been taken by you in 13 years when Sh. Lajpat Rai Mehta remained absent and Government have to bear additional financial liability. The complete report be sent to the Govt. within two months. This concurrence is conveyed as per Financial Promotion Policy and coordination Section Department of Finance letter No.1/66/2003-iFPPC/ 7702 dated 18.9.2003." G H

7. Appellant, however, contends that he would be entitled to the benefit of the revised pay and, thus, the pensionary benefits should be calculated on the following basis :

"PAY AS ON 3.4.1981 = Rs.880/-

NOTIONAL PAY ON 1.1.1986

Basic Pay	= Rs.880.00
D.A.	= Rs.717.00
Interim Relief	= Rs.132.00
2nd Relief 10%	= Rs. 88.00
	Rs.1818.00

"

Pay on 1.1.1986	= 2000
3.4.86	= 2060
3.4.87	= 2130
3.4.88	= 2000
3.4.89	= 2270
3.4.90	= 2340
3.4.91	= 2410
3.4.92	= 2480
3.4.93	= 2550
3.4.94	= 2625

PAY IN THE REVISED SCALE AS ON 1.1.1986

(Rs.2000-60-2060-70-2570-75-3000-100-3500)

Date of Birth = 10.9.1936

Date of Appointment = 22.3.1957

Date of Retirement = 30.9.1994

Total Service = 37 years 6 months 10 days

Absent Period (1.5.81 to 30.9.94 = 13 yrs. 5 months 0 days

Net qualifying Service = 24 years 1 month 10 days = 24.11 years

Pension as on 30.9.1994 = Rs. $\frac{2625 \times 48.22}{2 \times 66}$ Rs.959.00

Revised pension as per B/Pay + DA + Interim Relief I.R.(10%)

Service 959 1304 75 BP 96

= 2242/-

Revised Pension w.e.f. 1.1.1996 = 2817.00 (Against Rs.2242)"

8. Mr. Vikas Mahajan, learned counsel appearing for the appellant, would submit that having regard to the directions issued by the first appellate court, there cannot be any doubt whatsoever that the appellant having been allowed to retire with effect from 30.9.1994 and only the period during which he was on unauthorized leave having been directed to be excluded, all other benefits which were available to him as on the date of retirement should form the basis for calculating the pensionary and other retiral benefits payable to him.

Strong reliance in this behalf has been placed on *State of Kerala & Anr. v. P.V. Neelakandan Nair & Ors.* [(2005) 5 SCC 561].

9. Mr. Ajay Pal, learned counsel appearing for the State, however, supported the impugned judgment.

10. Indisputably, the appellant was on unauthorized absence from 30.4.1981 to 30.9.1994. The suit, which as noticed hereinbefore, centered round the question as to whether he would be entitled to the pensionary benefits keeping in view the fact that he had worked for the qualifying period specified therefor. In the said suit, the question as to the basis on which the pensionary benefits shall be calculated did not arise for consideration. It is one thing to say that a person is entitled to pensionary benefits having fulfilled the eligibility criteria laid down in the statutory rules but it is another thing to say as to on what basis the said benefit should be reckoned.

11. Appellant was not drawing any salary on the date of his superannuation. As the State omitted to take any disciplinary proceedings against him, he obtained the benefit of grant of pension. Remaining on unauthorized leave for such a long time is a misconduct. The appellate court declared his entitlement to obtain the pensionary benefits only because he was allowed to superannuate on 30.9.1994.

12. The declaratory relief granted by the appellate court, therefore, could not have extended grant of other benefits to

A which the appellant was not otherwise legally entitled to. The Rules prevalent for calculation of pensionary benefits were, therefore, required to be followed.

13. Appellant as noticed hereinbefore, had not worked for 13 years. The last pay was drawn by him in the year 1981. The B pensionary benefits, therefore, should be calculated only on that basis. He, having not worked, cannot be held to have earned increments or benefit in the revision of scale of pay.

In any event in view of the conduct of the appellant, we do not think that this Court should exercise its discretionary C jurisdiction in his favour. It is now a well settled principle of law that this Court under Article 136 and/or 142 of the Constitution need not grant relief to a litigant, although it may be lawful for it to do so. {See *C.K. Prahhalada & Ors. v. State of Karnataka & Ors.* [2008 (8) SCALE 600] and *Tanna and Modi v. CIT, Mumbai* [2007 (8) SCALE 511]}. The Court while exercising D its discretionary jurisdiction is entitled to see the conduct of the parties so as to enable it to adjust equities. It is also the duty of the Court to see that the public exchequer should not unnecessarily be depleted despite the fact that the State has failed and/or neglected to initiate disciplinary proceeding E against the appellant.

14. For the reasons aforementioned no relief can be granted in favour of the appellants.

15. The appeal is dismissed. No costs.

F R.P. Appeal dismissed.