
(2009) 12 P&H CK 0129
In the Punjab And Haryana At Chandigarh

Harbhagwan Sawhney

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 158 PLR 140

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sham Sunder, J.—This appeal, is directed, against the judgment and decree, dated 28.02.05, rendered by the Court of Civil Judge (Senior Division), Faridabad, vide which, it dismissed the suit of the plaintiff, and, the judgment and decree, dated 13.09.06, rendered by the Court of Additional District Judge (I), Faridabad, vide which, it dismissed, the appeal.

2. The facts, in brief, are that, the plaintiff, joined the service of Haryana Government, on 20.05.49, as Clerk. It was stated that the Government of Haryana, framed a policy, that the employees, who had undergone sterilization operation, after having two or three surviving children, were entitled to special increment. In case of male employees, the age limit for the entitlement to special increment, was below 50 years, and in case of female employees, the age limit, was between 20 to 50 years. In pursuance thereto, the plaintiff, underwent sterilization operation, in Civil Hospital, Sonapat, on 18.03.76. It was further stated that the plaintiff, retired, as Superintendent, on 30.09.89. It was further stated that despite undergoing sterilization operation, on 18.03.76, as per the policy of the government, the claim of the plaintiff, for granting special increment, was rejected by the authorities concerned. The defendants, were many a time, asked to release the special increment, alongwith the consequential pensionary benefits, at the revised rates, but to no avail. Ultimately, a suit for declaration and mandatory injunction, was filed.

3. The defendants, put in appearance, and filed written statement, wherein, they took up various objections, and contested the suit. It was pleaded that the suit was barred by time. It was stated that when the plaintiff, underwent sterilization operation, he was not entitled to a special increment, as per the policy of the government. It was further stated that by the time the policy of the government was revised, the plaintiff had already retired from service and, as such, was not entitled to the grant of a special increment, for undergoing sterilization operation, in 1976. It was further stated that the order declining the claim of the plaintiff, in 1995, is legal and valid. The remaining averments, were denied, being wrong.

4. On the pleadings of the parties, the following issues were struck:

(i) Whether the plaintiff is entitled to receive personal pay and benefits on notional basis i.e. deemed from 01.10.89 to 20.07.93 and w.e.f. 21.07.93 after recomputing pensionary benefits in actual? OPP

(ii) Whether the suit is not maintainable in the present form? OPD

(iii) Whether this Court has no jurisdiction to try the present suit? OPD

(iv) Whether the suit is not properly valued for the purpose of Court fee? OPD

(v) Whether the plaintiff has no locus standi to file the present suit? OPD

(vi) Relief.

5. After hearing the Counsel for the parties, and, on going through the record of the Case, the trial Court, dismissed the suit of the plaintiff.

6. Feeling aggrieved, an appeal was preferred, by the plaintiff/appellant, which was also dismissed, by the Court of Additional District Judge (I), Faridabad, vide judgment and decree dated 13.09.06.

7. Still feeling dissatisfied, the instant Regular Second Appeal, has been filed by the plaintiff/appellant.

8. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

9. The following substantial questions of law arise, in this appeal, for the determination of this Court:

(i) Whether the Courts below, recorded perverse findings, that the claim of the plaintiff for grant of special increment, on account of undergoing sterilization operation, was legally and validly rejected, by the authorities concerned, vide order dated 10.04.95, exhibit DW1/B?

(ii) Whether the suit of the plaintiff, was barred by limitation?

10. The Counsel for the appellant, submitted that the appellant, joined service, on 20.05.49, as Clerk, and, thereafter, retired as Superintendent, on 30.09.89.

He further submitted that the appellant, underwent sterilization operation, in Civil Hospital, Sonapat, on 18.03.76, just with a view to promote Small Family Scheme. He further submitted that the government vide letter, dated 20.07.81, gave a special increment, in the form of personal pay, to the persons, who underwent sterilization operation, on or after the date i.e. 20.07.81. He further submitted that a Civil Writ Petition, was filed, in this Court, against the policy decision, which was accepted, and, it was held, that the benefit, would also be granted, to those employees, who had undergone sterilization operation, prior to 20.07.81. He further submitted that the plaintiff, thus, became eligible for the grant of special increment, under Family Planning Scheme, vide letters dated 20.07.81 and 20.04.93, but, since the appellant retired, from service, on 30.09.89, he was required to be given the benefit of one increment, on account of sterilization operation, upto the date of his retirement. He further submitted that a number of representations, were made, by the plaintiff, and ultimately, on 10.04.95, he received a letter, from the Commissioner, Hisar Division, Hisar, intimating him that, as per the guidelines, issued by the Government of Haryana, the plaintiff, could not be given the benefit of special increment, in view of Rule 6.24 (vii) of the Punjab Civil Services Rules, Volume 11, because the increment, had not been availed of, by him, in actuality, while in service. He further submitted that the said Rule, did not create any bar, in the way of grant of a special increment and consequential revised pensionary benefits, to the plaintiff. He further submitted that the suit was also filed within the period of limitation. He further submitted that the Courts below, recorded perverse findings, on account of misreading and misappreciation of evidence, and law, on the point that the plaintiff was not entitled to the benefit of special increment and consequential benefit of revised pension. He further submitted that the plaintiff, was not entitled to the said increment. He further submitted that the judgments and decrees of the Courts below, being illegal, were liable to be set aside.

11. On the other hand, the Counsel for the respondents, submitted that the Haryana Government, had granted special increment, to the government employees, who had undergone sterilization operation, after having two or three surviving children, on or after 20.07.81. She further submitted that some of the employees, had filed Civil Writ Petition, in this Court, wherein, it was held, that the employees, who had undergone sterilization operation, before 20.07.81, were also entitled to the similar benefit. She further submitted that the plaintiff, based his claim, on the letter, issued by the defendants, on 20.07.93, exhibit P7, and, as such, he was not entitled, for the benefit, which was given, vide letter, dated 20.07.81. She further submitted that the case of the plaintiff, was considered, and the same, was rejected vide order dated 10.04.95. She further submitted that the suit of the plaintiff, was barred by time. She further submitted that the findings, recorded by the Courts below, that the plaintiff, was not entitled to the relief prayed for, are correct. She further submitted that the judgments and decrees of the Courts below, being legal and valid, are liable to be upheld.

12. After giving my thoughtful consideration, to the rival contentions, advanced by the Counsel for the parties, in my considered opinion, the appeal deserves to be dismissed, for the reasons to be recorded, hereinafter. In *Madvan Nair v. Bhaskar Pillai* (2005) 10, SCC, 533, *Harjeel Singh v. Arnrik Singh* (2005) 12, SCC, 270, *H.P. Pyarejan Vs. Dasappa (Dead) by LRs. and Others*, , and *Gurdev Kaur and Others Vs. Kaki and Others*, while interpreting the scope of Section 100 of the Code of Civil Procedure, the principle of law, laid down, was that the High Court, has no jurisdiction to interfere with the findings of fact, arrived at by the trial Court, and the first Appellate Court, even if, the same are grossly erroneous, as the legislative intention, was very clear, that the legislature never wanted second appeal to become a "third trial on facts" or "one more dice in the gamble." It was further held that the jurisdiction of the High Court in interfering With the judgments of the Courts below, is confined only to the hearing of substantial questions of law. There is, no dispute, with regard to the factum, that the appellant, joined the Haryana Government, on 20.05.49, and retired from service, on 30.09.89. It is also not disputed, that he underwent sterilization operation, on 18.03.76. At the relevant time, he was not entitled to the benefit, under the Family Planning Scheme, for undergoing the sterilization operation, as only those employees, were held entitled, as per the letter, dated 20.07.81 of the Haryana Government, who had undergone the sterilization operation, after 20.07.81. That policy of the government, was challenged, and the same, was set aside, by this Court, and it was held, that all the employees, irrespective of the fact, as to whether, they underwent sterilization operation, before or after 20.07,81, were entitled to the special increment. Thereafter, a letter, dated 20.07.93, was issued. On the basis of that letter, the plaintiff, claimed the grant of increment, on account of sterilization operation, underwent by him, and the release of revised pensionary benefits. The claim of the plaintiff, was considered and rejected, on the ground, that he had not been granted the benefit of special increment, when he was in service, and, as such, the same according to Rule 6.24 (vii) of the Punjab Civil Services Rules, Volume II, could not be granted to him, as he had retired, before 20.07.93. Ultimately, he was intimated, vide letter, dated 10.04.95, exhibit DWI/B, regarding the rejection of his claim. It may be stated here, that the rejection of the claim of the appellant, by the authorities concerned, could not be said to be legal and valid. The letter, dated 20.07.93, was issued, after the plaintiff, had retired, from service. Vide this letter, all the employees, who underwent sterilization operation, before or after 20.07.81, were held entitled to one special increment. If the letter, was issued, after the retirement of the plaintiff, he was not to be blamed. As and when, the cause of action, accrued to the plaintiff, to raise the claim, on the basis of the letter, dated 20.07.93, he staked the same. His claim, could not be rejected merely, on ground of the bar, created by Rule 6.24 (vii) of the Punjab Civil Services Rules, Volume II. A similar question arose, for consideration, in *Ram Chancier and Anr. v. State of Haryana and Ors.* 1999 (1), SLR, 315, and *Sunt Lal v. State of Haryana and Ors.* 1997 (4), RSJ, 767, decided by a Division Bench of this Court. In the aforesaid cases, denial of benefit of increment and revised pension, by

recourse to Rule 6.24 (vii) of the Rules, was made. In these circumstances, it was held, that recourse, to such a Rule, could not be made, by the respondents. The principle of law, laid down, in Ram Chander and Anr.'s and Sant Lal's cases (supra), is fully applicable, to the facts of the instant case. The Courts below, were, thus, wrong in holding, that the claim of the plaintiff/appellant, was rightly rejected, by taking recourse to Rule 6.24 (vii) of the Punjab Civil Services Rules, Volume II. The findings of the Courts below, in this regard, being perverse, are set aside.

13. The next question, that arises for consideration, is, as to whether, the suit, filed by the plaintiff, was barred by limitation, or not. No doubt, no issue regarding limitation was struck by the trial Court, though a plea, in that regard was taken by the defendants, in the written statement. It is well settled, that according to Section 3 of the Limitation Act, 1963, it is for the Court to decide whether the suit was within limitation or not. Non-striking of issue, in that regard, paled into insignificance, when the parties were alive to the controversy and went to trial. The plaintiff/appellant, had already retired, from service, on 30.09.89. His claim for grant of special increment w.e.f. the date, he underwent sterilization operation and consequential release of his revised pension, was declined, on 10.04.95. Cause of action, accrued to the plaintiff, to file a suit, within a period of three years, from the date, his claim, was finally rejected, by the defendants. He, on the other hand, filed the suit, on 06.04.02 i.e. much after the lapse of a period of three years. It was not a continuous cause of action, which accrued to the plaintiff, and, he could file the suit, at any time. Had he been, in service, he could take such a plea, but once, he retired, from service, rejection of his claim, for grant of special increment, on account of undergoing sterilization operation, gave him one time cause of action. In State of Punjab and Another Vs. Balkaran Singh, , a suit for declaration was filed that the order denying revised scale of pay, was illegal, in the year 1993, though the cause of action first accrued on 13.03.80. In these circumstances, it was held that the suit was palpably barred by time. The principle of law, laid down, in State of Punjab v. Balkaram Singh's case (supra), is fully applicable to the facts of the instant case. The suit filed by the plaintiff, was palpably barred by time.

14. The Counsel for the appellant, however, placed reliance, on State of Punjab v. Surjan Singh 1996 (4), SCT, 771, in support of his contention, that pension and pensionary benefits, furnish a recurring cause of action, and not hit, by the period of limitation of three years. The facts of the aforesaid case, are clearly distinguishable, from the facts of the instant case. In that case, the plaintiff, claimed that, his total service, from 01.01.56 to 29.03.81, be counted, as qualifying service, and, he be granted the pensionary benefits accordingly. In those circumstances, it was held, by this Court, that pension and pensionary benefits, furnished a recurring cause of action. In the instant case, until and unless, the plaintiff, was granted the special increment, from the date, when he underwent the sterilization operation, the question of counting the same, towards pensionary benefits, did not at all arise. So once, his claim for the grant

of special increment w.e.f. the date, he underwent sterilization operation, was rejected, his further claim, with regard to the grant of revised pensionary benefits, automatically stood declined. In this case, only one time cause of action accrued to the plaintiff, on 10.04.95, when his claim for the grant of special increment was declined. He could not claim that a recurring cause of action accrued to him. Any principle of law, laid down, in State of Punjab v. Surjan Singh's case (supra), decided by a single Bench of this Court, which is contrary to the principle of law, laid down, in State of Punjab v. Balkaram Singh's case (supra), decided by the Apex Court shall not hold the field. No help, therefore, can be drawn by the Counsel for the appellant from State of Punjab v. Surjan Singh's case (supra). The submission of the Counsel for the appellant, in this regard, being without merit, must fail, and the same stands rejected.

15. The substantial question No. 1 of law, is answered, in favour of the appellant, whereas, the substantial question No. 2 of law, is answered, against the appellant. The net result remains, that the appeal, is liable to be dismissed.

16. For the reasons recorded above, the instant Regular Second Appeal, being barred by limitation, must fail, and the same is dismissed with costs.