

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No.1350 of 1989

Date of decision: 11.02.2015

Sukhdev Singh

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.V.K.Sharma, Advocate,
for the appellant.

Mr.Hitesh Pandit, Addl.A.G.Haryana.

Raj Mohan Singh, J.

1. The present regular second appeal was filed under Section 41 of the Punjab Courts Act. Framing of question of law was not necessary in the light of decision rendered by Full Bench of this Court in '**Ganpat versus Smt. Ram Devi and Ors. 1977 PLR Page-1**', wherein it was held that the provisions of Section 41 of the Punjab Courts Act, are in no way effected and curtailed by the amendment made in Section 100 of CPC. Now, since the regular second appeal is maintainable only with the aid of section 100 CPC, therefore, substantial questions of law is *sine qua non* for maintaining the appeal.

2. Prior to amendment of Section 100 CPC, a second appeal could have been filed before this Court on the grounds set out in clauses (a) to (c) of Section 100 (1) CPC i.e. (a) the decision being contrary to law or to some usage having the force of law; (b) the

decision having failed to determine some material issue of law or usage having the force of law and (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

3. Now the interference in the second appeal could only be made if substantial question of law arises in the case. Therefore, the interference cannot be only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim '*interest reipublicae ut sit finis litium*'. The underlined purpose was to bring finality to the issues/litigation at some point of time.

4. In the present appeal, the substantial question of law has not been framed. Thus the Court proposes to frame following substantial questions of law in order to test the legality of claim of appellants:-

1. Whether the plaintiff was entitled to the enhancement in substantive pay and his pay was required to be re-fixed in the substantive post of Steno Typist and not on the post of Junior Scale Stenographer?
2. Whether substantive post of the plaintiff as on 1.2.1981 was the post of Steno Typist or post of Junior Scale Stenographer particularly when the plaintiff was not confirmed on the post of Junior Scale Stenographer?
3. Whether the pay of the plaintiff was to be re-fixed in

terms of Rule 6 of the Haryana Civil Services (Revised Scales of Pay) Rules 1980?

5. Plaintiff is in appeal against the judgment and decree dated 7.3.1989 passed by the Additional District Judge-I, Faridabad vide which the judgment and decree dated 21.9.1987 passed by the Sub Judge IIIrd Class, Faridabad was set aside and the suit of the plaintiff was dismissed.

6. Plaintiff filed suit for declaration to the effect that the pay scale fixed by the defendants in respect of post of the plaintiff was wrong and the plaintiff was entitled to basic pay of ₹ 760/- with usual allowances from the date of filing of the suit with other regular increments as a consequential relief with a direction to the defendants to release the arrears of salary, which was wrongly withheld and paid less to the plaintiff.

7. The case of the plaintiff was that he was appointed as Steno Typist on 9.10.1975 in the pay scale of ₹ 110-225/- plus special pay of ₹ 25/-. On 26.12.1978, plaintiff was promoted to the post of Junior Scale Stenographer on officiating basis in the pay scale of ₹ 140-280/- and his pay was fixed at ₹ 158/-. On 3.10.1979, the plaintiff passed the examination of Bachelor of Arts and was given two advance increments. The pay scale of Stenographer was revised w.e.f. 1.4.1979 to ₹ 480-760/- and the pay of the plaintiff was fixed at ₹ 525/-. The plaintiff was holding the substantive post of Steno Typist. The pay of the plaintiff on the post of Junior Scale Stenographer as a consequence of revision of pay scale, should have been fixed at ₹ 570/- taking into account the pay of the

substantive post of the plaintiff, but the defendants-respondents fixed the pay of the plaintiff at ₹ 540/-, which was on lower basis.

8. On 25.9.1980, the plaintiff was promoted to the post of Senior Scale Stenographer and his pay was fixed at ₹ 555/-. The plaintiff was neither confirmed on the post of Junior Scale Stenographer nor on the post of Senior Scale Stenographer.

9. In the year 1983, the special pay of ₹ 25/- on the post of Steno Typist was enhanced to ₹ 50/- and the said enhancement was implemented w.e.f. 1.2.1981. Since the plaintiff was a confirmed Steno-Typist, though holding higher post on officiating basis, his pay as Junior Scale Stenographer should have been fixed on higher side keeping in view the substantive pay of plaintiff on the post of Steno Typist. According to the plaintiff, his pay should have been fixed at ₹ 600/- on the post of Junior Scale Stenographer and ₹ 620/- on the post of Senior Scale Stenographer. Taking into consideration the aforesaid, the pay of the plaintiff should have been fixed at ₹ 760/- w.e.f. 1.6.1986.

10. Notice of the suit was issued to the defendants and they contested the suit on all customary grounds. The defendants alleged that once the pay of the plaintiff was fixed at ₹ 525/- as Junior Scale Stenographer on 5.3.1981, his pay on the post of Steno-typist lost its existence and the plaintiff was only entitled to get regular increment on the pay scale of Junior Scale Stenographer. The instructions of the department were applicable only in those cases where incumbent had been promoted to higher post before 1.2.1981. Plaintiff was, however, promoted on the post of Senior Scale Stenographer on

25.9.1980 and, therefore, on 1.2.1981, plaintiff had advanced two steps from the post of Steno Typist and, therefore, he could not have the benefit of those instructions. The case was rejected by the defendant department.

11. Plaintiff filed replication and on the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether the plaintiff is entitled to be given the pay as per pay scale of ₹ 760/- as basic salary with usual allowances if so to from which date and to what effect ?

OPP

2. Whether the present court has no territorial jurisdiction to try this suit ? OPP

3. Whether the suit is not maintainable in the present form ? OPD

4. Whether the plaintiff is estopped by his own acts and conducts to file the present suit ? OPD

5. Relief ?”

12. Trial Court decreed the suit vide judgment dated 21.9.1987 and held that the pay scale fixed by the defendants in respect of post of the plaintiff was wrong and the plaintiff was entitled to get basic pay of ₹ 760/- with usual allowances on the date of institution of the suit along with other regular increments, which were due.

13. The defendants went in appeal and the lower Appellate Court, vide judgment and decree dated 7.3.1989 accepted the appeal, thereby, dismissing the suit of the plaintiff in appeal. The

lower Appellate Court held that the substantive post of the plaintiff as on 1.2.1981 was Senior Scale Stenographer i.e. two steps ahead of substantive post of Steno Typist. The lower Appellate Court swayed away with the aforesaid fact that the plaintiff was not entitled to claim benefit of letter dated 6.10.1981 issued by the Finance Department, Government of Haryana. The lower Appellate Court opined that once the plaintiff was promoted as Senior Scale Stenographer w.e.f. 25.9.1980 from the post of Junior Scale Stenographer, the plaintiff cannot be allowed to urge that his substantive post was still the post of Steno Typist. The substantive post of the plaintiff was treated to be the post of Junior Scale Stenographer and not the post of Steno Typist. Therefore, the benefit of letter dated 6.10.1981 was not held applicable qua the case of the plaintiff and the plaintiff was not held entitled to the special pay of ₹ 50/- w.e.f. 1.2.1981 nor the plaintiff was entitled for the merger of special pay of ₹ 50/- in his basic pay.

14. I have considered the submissions made by learned counsel for both the parties and have perused the record.

15. Before advertng to the merit of the case, it is relevant to take stock of the position of rule. Rule 4.14 of the Punjab Civil Services Rules is being reproduced here as under:-

“4.14 (1) Subject to the provisions of Rules 4.13 and 4.16 a Government employee who is appointed to officiate in a post shall draw the presumptive pay of that post. (2) On an enhancement in the substantive pay, as a result of increment or otherwise, the pay of such Government employee shall be re-fixed under sub-rule (1) from the

date of such enhancement as if he was appointed to officiate in that post on that date where such re-fixation is to his advantage.

In sub rule 2 of aforesaid rule 4.14 as is applicable to State of Haryana, it has been clearly laid down that on enhancement in a substantive pay as a result of increment, the pay of the employee shall be re-fixed under sub rule 1 from the date of such enforcement as if he was appointed to officiate in that post on that date where such re-fixation is to his advantage.

16. Admitted case of the parties is that the plaintiff was holding a substantive post of Steno Typist and in view of rule 4.4 (c) of CSR, Vol.I, Part I as applicable to State of Haryana, the pay of the plaintiff was to be fixed at ₹ 760/-. According to this rule, where an employee holding a post in officiating capacity is promoted in officiating capacity to another post carrying duties and responsibilities of greater importance then his official pay in the time scale of the higher post shall be fixed at the stage next above his pay drawn by him in the lower post. Since the plaintiff was holding substantive post of Steno Typist, on his promotion to higher post, he was entitled to get benefit of special pay of Steno Typist and consequential fixation of pay thereof.

17. Plaintiff having been promoted two steps higher to the post of Steno Typist, the Appellate Court had assumed that once the employee promoted to higher post then he lost his lien on the lower post even though he was not confirmed on the higher post. It was admitted position that the plaintiff was holding a substantive post of

Steno Typist as on 1.6.1980 according to the statement of DW-1 Gurdial Singh. The analogy that on promotion to the post of Senior Scale Stenographer w.e.f. 25.9.1980, the post of Junior Scale Stenographer became the substantive post of the plaintiff as on 25.9.1980 and, therefore, the plaintiff ceased to have post of Steno Typist as his substantive post, was not the correct interpretation of thing and was against the law of substantive post in service jurisprudence. An employee cannot claim substantive appointment to a particular post unless and until he is confirmed on that post.

18. According to letter Ex.P-15, the qualification of graduation was acquired by the plaintiff during the period of 1.4.1979 to 20.2.1980 and therefore, benefit of two advance increments was to be granted while fixing the pay in revised pay scale. Plaintiff having acquired such qualification as on 3.6.1979 was entitled to the benefit of two advance increments towards his fixation of pay in the revised scale.

19. A perusal of letter dated 20.1.1983 issued by the Finance Department (Ex.P-4) reveals that there was reference of letter dated 6.10.1986 vide which the special pay attached with the time scale of Steno Typist was enhanced from ₹ 25/- to ₹ 50/- per month w.e.f. 1.2.1981. The doubts which were created in some departments were sought to be removed by expressing that in such cases, where special pay in respect of same post has been enhanced, the rate of special pay to be taken into account for the purpose of fixation of pay in the higher post should be the one drawn immediately before the date of promotion subject to fulfilment of other conditions governing

the fixation of pay in the higher post as laid down in Government instructions. The pay of those Steno Typists promoted to the higher post before 1.2.1981 may be re-fixed w.e.f. 1.2.1981 if it is more advantageous to them. In other words once the initial pay in the higher post is fixed on the date of actual promotion, any benefits allowed in the lower post because of pay revision will be treated on the same basis as envisaged in rule 4.14 (2) of the P.C.S.R. Vol.I, Part I. Apparently, the interpretation of aforesaid rule was explained in the letter Ex.P-4.

20. This Court has examined the relevant facts on record with the able assistance of both the learned counsel for the parties. The grievance of the plaintiff is that on fixation of his pay in the revised pay scale w.e.f. 3.6.1979, should have been in the substantive post of Steno Typist. Since the plaintiff was holding the higher post in officiating post as Junior Scale Stenographer, therefore, Haryana Civil Services (Revised Scales of Pay) Rules 1980 are applicable to the case of the plaintiff. According to the aforesaid rules precisely rule 6 of the said rules, inter alia, provides:

“1. The initial pay of the Government employee in the revised scale shall, unless in any case it is otherwise directed, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien

XXXX

XXXXX

XXXXX

XXXXX

(5) If pay as fixed in higher officiating post under sub-rule

(1) above is lower than the pay as fixed in substantive

post or a lower officiating post, officiating pay shall be refixed at the stage next above the substantive pay or the lower officiating pay, as the case may be.”

21. A perusal of the aforesaid provisions covers the case of the plaintiff. If the fixation of pay of the plaintiff in the pay scale of officiating post held by him is fixed then his pay would be less than the amount of pay which on refixation in the revised scale of pay on the substantive post would have been made. The revision of pay w.e.f. 3.6.1979 prescribes that the pay has to be fixed in the pay scale of the substantive post of Steno Typist and when it is noticed that his pay in the substantive post is higher than the pay of the officiating post, then the pay in the officiating post shall be re-fixed at a stage next above the substantive pay which is so fixed. According to this Court, the aforesaid is the correct interpretation of rule and covers the cause of the plaintiff. The plaintiff was entitled to the revision of pay of his substantive post i.e. post of Steno Typist and the enhancement in terms of two advance increments was to be counted in the pay for the purposes of fixation of pay on the post of Steno Typist i.e. feeder cadre and the addition of special pay to the tune of ₹ 50/- w.e.f. 1.2.1981 was also legally required to be added to the pay scale of the substantive post. In this way, the requirement of rule would be satisfied. It is relevant to point out here that the plaintiff already stood retired, therefore, it is held that the plaintiff was entitled to all the consequential benefits on such refixation and arrears.

22. In view of aforesaid, the substantial questions of law No.1 to 3 are answered in favour of the plaintiff and he is entitled for

addition of two advance increments on passing Bachelor of Arts in the pay, which was to be refixed in the feeder cadre along with enhancement of special pay from ₹ 25/- to ₹ 50/- w.e.f. 1.2.1981.

The cumulative effect of all the aforesaid facts are that the plaintiff should have been held entitled revision of pay of his substantive post of Steno Typist by adding two advance increments on passing graduation and enhancement of special pay of ₹ 50/- w.e.f. 1.2.1981.

23. Hence, this appeal is allowed. The impugned judgment and decree dated 7.3.1989 passed by the lower Appellate Court is set aside. Consequently, the judgment dated 21.9.1987 passed by the trial Court is ordered to be restored. However, parties to bear their own costs.

(RAJ MOHAN SINGH)
JUDGE

February 11, 2015
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