

(1967) 03 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 137 of 1963

The State of Punjab

APPELLANT

Vs

S. Bhagwan Singh Grewal

RESPONDENT

Date of Decision : 16-03-1967

Acts Referred:

Limitation Act, 1908 — Article 102

Citation : AIR 1968 P&H 58 : (1968) 1 ILR (P&H) 55

Hon'ble Judges : P.C. Pandit, J;A.N. Grover, J

Bench : Division Bench

Advocate : J.N. Kaushal, General and B.S. Chawla, for the Appellant; P.C. Jain and A.S. Anand, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This is a defendant's appeal against the decree of the learned Subordinate Judge, First Class, Patiala, decreeing the plaintiff's suit.

2. Bhagwan Singh Grewal, plaintiff, was at the time of the formation of PEPSU the employee of the Patiala State and he continued to serve there till 7th of September, 1954. He was integrated as Head Assistant in the Health Department of PEPSU State with effect from 1-9-1948, vide their order dated 29th of October, 1956. He retired on superannuation pension with effect from 24-1-1959. On 13th of March 1948, he was drawing Rs. 74 per mensem in the grade of Rs. 70--4--90. The PEPSU Government revised the pay of its employees in 1948. Consequently, the Accountant-General, Punjab, Simla, fixed the plaintiffs pay at Rs. 88 per month in the grade of Rs. 80--8--220 with effect from 1-9-1948. According to the plaintiff, his next annual increment raising his pay from Rs. 88 to Rs. 96 per mensem fell due on 13th of March, 1949 under the PEPSU Revision of Pay Rules. Thus, he earned his next increment raising his pay to Rs. 104 per month with effect from 13th of March, 1950 in the aforesaid scale. However, the Accountant-General, Punjab, erroneously decided that he was only entitled to Rs. 100 per mensem in the revised scale of Rs. 100--10--250 with effect from

1-3-1950. Under the PEPSU Home Department order dated 21-4-1952, according to the plaintiff he was entitled to a pay of Rs. 110 per month in the revised scale of Rs. 100--10--250 with effect from 13-3-1950, as he was already entitled to Rs. 104 per mensem from 13-3-1950 in his previous grade of RS. 80--8--220. The decision of the Accountant-General, Punjab, therefore, caused a great loss to the plaintiff in his pay, pension and gratuity. On the plaintiff's representations, the Punjab Government, with which in the meantime PEPSU State had been integrated, fixed his pay at Rs. 110 per mensem with effect from 13-3-1950, the next increment falling due on 13-3-1951, and necessary sanction in that behalf was conveyed by the Secretary to Government, Punjab, Medical and Public Health Department, to the Director of Health Services, Punjab, on 13-2-1961. The plaintiff was informed about this order of the Government by the Malaria Officer, Patiala, to whom the sanction was conveyed by the Director of Health Services, Punjab. But, in spite of this, according to the plaintiff, he had neither been paid his arrears of pay, gratuity and pension in accordance with this order, nor had his pension been fixed at Rs. 90.32 per mensem from the date of his retirement, viz.. 24-1-1959 That necessitated the filing of a suit in April, 1962, out of which the present appeal has arisen. The relief claimed by him against the State of Punjab was that he should be given a decree for the recovery of Rs. 4,109.88, with interest at the rate of 6 per cent per annum on the decretal amount from the date of the institution of the suit till the realisation of the amount, as follows:--

(a) Rs. 3,801.42 being arrears of pay, as sanctioned by the Punjab Government by their order dated 13-2-1961 with effect from 13-3-1950 up to the date of retirement, i.e., 24-1-1959,

(b) Rs. 148.32 as arrears of pension from 24-1-1959 to 23-1-1962;

(c) Rs. 51.90 on account of the difference in gratuity;

(d) Rs. 8.24 on account of difference in pension for the notice period, i.e., from 23-1-1962 to 24-3-1962,

A declaration was also claimed by him to the effect that he was entitled to a pension of Rs. 90.32 per mensem from the date of his retirement.

3. The suit was resisted by the State of Punjab on a number of pleas which gave rise to the following issues:--

1. Whether this Court has jurisdiction to entertain the present suit?

2. Whether the suit is not properly valued for purposes of court-fees and jurisdiction?

3. Whether the suit is within limitation?

4. Whether the present suit is barred by Pensions Act as alleged in para 2 of the preliminary objections of the written statement?

5. Whether the matters involved in the present suit are not justiciable as alleged in para 3 of the preliminary objections of the written statement?

6. Whether the notice u/s 80, C.P.C., is an invalid one?

7. Whether the plaintiff is entitled to recover a sum of Rs. 30,801.42 as arrears of pay for the period 13-3-1950 to 24-1-1959?

8. Whether the plaintiff is entitled to a pension at the rate of Rs. 90.32 per month as alleged in the plaint?

9. Whether the plaintiff is entitled to difference of pension amounting to Rs. 148.32 as claimed in the plaint?

10. Whether the plaintiff is entitled to difference of gratuity amounting to Rs. 151.90 as claimed in the plaint?

11. Relief.

4. The trial Judge came to the conclusion that the civil courts had jurisdiction to entertain the suit; that the suit was properly valued for purposes of court-fee and jurisdiction; that the suit was within limitation; that the suit was not barred by the Pensions Act; that the matters involved in the present suit were justiciable; that the notice u/s 80 of the CPC was valid; that the plaintiff was entitled to Rs. 3,801.42 as arrears of pay for the period 13-3-1950 to 24-1-1959; that he was also entitled to get a pension at the rate of Rs. 90.30 and not at the rate of Rs. 90.32 as alleged in the plaint; that the plaintiff was entitled to Rs. 147.60 and not Rs. 148.32 on account of the difference in pension; and that he was entitled to Rs. 151.90 on account of the difference in gratuity, it was also held that the plaintiff was entitled to Rs. 8.20 for the difference in pension for the notice period, i.e., from 23-1-1962 to 24-3-1962. As a result of these findings, the plaintiff was given a decree for the recovery of Rs. 4,109.12 and he was also granted a declaration that he was entitled to a monthly pension of Rs. 90.30 from the date of his retirement, i.e., 24-1-1959. The claim regarding interest on the decretal amount was, however, negatived. Against this decision, the present appeal has been filed by the State of Punjab.

5. The only contention raised by the learned counsel for the appellant was that the trial Judge was in error in holding that the plaintiff's claim regarding the arrears of his salary was within limitation. According to him, Article 102 of the Indian Limitation Act, 1908, applied to the recovery of these arrears and the limitation prescribed was three years from the date when the salary accrued due. He submitted that the suit was filed in April, 1962 and the claim with regard to the arrears of salary related to the period 13-3-1950 to 24-1-1959 when he retired. The said arrears accrued due to him more than three years before the institution of the suit. Under Article 102, a plaintiff can recover only the wages which had accrued due to him within three years of the filing of the suit. With regard to the order of the Governor dated 13-2-1961, Exhibit P-I, by which he accorded sanction to the fixation of the plaintiff's pay at Rs. 110 per mensem

with effect from 13-3-1950 in the grade of Rs. 100--10--200/10-250, his submission was, that it did not give him any Fresh period of limitation, because the wages had accrued due to him right from 13-3-1950 when, according to the plaintiff, he became entitled to the rate of pay claimed by him. If the Government was not making the payment according to that rate he could have filed a suit for their recovery within three years of the date they became due. Learned counsel argued that if an employee who was not being given proper salary by the Government brought a suit for a declaration that his salary be correctly fixed and for recovery of the arrears of pay on that basis and if that suit was ultimately decreed, he could not be given a decree for arrears of salary for more than three years. The order of the Governor, so argued the learned counsel, could not be placed on a higher footing than the decree of a civil court Reliance in this connection was placed on a Bench decision of this Court in Union of India (UOI) Vs. Ram Nath Chitroy, , where it was observed that by granting a declaration about the legality or illegality of dismissal the Court did not create any right in the plaintiff. It merely removed an illegal order from the way of the plaintiff. That would not affect the accrual of cause of action in any manner, and the cause of action would still arise on the day the salary for a particular period became due under the terms and conditions of employment.

6. It is common ground that Article 102 will apply, if the Government servant had to file a suit for the recovery of arrears of his pay. Such a suit has to be brought within three years from the date when the wages accrued due. When did the wages accrue due in the instant case? Admittedly, the plaintiff was working in the pay-scale of Rs. 80--8--220 and the next annual increment raising his pay from Rs. 88 to Rs. 96 per mensem fell due on 33-3-1949. He was to get his next increment on 13-3-1950 when he would have drawn Rs. 104 p er mensem. In the meantime, on 1-3-1950, is pay-grade was revised to that of Rs. 100--10--200/10--250. In spite of this, the Accountant-General, Punjab, decided that he was only entitled to get Rs. 100 in the revised scale with effect from 1-3-1950 and that he would get an increment of Rs. 10 per mensem every year from 1-3-1951. According to the plaintiff, however, he was to get Rs. 110 per mensem with effect from 13-3-1950 with an increase of Rs. 10 every year from 13-3-1951. It is undisputed that the Government and not the Accountant-General, Punjab, was the proper authority for fixing the plaintiff's pay in the new time-scale. The Government decided this matter-on 13-2-1961, vide Exhibit P-I, by which the claim of the plaintiff was admitted. If the decision of the Government had been against the plaintiff, it is only then that he could file a suit in a civil court. He could not go to the civil court earlier than that date because in that case, the same would have been dismissed as premature, because the proper authority, which had to fix his pay in the new time-scale, had not given and decision against him. It is only to challenge an adverse decision that one goes to a civil court to get it rectified. In the instant case, the appropriate authority had not given any decision against the plaintiff. The plaintiff's pay was rightly fixed on 13-2-1961 and consequently, it would be on this date that the

wages at the enhanced rate fell due to him. Admittedly, the suit was brought within three years from this date. The decision relied on by the learned counsel is of no assistance to the appellant. It is clearly distinguishable on facts. There the employee was dismissed from service with effect from 19th of January, 1952 and he brought a suit on 5th of March, 1957, challenging that dismissal and for recovery of arrears of pay. The trial court decreed the suit, but on appeal by the Union of India, this Court partly accepted the appeal, inasmuch as it confirmed the finding of the trial Court that the order of dismissal was illegal, but reduced the period for which he was entitled to get the arrears of salary to only three years and two months (for the notice period) before the institution of the suit. No such thing has happened in the instant case. As already mentioned above, it was for the first time on 13-2-1961 that the appropriate authority had fixed the salary of the plaintiff in the new time-scale and fortunately for him, the decision had been in his favour.

7. It may be mentioned that the learned counsel also wanted to argue that under the Pensions Act, the plaintiff could not file a suit for a declaration that he was entitled to get a particular pension every month. But, since in the instant case, it was agreed that if the plaintiff was entitled to the pay of Rs. 110 per mensem with effect from 13-3-1950 in the time-scale of Rs. 100--10--200/10--250, his pension would come to Rs. 90.30 per mensem with effect from 24-1-1959, learned counsel did not press this argument any further.

No other point was urged before us.

8. The result is that this appeal fails and is dismissed with costs.

A.N. Grover, J.

9. I agree.