

(2013) 01 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 5355 of 2012 (O and M)

Kehar Singh

APPELLANT

Vs

Kurukshetra Urban Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 3 RCR(Civil) 256 : (2013) 3 SCT 246

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : Ashutosh Kaushik, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—It is plaintiffs second appeal. The appellant/plaintiff (hereinafter referred as "the plaintiff) having earlier served in the Indian Army from 5.8.1968 to 31.8.1988 joined on the post of security guard and has been receiving salary of class IV employee in the pay scale of Rs. 750- 940 and then on revision of pay w.e.f. 1.1.1996 in the pay scale of Rs. 2500- 3050. The appellant being born on 24.8.1949 stood retired on 31.8.2007 on attaining the age of 58 years. Consequently, he filed the suit on 21.3.2009 for claiming that he should have been retired on 31.8.2009 instead of 31.8.2007, as the retirement age of class IV employees i.e. peons and chowkidars, as per Rules 15-A Haryana Co-operative Societies Act is 60 years. The appellant could be treated at par with chowkidars. Thus, he is entitled to be superannuated at the age of 60. The Bank contested the suit and denied all the allegations and it was, inter-alia, pleaded that the plaintiff was never appointed as class IV employee and, as per service rules of the Bank, only peon is the class IV employee. The plaintiff was never assigned such duty which is performed by the peons. He never raised such objection at the time of his retirement. He being the security guard was issued a gun and does not fall in the category of class IV employee due to different nature of his duties. Mere parity in the pay scale does not determine the age of superannuation.

2. Both the parties led their respective evidence. Ultimately, the trial court declined to accept the plea of the plaintiff and the first appellate court also dismissed his appeal.

3. Arguments heard.

4. Service Rules of the Bank, pay-scale and staff strength of the employee of the Urban Co-operative Bank and their retirement age are reproduced as under:-

15-A) Every employee shall retire from the service on the afternoon of the last day of the month in which he attains the age of 58 years provided that in the case of peon/chowkidar the retirement age shall be 60 years. Provided further that the employee, whose date of birth is the first of month, shall retire on the afternoon of the 1st day of the proceeding month on attaining the age of 58 or 60 years as the case may be.

B) An employee may seek retirement after 20 years of qualifying service in the bank.

5. The basic pay and other staff strength has been detailed in Appendix to the rules, which indicates that peons and the security guards would draw salary in the pay-scale of 750-12-870-EB-14-940+30. Both the categories consist of separate cadres and bear different qualifications. The security guards are taken up from ex-serviceman for a specific purpose and not for performing the duties of class IV employees. Their nature of duties are distinct and different from that of the peons. The service rules of the Bank do not categorize the peons and security guards as class IV employees, but they relate to different class of persons. The Rules specify the age of 60 years for the peons and chowkidars only. The security guards are not selected from the same list and through the same interview, through which the peons are employed. The appellant never opted to be appointed as peon. Rather he preferred to be posted as security guard and not even as watchman. No such rules of the Bank which may have been adopted by the respondent-Bank indicate about the age of superannuation of the security guards.

6. Therefore, in the absence of any such adoption of rules by the respondent, it would be difficult to hold that as per Rule 15A of the Cooperative Bank Rules, the superannuation age of the security guards would be treated at par with that of peons. The judgments passed in the case of Dharendra Chamoli and Another Vs. State of U.P., and Mahesh Chand Tyagi Vs. Delhi Jal Board, are on different set of facts and interprets different rules. Mahesh Chand Tyagi's case (supra) refers to Rule 56(b) of the Fundamental Rules, framed by the Delhi Administration, which has been extended to Class IV employees also. In Dharendra Chamoli's case (supra), the intention of the Court was to bring parity to all the employees who may be on sanctioned or on non sanctioned posts. As such, the same are not applicable to the facts of the present case. The view taken by the courts below appears to be correct and the concurrent findings of facts recorded by the courts below do not suffer from any illegality or perversity which may warrant

interference by this Court.

No substantial question of law arises for determination in this appeal. Dismissed.