

(2012) 04 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 598 of 2010

State of Haryana and others

APPELLANT

Vs

Sh. Mulkh Raj Mehta

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 79, 80

Citation : (2012) 167 PLR 58

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Anil Kumar, Deputy A.G., Haryana, for the Appellant; Vivek Khatri, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendants State of Haryana and its authorities having been defeated in both the courts below have filed this second appeal. Respondent-plaintiff Mulkh Raj Mehta filed suit against defendants/appellants. It is undisputed that date of birth of the plaintiff is 15.11.1945. He passed LLB examination in the year 1968 and was enrolled as Advocate in July 1968 and started practice as such. He joined the service of defendants as Assistant District Attorney (ADA) on 18.12.1974. He retired on 30.11.2003 on attaining the age of superannuation. Minimum eligibility condition for the post of ADA was LLB pass and experience of three years as Advocate.

2. The plaintiff in the suit claimed benefit of Rule 4.2-A of the Punjab Civil Service Rules Volume II (CSR). The said Rule provides for addition of qualifying service to actual period of service for the purpose of pension, if the service or post is one for which post graduate, research or specialized qualification or experience in scientific, technological or professional fields is essential and to which candidates of more than 25 years of age are normally recruited. The scale and extent of the qualifying service that can be added under this Rule has also been provided therein. The plaintiff alleged that he joined service at the age of

29 years 33 days and, therefore, claimed addition of service of 4 years 33 days (the period exceeding the age of 25 years) to his actual period of service for the purpose of pension.

3. Defendants, however, granted him benefit of qualifying service of 8 months 4 days only and pleaded that plaintiff is not entitled to add qualifying service of 4 years 33 days for the purpose of pension. Reliance in this regard was placed on Government instructions dated 05.03.2001.

4. Learned Civil Judge (Senior Division), Hisar vide judgment and decree dated 11.09.2007 decreed the plaintiffs suit. First appeal preferred by defendants has been dismissed by learned Additional District Judge (Fast Track Court), Hisar vide judgment and decree dated 02.09.2009. Feeling aggrieved, defendants have filed this second appeal.

5. I have heard learned counsel for the parties and perused the case file.

6. At the outset, counsel for the appellants contended that Department of Home and Administration of Justice which is appointing authority of ADA was not joined in the suit and, therefore, the suit is bad for non-joinder of necessary party. The contention cannot be accepted because State of Haryana has been sued through Collector. Section 79 of the CPC provides that in suit by or against the State Government, the authority to be named as plaintiff or defendant shall be "the State". In the instant case, State of Haryana has as such been named as defendant No.1. Section 80 of the CPC further provides that notice required to be served on State Government shall be served either on a Secretary to that Government or the Collector of the District. In the instant case, State of Haryana has been sued through Collector and, therefore, it cannot be said that the suit is bad for non-joinder of Department of Home and Administration of Justice. No such specific objection was even raised in the written statement and, therefore, the contention is also beyond pleadings, besides being unacceptable on merit.

7. As regards merits of plaintiff's claim, counsel for the appellants contended that the plaintiff became eligible for the post of ADA on gaining three years' experience as Advocate on 19.07.1971 i.e. at the age of 25 years 8 months 4 days and accordingly benefit of qualifying service of 8 months 4 days (the period exceeding the age of 25 years) has been rightly granted to the plaintiff. The contention cannot be accepted. Rule 4.2-A of CSR is reproduced hereunder:

A Government employee who retires from a service or post shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty five years or a period of five years, whichever is less, if the service or post to which the Government employee is appointed is one.

(a) by which postgraduate research or specialist qualification or experience in scientific, technological or professional fields is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited.

Provided that this concession shall not be admissible to a Government employee unless his actual qualifying service at the time he quits Government service is not less than ten years;

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule;

Provided further that this concession shall not be admissible to those who are eligible for counting their past service of superannuation pension, unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service foregoing the counting of the past service.

8. A bare reading of the Rule makes it clear that the employee is entitled to add the actual period not exceeding 1/4th of the length of service or the actual period by which his age at the time of recruitment exceeds 25 years or a period of 5 years whichever ever is less. It is undisputed that the post of ADA to which the plaintiff was recruited is covered by the aforesaid Rule because the defendants themselves granted benefit of the said Rule, although to the extent of 8 months 4 days qualifying service only. The Rule categorically states that the actual period by which age of the employee exceeds 25 years at the time of recruitment shall be added as qualifying service. Thus age of the employee has to be seen at the time of recruitment or appointment and not when he becomes eligible for the post by acquiring necessary qualification and experience. Defendants have granted the benefit of 8 months 4 days only by taking the age of the plaintiff on the day he became eligible to apply for the post by acquiring qualification and experience. However, immediately thereupon, the plaintiff could not have joined the post. On the other hand, on becoming so eligible for the post, he had to go through the process of selection for the post and that too, after the posts were advertised. Consequently the question of counting the period on the day the plaintiff became eligible to apply for the post does not arise. The period has to be counted keeping in view the age of the plaintiff at the time of recruitment i.e. appointment as per plain language of the Rule. Instructions dated 05.03.2001 relied on by the defendants cannot override the statutory Service Rules i.e. Rule 4.2A of CSR.

9. It is also worth mentioning that Single Bench of this Court referred following two questions of law for decision by larger Bench:

1. Whether as per Rule 4.2-A, the qualification of L.L.B., qualify for benefit as contained in Rules 4.2-A of Civil Services Rules, Volume II?
2. Whether the underlying idea of the said enactment is to make one eligible for earning pension, if he is falling short of minimum service, for getting superannuation pension being late entrant only or to provide extra weightage for

calculating the pension on account of his special qualification

10. Division Bench of this Court vide order dated 10.02.2011 answered both the said questions against the defendants. In view of said order also, the defendants cannot succeed. For the reasons aforesaid, I find that both the courts below have rightly decreed the suit of the plaintiff. On the basis of plain language of Rule 4.2-A of CSR, the plaintiff is entitled to the relief sought for by him. There is no illegality or perversity in concurrent finding recorded by the courts below in favour of the plaintiff. No question of law, much less substantial question of law, survives for adjudication in this second appeal. The appeal is meritless and is, therefore, dismissed.