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(2011) 05 P&H CK 0286

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 4460 of 2009

M.L. Arora	APPELLANT
Vs	
D.H.B.V.N.L. and Others	RESPONDENT

Date of Decision: May 25, 2011

Citation: (2011) 131 FLR 263 : (2012) 2 LLJ 394 : (2011) 163 PLR 582

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

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.
Plaintiff M.L. Arora who was non-suited by the trial court but has been partly successful in the lower appellate court has filed the instant second appeal.

2. Plaintiff retired as Junior Engineer from the service of the defendants on 30.11.2003. The plaintiff alleged that he has not been paid his retrial benefits immediately on his retirement. Some amount was paid later on, on which he claimed interest. It was also alleged that defendants have withheld amount of Rs 1,61,392/- wrongly from the gratuity amount of the plaintiff alleging that the said amount is recoverable from the plaintiff on account of shortage of material and damage to transformers etc. The plaintiff in the suit challenged the withholding of the said amount claiming the said amount with interest.

3. The defendants pleaded that two show cause notices were issued to the plaintiff for missing parts of the damaged transformers worth Rs 35,829/- and for liability of the plaintiff to the extent of Rs 17,995/- out of compensation amount which had to be paid for non fatal accident of one Ravi Dutt. In addition thereto, some more amounts as detailed in the written statement were also due to be recovered from the plaintiff. Accordingly, withholding of amount of Rs 1,61,392/- from the gratuity amount of the plaintiff was sought to be justified.

4. Learned Additional Civil Judge (Senior Division), Rewari vide judgment and decree dated 23.7.2008 dismissed the plaintiffs suit. However, first appeal preferred by plaintiff has been allowed partly by learned Additional District Judge, Rewari vide judgment and decree dated 14.5.2009 and thereby the plaintiff has been allowed simple interest @ 7.5 % per annum on delayed payment of retrial benefits of the plaintiff from the date of retirement till payment. Defendants have also been directed to refund the amount of Rs 55,658/- out of withheld amount of gratuity, with interest @ 7.5 % per annum from the date of plaintiffs retirement till payment. Feeling still aggrieved, the plaintiff has filed the instant second appeal.

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

6. On 16.11.2010, it was observed that plaintiff-appellant retired on 30.112003 i.e. almost seven years ago. It appeared that there was no order of recovery of any amount from the gratuity of the plaintiff on the ground of alleged shortage of materials or loss caused by the plaintiff. Accordingly, the respondents were directed to file affidavit stating if any order of recovery had been passed against the plaintiff-appellant and if not why the matter had not been finalized for almost seven years since the retirement of the plaintiff and why the gratuity amount in question was being withheld without there being any order of recovery against him. After availing three adjournments for the purpose, respondents vide CM No. 37S6.C of 2011 placed on record affidavit of Ranbir Singh, Executive Engineer along with Annexures Al to A3. However, it was observed in order dated 21.3.2011 that documents Annexures A/2 and A/3 did not make any sense because vide document A/2 amount of Rs 4498.73 was shown to be net payable amount" to the plaintiff whereas according to document Annexure A/3, the same amount was shown to be, recoverable from the plaintiff. It was also not stated specifically whether any order for recovery of any amount from the plaintiff-appellant had been passed or not. Accordingly, Ranbir Singh Executive Engineer (deponent) and also Senior Accounts Officer who issued document Annexure A/2 were ordered to appear in person today in the Court. Accordingly, Ranbir Singh, Executive Engineer and Pardeep Lohan, Senior Accounts Officer are present in person. They have orally explained that Annexure A/3 is order dated 19.8.1999 whereby recovery of Rs 4498.75 was ordered from the plaintiff but inadvertently double recovery of said amount was made and therefore, vide letter Annexure A/2 dated 18.82005 the said amount was shown to be refundable to the plaintiff. The explanation appears to be satisfactory but the CM No. 3756.C of 2011 and affidavit of Ranbir Singh say something else. According to these documents, as per memo dated 18.8.2005, Annexure A/2, amount of Rs 1,56,893/- plus Rs 4,499/-(rounded off from Rs 4498.75) i.e. total amount of Rs 1,61,392/- was recoverable from the plaintiff. Thus, although according to Annexure A/2, an amount of Rs 4,499/- was payable to the plaintiff and should have been deducted from the amount of Rs 1,56,893/- which was allegedly recoverable from the plaintiff but in fact the amount of Rs 4,499/- has been added in the amount recoverable from the plaintiff. This is how defendants are functioning to harass their own retired employee.

7. Learned counsel for the respondents after seeking instructions from Ranbir Singh, Executive Engineer and Pardeep Lohan, Senior Accounts Officer states that no order for recovery of any amount from the plaintiff has yet been passed. Consequently, defendants have no right to withhold the disputed amount from the gratuity of the plaintiff. If any amount was recoverable from the plaintiff, necessary order in accordance with law should have been passed and only then any such amount could be withheld from the gratuity of the plaintiff. In the absence of any such order there is no justification for withholding the aforesaid gratuity amount. It is significant to notice that the plaintiff retired almost seven and half years ago. During this long period, defendants have not passed any order of recovery against the plaintiff. Even the instant suit was filed on 24.92004 i.e. almost seven years ago but even then the defendants have not moved. Obviously no officer of the defendants is suffering any personal loss or injury by the aforesaid inaction and only the plaintiff-appellant is feeling the pinch because his amount has been withheld.

8. For the reasons aforesaid, I find that substantial question of law arises in this second appeal as to whether the defendants are justified in withholding the gratuity amount of the plaintiff and finding of the courts below to the contrary (partly in favour of the plaintiff by the lower appellate court and partly against him) is perverse and illegal. For reasons already recorded the said substantial question of law is answered in favour of the plaintiff-appellant. Defendants are not justified in withholding the disputed amount of gratuity of the plaintiff without there being any order of recovery passed against him although almost seven and half years have elapsed since retirement of the plaintiff. This callous attitude of the defendants has to be strongly deprecated and necessary action in accordance with law is required to be taken against the guilty officials so that others like plaintiff do not suffer.

9. For the reasons aforesaid, the instant second appeal is allowed. Judgment and decree of the lower appellate court are modified. Plaintiff''s suit is decreed holding that the plaintiff is entitled to interest @ 7.5 % per annum on delayed payment of retrial benefits as granted by lower appellate court and also holding that the plaintiff is entitled to withheld amount of gratuity of Rs 1,61,392/- along with interest thereon @ 7.5% per annum from the date of plaintiffs retirement till payment. Defendants are directed to pay the same accordingly.

10. A copy of this judgment be sent to Chairman and Managing Director of Dakshin Haryana Bijli Vitran Nigam Limited, Hisar for taking appropriate disciplinary action in accordance with law against the guilty officials in the light of the observations made in the judgment.