

(2012) 09 P&H CK 0383

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1282 of 2009 (O and M)

Mohinder Singh

APPELLANT

Vs

Pepsu Road Transport Corporation and others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Citation : (2012) 168 PLR 681

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

Bench : Single Bench

Advocate : D.K. Kaushal, for the Appellant; Sukhjit Singh, for the Respondent

Final Decision : Allowed

Judgement

A.N. Jindal, J.—Appellant-Mohinder Singh, has sought modification of the judgment dated 8.8.2008 passed by the District Judge, Faridkot, and to award him pensionary benefits by reckoning his service w.e.f. the date of joining service and not from 1.2.1973 when he started contributing towards C.P.F. for the first time and also to award him interest over the delayed payment @ of 12% per annum. Undisputed factual back ground of the case is that the plaintiff joined service with respondents on 9.8.1971 and retired on 31.12.2004. The department started deducting CPF w.e.f. 1.2.1973. While calculating the retiral benefits, the department calculated the pensionary benefits from the date when he started contributing towards CPF and department also did not pay him any interest on the delayed retiral benefits.

2. The suit was contested by the respondents. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled to declaration and mandatory injunction, as prayed for? OPP
2. Whether the suit is not maintainable, as alleged? OPP
3. Whether the suit is bad for not affixing ad-valorem court fee, as alleged? OPD

4. Relief.

3. The trial court decreed the suit in toto. However, the learned District Judge modified the judgment while holding as under:-

...It is held that the pensionable service of the plaintiff has to be reckoned with effect from 1.2.1973 i.e. when he started contributing towards C.P.F. for the first time. The other part of the judgment, passed by the learned lower court, however, need not be interfered with where the learned lower court held the plaintiff entitled to interest over the delayed payment. With the aforesaid modification in the judgment and decree passed by the learned lower court, the appeal filed by the appellants defendants PRTC stands dismissed.

4. Feeling aggrieved by the aforesaid order, the appellant, by placing reliance on two Division Bench judgments of this Court delivered in CWP No. 5661 of 1999 decided on 4.4.2000 titled as Kasturi Lal Khurana and others v. State of Punjab and others : 2003 (4) SCT 462 and LPA No. 207 of 2011 titled PEPSU Road Transport Corporation, Patiala and another v. Ved Parkash and another decided on 3.2.1011, has contended that the appellant cannot be denied pensionary benefit for the period during which his contribution towards CPF was not deducted. He cannot be denied the pensionary benefits on this sole ground. The Division Bench in Kasturi Lal Khurana (supra) held as un-der:-

The plea of respondent Nos. 1 and 2 that the period prior to 28.2.1968 cannot be counted towards the qualifying service is based on a misconceived assumption that after passing of the resolution dated 6.9.1968 because the petitioners were not called upon to deposit their contribution towards the provident fund with effect from the dates of the initial appointments.

That apart, no evidence has been produced before the Court to show that at the time of implementation of the Pension Scheme, they were called upon to deposit their contribution of the provident fund:

8. In view of the above, we hold that the petitioners are entitled to get retiral benefits on the basis of the total service rendered by them.

9. Hence, the writ petition is allowed. The respondents are directed to re-count the qualifying service of the petitioners by taking into consideration the total service rendered by them from the dates of initial appointments. The amount of contribution of provident fund which the petitioners were required to deposit may be adjusted from out of the amount which they may be found entitled to get as a result of re-calculation of the retiral benefits payable to them in terms of this order. The respondents should undertake and complete the exercise for granting of revised retiral benefits to the petitioners within a period of four months from the date of submission of certified copy of this order.

5. A Single Bench of this Court in Civil Writ Petition No. 8285 of 2004 titled Ved Parkash v. The state of Punjab and others decided on 16.9.2010, while relying on Kasturi Lal Khurana's case (supra), held that the petitioner would be entitled to

the pensionary benefits from the date of his joining.

6. Apart from the above judgments, this Court in Ramesh Tuli v. State of Punjab and others : 2007 (8) SLR 467, while calculating the pensionary benefits from the date of joining of the petitioners, further observed as under:-

However, her contribution to the Contributory Provident Fund with effect from 17.8.1965 to 30.8.1980, which was required to be made by the petitioner, shall along with interest be adjusted and deducted from the arrears of her pension.

7. Thus, from the above, it is settled position of law that the an employee is entitled to pensionary benefits from the date of his joining and not from the date his contribution towards CPF start deducting. Resultantly, this appeal is accepted, the impugned order is modified and the appellant would be entitled to have his pensionary benefits with effect from the date of joining in service with the respondents i.e. 9.8.1971. He would also be entitled to the interest for the period his payment was delayed. However, the contributory provident fund required to be deposited by the appellant would be deducted alongwith interest from the pensionary benefits payable to him.