

(2010) 04 P&H CK 0156

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Vishwa Mittar

APPELLANT

Vs

Govt. of Punjab and
Others

RESPONDENT

Date of Decision: April 20, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Judgement

Ranjit Singh, J.

Vishwa Mittar, who was working as JBT teacher in the S.D. High School, Anandpur Sahib, District Ropar has filed this Regular Second Appeal to impugn the order passed by the District Judge, Ropar. His grievance is about his pay fixation. Government of Punjab vide notification dated 18.10.1979 framed rules and regulations of pay scale of Government employees including the Government teacher. Secretary, Education to the Government of Punjab issued communication dated 21.01.1981 bringing the pay scale of teachers working in the privately managed schools at par with the Government teachers. It is averred that the District Education Officer while fixing the pay of the appellant in terms of instructions did not allow the increment as provided in proviso (ii) to Rule 7 of Sub-rule (1) of Pay Fixation Rules vide notification dated 18.10.1979. Rule 7 reads as under:

7(1) Date of increment in the revised Scale - The next increment of a Government employee whose pay has been fixed in accordance with Rule 6 shall be granted on the date on which he would have drawn his increment had he continued in the existing scale;

Provided that:

(i) Where the revised pay is fixed at the minimum of the time scale and on such fixation the revised pay exceeds the existing emoluments by more than Rupees Seventy-Five, the next increment shall be granted on the date it falls due in the revised scale.

(ii) The next increment shall be granted on the next succeeding day following the appointed day, to a Government employee whose pay fixed on the appointed day in the revised scale is at the same stage as the one fixed for another Government employee drawing pay at a lower stage than his in the same existing scale.

(2) In cases where a Government employee is held up at the maximum after completing the time scale, selection grade or extended scale, as the case may be, on or after the first day of January 1978, he shall be allowed exgratia biennial increments, unless it is withheld, not exceeding five such increments, at the rate of last increment in the relevant scale subject to the condition that in no case the pay shall exceed two thousand and four hundred rupees.

3. The appellant would claim that he was entitled to one increment on the succeeding day of the appointed day i.e. 02.12.1978. He accordingly served a legal notice claiming that he would be entitled to one more increment and then filed a suit.

4. The respondent contested the claim and filed a written statement. It is conceded that the pay scale of teacher working in the privately aided schools were brought at par with the teachers working in the Government schools. It is, however, denied that the appellant was entitled to any other increment as claimed by him. As per the instructions, the benefit of Rule 7(1)(ii) of the Revised Scales of Pay Rules, 1979 was not to be given to the employees of the aided schools while fixing the pay in the revised pay scale.

5. The trial Court framed the following issues:

1. Whether the plaintiff is entitled to the benefit of proviso (ii) to rule 7 Sub-rule 1 of the Punjab Civil Services (Scales of Pay) Rules 1979? OPP.

2. Whether the plaintiff is entitled to the declaration prayed for? OPP.

3. Whether the notice served by the plaintiff u/s 80 CPC is legal and valid. If not, to what effect? OPP.

4. Relief.

6. The trial Court decided issue No. 1 in favour of the appellant-plaintiff but, however, dismissed the suit primarily on the ground that there was no evidence that any person junior to the appellant was drawing more pay than him to entitle him to additional increment.

7. The State did not file any appeal to impugn the part of the judgment passed by the trial Court which went against it. The appellant, however, impugned the same by filing the first appeal.
8. Apart from making submission on merit, the application for leading additional evidence to prove on record the pay being drawn by some of the juniors was also filed before the First Appellate Court. This fact is noticed in para 5 of the impugned judgment. It is also noticed that the application was opposed by the respondent and it is further observed that the application would also be disposed of with the appeal.
9. Mr. Jain, however, would draw my attention to the impugned judgment where this application is neither dealt with nor disposed of in any manner. Counsel thus contends that no order on the application, was passed and the application has not been decided. Rather the counsel would also make a grievance that without there being any appeal filed by the State, the finding on issue No. 1 was reversed which even was not challenged before the First Appellate Court in any manner.
10. Without going into the pleas on merits, it may be noticed that the First Appellate Court was bound to decide the application for additional evidence either way. It was not appropriate for the First Appellate Court to decide the appeal without deciding the prayer for additional evidence that too in the manner as has been considered and decided.
11. Reference can be made to *Jatinder Singh v. Mehar Singh* AIR 2009 SC 354 where it is held that it is duty of the Court to deal with application for additional evidence on merits and when the court failed to take notice of the application so filed for additional evidence and to decide the same then the appeal has to be remitted back for a fresh decision along with the application of accepting additional evidence in accordance with law.
12. The First Appellate Court was to first decide the application for leading additional evidence as one of the issues which ultimately would regulate the decision in this case. Since the application for additional evidence is not considered and decided by the First Appellate Court, it would be appropriate to remand the case back to the First Appellate Court to decide this application afresh. It would also be a matter of consideration whether the First Appellate Court would have reversed the finding of the trial Court on an issue, which was not under any challenge before it.
13. One of the question of law arising in this case is, "Whether the Ld. Appellate Court erred in not deciding the application of the Plaintiff-Appellant for permission to produce additional evidence?" The impugned order is set aside. The case is remanded back to the First Appellate Court to decide the application for leading the additional evidence and thereafter decide the main appeal.