
(2011) 05 DEL CK 0097

In the Delhi High Court

Case No : Regular Second Appeal No. 117 of 2009

Delhi Transport Corporation

APPELLANT

Vs

Sita Devi

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0097

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Avnish Ahlawat, Latika Chaudhary and Nitesh Kumar Singh, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 15.05.2009 which has endorsed the findings of the trial Judge dated 27.03.2008 whereby the suit filed by the Plaintiff Sita Devi seeking a declaration (to the effect that the amounts as noted in the plaint have been illegally withheld by the Defendant) had been decreed.

2. The Plaintiff is the widow of Ram Kishan. Ram Kishan was employed as a driver with the Defendant; his services had been terminated on 26.03.1988. This order was the subject matter of challenge; on 18.04.1998 his termination order was set aside by the Industrial Tribunal. On 26.08.1996, Ram Kishan had died. The Defendant/DTC had filed a writ petition challenging the award of the Industrial Tribunal; it was dismissed on 30.01.2006; the department had been directed to pay compensation and arrears with interest to the Plaintiff. The appeal filed before the Division Bench had also been dismissed. The Defendant had paid a sum of Rs. 2,13,780/- to the Plaintiff; a sum of Rs. 1,51,241/- had been illegally retained by the Defendant. Pursuant to an application under the Right to Information Act filed by the Plaintiff, the following information was received; it had been noted that the following deductions had been made on the following counts:

(1) Rs. 1,31,241/- as employer's share with interest.

(2) PF Rs. 20,000/- detained.

3. Legal notice dated 07.05.2007 had been served upon the Defendant impugning his action; no reply was received; present suit was accordingly filed.

4. In the written statement, in para 7 the breakup of the deducted amount was given as given hereinbelow:

(i)

Employer shares released on 24.07.1990

Interest with effect from 24.07.1990 to

31.07.2006

Rs. 17,295.66 p.

Rs. 76,722.25p

Rs. 94,017.91p

(ii)

Employer share was not deducted from back

wages paid on 11.02.2003 interest with effect from 11.02.2003 to 31.07.2006

Rs. 27,135.00

Rs. 10,088.34P

(iii)

PF detained

Rs. 20,000/-

(iv)

Total deduction of (i), (ii) & (iii)

Rs. 1,51,241/-

5. From the pleadings of the parties, the following three issues were framed:

1. Whether the Plaintiff is entitled to decree of declaration as prayed? OPP

2. Whether the Plaintiff is entitled to consequential relief as prayed? OPP

3. Relief.

6. Oral and documentary evidence was led. The trial Court had decreed the suit of the Plaintiff; it was held that the amount of Rs. 17,295/- which was the employer's share of the Contributory Provident Fund (CPF) could be deducted;

further a sum of Rs. 27,135/- was also permitted to be retained by the department which was the employer's share not deducted from the back wages of Ram Kishan which was paid to him for the period from 26.03.1988 to 26.08.1996. However, the interest figure of Rs. 76,722.25 calculated w.e.f. 24.07.1990 to 31.07.2006 on the principal amount of Rs. 17,295.66 paise as also the sum of Rs. 10,088.34 paise calculated the interest w.e.f. 11.02.2003 to 31.07.2006 on the principal amount of Rs. 27,135/- were held to be illegal deductions; PF of Rs. 20,000/- also could not be detained. The trial Judge whose finding was endorsed by the first appellate court had accordingly passed a decree of declaration in favour of the Plaintiff that the order of the Defendant as far as the additional amount of Rs. 1,06,941/- (Rs. 1,51,241/- minus Rs. 44,300/-) (Rs. 17,295.66 paise + Rs. 20,135/- = Rs. 44,300/-) could not be deducted.

7. This is a second appeal. It has been admitted and on 16.12.2010, the following substantial question of law was formulated:

Whether the Delhi Transport Corporation (DTC) is entitled to charge interest on the amount of the employer share of the provident fund @ 9% per annum? If so, its effect?"

8. On behalf of the Appellant, it is pointed out that the judgment of the High Court (Ex.PW-1/1) dated 30.01.2006 in para 9 had returned a finding that the Plaintiff is a pension optee; he being a pension optee, the department was rightfully entitled to seek a refund of the employer's share of contributory fund which had been paid to the Defendant; this amount was liable to be refunded back with interest @ 9% per annum. To support her submission learned Counsel for the Appellant has placed reliance upon a judgment of this Court decided in LPA No. 33/1998 DTC v. Shri Baijnath Bhargava. It is pointed out that the entitlement of the Department/DTC to such refund of the employer's share of the provident fund with interest had been recognized in this judgment which has since been upheld by the Supreme Court.

9. None has appeared for the Respondent although served.

10. There are two concurrent findings of fact by the two courts below. Until and unless a perversity is pointed out, the impugned judgment cannot be interfered with. The submission as made before this Court today was never a part of the pleadings in the trial Court. It was not the defence of the Defendant (as is evident from the written statement) that the husband of the Plaintiff was a pension optee and the employer's share of the provident fund released to him as also the employer's share which was not deducted from the back wages could not have been paid for this reason. Written statement was filed in the trial court admittedly after the judgment Ex.PW1/1. Today before this Court it has been argued that the pension scheme for the DTC employees had come into effect on 27.11.1992 which had a retrospective effect i.e. from the year 1981 and was applicable to on retired as also existing employees; the order of termination of the Plaintiff having been set aside, he was deemed to be in service. These

submissions urged today were never a defense in the written statement.

11. Oral and documentary evidence had been led before the trial Court. The Plaintiff had examined herself and Defendant had examined one witness i.e. a senior clerk from the Department. After appreciation of the evidence, the trial Judge had noted that it was because of a mistake of the dealing clerk that he had failed to deduct the employer's share of Rs. 27,135/- and Rs. 17,295.66 paise on the two occasions when the amounts were released in favour of the Plaintiff; it was the inaction and lack of efficiency in the discharge of the duties of the concerned official; it was for no fault of the Plaintiff but because of negligent act of the Department; the entire records were with the Department and the Plaintiff could not have known that any excess payment had been received by her; she was illiterate and would not know such intricate and complicated calculations; refund of the amount with interest @ 9; per annum was even otherwise was exorbitant. Trial Judge had noted that this deduction which was detained as provident fund was again an illegal deduction and this was for the fault of the Department for which there was no justifiable reason. While decreeing the suit of the Plaintiff for part payment of Rs. 1,06,941/-, interest was not awarded; this was to counter and balance the submissions of the Department who had stated that they were entitled to interest on the principal figure of Rs. 17,295.66 paise and Rs. 27,135/-. Interest had been disallowed to both the parties.

12. This finding that the Department has been negligent was endorsed in first appeal. The impugned judgment had noted that the employer had not made proper calculations and without checking the records (which has been admitted by the Department itself), the amounts as aforementioned had been made over to the Plaintiff; the mistake was on the part of the Department. Statement of DW-1 had been adverted to. These findings of fact can in no manner said to be perverse.

13 The judgment of the High Court delivered in LPA No. 22/1998 DTC v. Shri Baijnath Bhargav dated 16.03.2000 (as noted supra) recognized the right of the Department to take back the employer's share of provident fund with interest; percentage of interest has not been mentioned in this judgment. The employer's share of provident fund i.e. Rs. 17,295.66 paise and the second amount i.e. Rs. 27,135/- which were the employer's shares of back wages which had under mistake been paid to the Plaintiff have been ordered to be retained by the Department; this amount has been recognized by both the two courts below as the amount of the Department; there is no dispute to this; however the interest charged @ 9% is exorbitant; both the courts below had rightly noted that Rs. 1,06,941/- could not have been retained; Rs. 20,000/- was also illegally and arbitrarily retained. All this was attributable to the negligence and fault of the Department. This finding in no manner can be said to be either an illegality or perverse.

14. Substantial question of law is accordingly answered in favour of the Respondent and against the Appellant. There is no merit in this appeal. Dismissed.