

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Regular Second Appeal No.2356 of 1995 (O&M)
Date of decision : 28.04.2015**

Punjab State through Collector District Bhatinda & others

...Appellants

versus

Vasdev

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab for the appellants.

Mr. Pawan Kumar, Senior Advocate with
Mr. Anshuman Mandhar, Advocate for the respondent.

RITU BAHRI, J (Oral)

State of Punjab has come up in regular second appeal against the judgment and decree dated 17.05.1995 whereby the lower appellate Court has accepted the appeal filed by the plaintiff and decreed the suit.

The plaintiff had filed a suit that he was entitled to get his pay fixed in the grade of Rs.110-250/- with effect from 01.11.1956 and was entitled to the arrears with interest and had also challenged the orders dated 09.07.1991 whereby his pay was reduced from Rs.2,640/- to Rs.2,460/- per month and a sum of Rs.30,515/- was recovered illegally.

The case of the plaintiff was that he joined service on 04.10.1954 on basic pay of Rs.40/- and he passed F.S. Non-medical on

12.11.1954, JBT on 21.09.1957 and was granted the grade of JBT teacher Rs.60-120. It was stated that the plaintiff passed BA on 01.12.1962 and became entitled for the basic pay of Rs.110/- with effect from 13.06.1964 and he was granted grade of Rs.110-250. It was alleged that the plaintiff was allowed JST grade by the Punjab Education Department, vide No.22(1)/I/Ed.II/2902-3 dated 13.06.1990 in order to implement the judgment of Hon'ble Supreme Court of India decided on 23.02.1988 and he was given JST grade with effect from 12.11.1954, vide No.DPI.Pb.Chandigarh No.8086-12/26-90-ES-III(3) dated 07.12.1990 and pay of the plaintiff was fixed with effect from 12.11.1954, but the arrears were drawn for 38 months prior to the issuance of Government instructions dated 19.02.1979. In the light of the above directions, the plaintiff was given an arrear of Rs.29,431/- with deduction of Rs.5,000/- into his GPF. It was alleged that the plaintiff was still entitled to 110-250 grade instead of 80-250 and recovering of Rs.30,515/- on various grounds including the order was illegal non-speaking one and reduction of the pay was a penalty as enumerated in Rule 5 of the Punjab Punishment and Appeal Rules, 1970 and no opportunity was given to the plaintiff to explain his case. Hence the suit.

The appellants/respondents before the trial Court resisted the claim of the plaintiff by raising few preliminary objection inter alia i.e. that a bonafide mistake can be corrected without observing the principles of natural justice; that plaintiff was not entitled to scale 110-

250 and he was entitled for scale of Rs.80-250; that the suit of the plaintiff was liable to be dismissed for want of notice under Section 80 of the CPC. On merits, it was admitted that plaintiff passed BA examination on 01.12.1962 but stated that he was entitled to JST scale of 80-250 with effect from 21.09.1957. It was stated that plaintiff was working against the post of JBT teacher on 01.12.1952 and not against the post of untrained mathematics master. Therefore, he was not entitled to scale of Rs.110-250. It was admitted that circulars dated 13.06.1990 and 07.12.1990 had been issued by the State Government. The plaintiff had been granted JST Grade on 12.11.1954 and arrears amounting to Rs.29,431/- were paid to him on 06.03.1991. Plaintiff was granted JST grade on 12.11.1954 due to bonafide mistakes as that scale came into existence only on 23.07.1957. The orders of the Hon'ble Supreme Court was to be implemented with effect from 01.05.1957, therefore, question of allowing the JST grade to the plaintiff with effect from 12.11.1954 did not arise at all. The plaintiff had remained on leave without pay on 01.05.1957 from the date from which he became entitled for JST Grade and he joined on 21.09.1957 after passing the JBT course. Therefore, he was entitled to JST grade of Rs.80-250/- with effect from 21.09.1957 instead of 12.11.1954. It was also stated that due to the bonafide mistake, the plaintiff had rightly been issued the notice regarding the reduction of the pay scale and recovering the amount of Rs.30,515/-.

The trial Court, after going through the evidence led by

the parties, dismissed the suit, however, the lower appellate Court decreed the suit of the plaintiff on the ground that the recovery had been effected based on audit report and in the audit report it was mentioned that the pay of plaintiff was wrongly fixed. The lower appellate Court has referred to the judgment of the Hon'ble Supreme Court in the case of **Sahib Ram Vs. State of Haryana 1955 (1) SCT 668** in which it was held that if upgraded pay scale has been released by mistake and not on misrepresentation of instructions and there is no fraud by the employee, the amount cannot be recovered.

Recently, the Hon'ble Supreme Court in the case of **State of Punjab & ors. Vs. Rafiq Masih (White Washer) etc. 2015 (1) SCT 195** has laid down criteria for effecting recovery from the employees who had been granted benefit of higher pay scale not on account of misrepresentation or fraud. Relevant part of the judgment is reproduced below:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be 20 that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

The case of the respondent falls in the category (ii) and he is above 80 years of age and has retired.

The State appeal is dismissed.

28.04.2015
Vinay

(RITU BAHRI)
JUDGE