

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

RSA No.4074 of 2011(O&M)

Date of Decision: 22.07.2015

Kesh Ram Garg

.....Appellant

Versus

State of Punjab & others

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. H.S. Virk, Advocate for the Appellant.

Mr. Vaibhav Sharma, DAG Punjab.

RITU BAHRI, J.

Plaintiff-appellant has preferred the present second appeal against the judgment of reversal dated 04.08.2011 passed by the District Judge, Sangrur, whereby appeal filed by the defendants-respondents against the judgment and decree dated 28.10.2010 passed by the Civil Judge (Senior Division), Sangrur, has been accepted and his suit for declaration and mandatory injunction has been dismissed.

Brief facts necessary for disposal of the present second appeal are that plaintiff joined the services of Language Department of the Punjab State on 08.12.1976 as Clerk on regular basis. Plaintiff was placed in the pay scale of Rs.510-800/- as Senior Clerk w.e.f. 2.3.1983 and was promoted as Junior Assistant on 15.12.1986. He was further promoted as Senior Assistant on 6.5.1988 and was again confirmed by the Department.

Services of the plaintiff-appellant were governed under the Punjab Civil Services Rules. As per plaintiff-appellant, his work and conduct was quite satisfactory through out his service carrier and no adverse remarks were ever conveyed to him. Plaintiff-appellant was sent on deputation while working as Senior Assistant with the Language Department, Punjab vide office order No.16 dated 16.1.2004 as Superintendent in the pay scale of Rs.6400-10640/- with Consumer Disputes Redressal Forum, Sangrur. He joined as Superintendent in the said department on 21.01.2004, which post was of higher duty and responsibility. It was further submitted that plaintiff-appellant had been absorbed as Superintendent Grade-II with the State Consumer Disputes Redressal Commission, permanently and order to this effect was on 24.01.2007. The Punjab Government had allowed proficiency step up increments known as PROP Scheme to its employees w.e.f. 1.1.1986 after completion of 8 & 18 years of service. Again the ACP Scheme was announced and made effective w.e.f. 1.1.1996, according to which, the employee of the State Government based upon good service record was made entitled for four extra increments through out his service carrier after completion of 8, 16, 24, 32 years of service. The State Government, vide notification No.7/60/2006-5PPT/15963 dated 3.11.2006, had amended the ACP Scheme and according to amended Scheme, every employee was made eligible for three extra increments on completion of 4, 9, 14 years of service in a cadre. Plaintiff-appellant adopted the said amended scheme by giving affidavit on a non-judicial stamp paper within the prescribed period and sent the said option to Director Language Department, Patiala vide letter No.411 dated 7.9.2007 through District Consumer Disputes Redressal Forum, Sangrur. On completion of 16 years of service as Senior Assistant on

6.5.2004, the plaintiff became entitled for second PROP increment, which was not sanctioned by the Language Department and had been rejected illegally vide letter dated 19.6.2004. Plaintiff-appellant being employee of language Department upto 31.01.2007 as Senior Assistant was never promoted to the post of Superintendent Grade-II and as such the option in the amended ACP scheme was to be carried out by the defendant No.2, who had wrongly rejected the case of the plaintiff-appellant vide letter dated 19.06.2006 on the pretext that plaintiff had been promoted as Superintendent, whereas he was never promoted by the Language Department and his term for deputation was only for two years and the plaintiff was liable to be reverted to his parent department as Senior Assistant. It was further submitted that the pay of the plaintiff was not being fixed according to the amended ACP Scheme by defendant No.2 and he was being forced to receive less salary than his entitlement. Hence, the present suit.

Upon notice, defendant Nos.1 & 2 filed their joint written statement stating therein that pursuant to letter No.SCEDR/PB/SA-III/03/7819 dated 20.11.2003 circulated by the State Consumer Dispute Redressal Commission, Punjab, plaintiff gave his consent to join as Superintendent, which was sent to defendant No.3-department. It was further stated that defendant No.3 selected the plaintiff-appellant as Superintendent and accordingly defendant No.2 issued the appointment letter in favour of the plaintiff, whereupon joined defendant No.3-department on 20.01.2004 as Superintendent in the pay scale of 6400-10640/-. It was further admitted that plaintiff had worked with the Language Department as Senior Assistant upto 19.01.2004. The factual

position was that the plaintiff was promoted as Senior Assistant on 6.5.1988 and got his 8 years Proficiency Step up w.e.f. 6.5.1996 during his service in the Language Department, Patiala. It was further submitted that plaintiff had gone on deputation as Superintendent in the pay scale of 6400-10640. He did not complete his 16 years regular service as Senior Assistant on 6.5.2004, but his cadre of Senior Assistant was changed on 20.01.2004, when he joined as Superintendent with Consumer Forum. As per instructions dated 25.09.1998 regarding implementation of the recommendations of Fourth Pay Commissioner under, "Assured Career Progression Scheme" plaintiff was not entitled for proficiency step up because he had shifted to Consumer Forum, Sangrur as Superintendent in the pay scale of 6400-10640 w.e.f. 20.01.2004 and left the Language Department on 19.01.2004. It was further submitted that case of the plaintiff was not covered under the instructions for providing him the benefit of 16 years proficiency increment.

In separate reply filed by defendant No.3, it was stated that vide order dated 24.12.2003, bearing endorsement dated 30.12.2003, plaintiff was appointed as Superintendent against a temporary post, the continuation of which was being accorded by the State Government from year to year, on deputation basis for a period of two years extendable upto three years in the District Consumer Forum, Sangrur, in the pay scale of Rs.6400-10640 plus usual allowances (without deputation allowance) as admissible as per Government Rules and Regulations. The plaintiff-appellant was liable to be reverted at any time to his parent department without any prior notice or without assigning any reason. It was further submitted that plaintiff-appellant resumed his duties on 20.01.2004. He was neither promoted nor

given officiating promotion as Superintendent by the defendant No.3. It was further submitted that the case of the plaintiff was not covered under the provisions prescribed in Rule 4.13 of the Punjab Civil Services Rules Volume-1, Part-1.

Replications were filed wherein the entire contents of the written statements were denied. From the pleadings of the parties following issues were framed:-

1. *Whether plaintiff is entitled to declaration that he is entitled to second PROP increment from 6.5.2004 on completion of 16 years of service as Senior Assistant?OPP.*
2. *Whether plaintiff is entitled to additional increment from 20.01.2004 for higher responsibility from the date of joining as Superintendent?OPP.*
3. *Whether plaintiff is also entitled for salary as accrued due to him after fixation of his pay according to revised ACP along with interest at the rate of 12%?OPP.*
4. *Whether the plaintiff has no cause of action to file the present suit?OPD.*
6. *Relief.*

Trial Court, after going through the evidence led by the parties, came to a conclusion that the plaintiff was an employee of the Language Department-defendant No.2 up to 31.01.2007 as Senior Assistant. He was never promoted by the Language Department to the post of Superintendent Grade-II and hence, the option for amended ACP scheme was to be carried out by defendant No.2. Plaintiff (appellant) was absorbed by the State Consumer Dispute Redressal Commission as Superintendent Grade-II w.e.f. 24.01.2007. Before 24.01.2007, he was liable to be reverted to his parental department i.e. Language Department. The State Government had sanctioned the ACP Scheme w.e.f. 01.11.2006, for which, the plaintiff-

appellant had given his option. If the plaintiff was liable to be reverted back to the parent department before 23.01.2007, then it was the Language Department-defendant No.2, which was liable to give second PROP increment to the plaintiff after completion of 16 years service as Senior Assistant. The trial Court had rejected the plea of Language Department that the plaintiff had left the said department on 21.01.2004, therefore, his case was not covered under the instructions providing for 16 years of proficiency increment. Finally, it was observed that the Language Department was liable to give second PROP increment to the plaintiff w.e.f. 06.05.2004. Accordingly, issue No.1 was decided in favour of the plaintiff.

Issue No.2 was also decided in favour of the plaintiff to the effect that he was entitled to additional increment of higher responsibility from the date of joining as Superintendent i.e. 20.01.2004. As per deposition of Suresh Pahwa (DW2), Malkiat Singh Dhillon and Manjit Kaur had joined the department on deputation basis as Superintendent(s). In the previous department(s), they were working as Senior Assistants. After their joining as Superintendents on deputation basis, they were given increments. As per Rule 8 of the Punjab Civil Service Rules, one increment is to be given when an employee is posted on the post of higher responsibility. Hence, the plaintiff-appellant was held entitled to get one additional increment from the date of his joining with State Consumer Dispute Redressal Commission-defendant No.3 i.e. 20.01.2004. Representations (Ex.P-19 and Ex.P-20) made by the plaintiff were rejected wrongly. With the above observations, the trial Court decreed the suit of the plaintiff and held him entitled for second PROP increment w.e.f. 06.05.2004 after completion of 16 years of service as Senior Assistant and additional

increment of higher responsibility on his joining as Superintendent with defendant No.3 w.e.f. 20.01.2004 along with interest at the rate of 9% per annum. Plaintiff was further held entitled for salary after fixation of his pay as per revised ACP Scheme notified by the State vide letter dated 03.11.2006 and additional increment w.e.f. 20.01.2004 of higher responsibility.

On appeal, the lower appellate Court reversed the findings of the trial Court and dismissed the suit of the plaintiff-appellant. While accepting the appeal of the defendants-respondents, the lower appellate Court had examined the provisions of Rule 10.21 (1) (ii), Chapter X of Punjab Civil Services Rules, Volume 1, Part I, which reads as under:-

“The transfer of an employee from one department to another department under the Punjab Government will not be considered as deputation and no deputation allowance will be admissible.”

As per aforesaid rule, transfer of a Punjab Government employee from one department to another would not be considered as deputation. In the case of the plaintiff-appellant, no deputation allowance was given to him. He was appointed on the post of Superintendent in District Consumer Disputes Redressal Forum, Sangrur (for short “DCRDF, Sangrur”), in the scale of Rs.6400-10640/-. Since the said posting was not on deputation, it would be considered as the post carrying higher scale of pay under the Government of Punjab. Once, the plaintiff-appellant had been appointed on the post of higher pay scale, he could not claim proficiency step up after completion of 16 years of service on 06.05.2004 as he had already joined as Superintendent in the DCRDF, Sangrur in the forenoon of January 20, 2004. There was a gap of four months to complete 16 years. The plaintiff would have completed 16 years in the Language

Department on 06.05.2004, but prior to this date, he was appointed on the post of higher pay scale i.e. Superintendent on 20.01.2004. Since he did not complete 16 years of service as Senior Assistant in the Language Department, he was not entitled for grant of PROP increment. The lower appellate Court has returned a finding that, whether the plaintiff-appellant was working in the Language Department or State Consumer Disputes Redressal Commission-respondent No.3, the mere fact that he was granted higher pay scale, disentitled him for grant of benefit of PROP Scheme. The pay scale of Senior Assistant was Rs.5800-9200 and the stagnation was broken when the plaintiff-appellant was appointed as Superintendent with defendant No.3-department in the scale of Rs.6400-10640. Thereafter, while considering the claim of the plaintiff-appellant for an additional increment on his appointment against higher post of Superintendent in the pay scale of Rs.6400-10640, the reference was made to Rule 4.4 (a) of Chapter IV of Punjab Civil Services Rules, Volume 1, Part I, which reads as under:-

“4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

- (a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended;
- (i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purpose of rule 4.13) than these attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;
- (ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference; and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time

scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay;

(iii) when appointment to the new post is made on his own request under rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.

A perusal of the above rules shows that in order to draw an additional increment, the plaintiff-appellant had to show that on his appointment to the new post, the maximum pay in the time-scale of that post was less than his substantive pay in respect of the old post and then, he could draw that maximum pay as initial pay on the new post. The plaintiff-appellant has not chosen to state in the plaint the exact stage at which he was drawing pay in the scale of Rs.5800-9200 as Senior Assistant. On being appointed as Superintendent in the pay scale of Rs.6400-10640, he was not drawing the pay less than that of the old post. In the plaint, he has not made any averment as to how under Rule 4.4 (a) (ii), he was entitled to an additional increment on being appointed as Superintendent.

Apart from the above facts, the request of the plaintiff-appellant for grant of proficiency step up under the Assured Career Progression Scheme was rejected vide order dated 19.06.2006 (Ex.P7) and his request for grant of an additional increment in the pay scale of Rs.6400-10640 was rejected vide order dated 25.02.2005 (Ex.P23). Neither the plaintiff-appellant challenged these orders before the departmental authorities nor in the civil suit filed. In the absence of any challenge to these orders, the suit of the plaintiff-appellant could not be decreed. Learned counsel for the appellant-plaintiff has not been able to show that the minimum scale of the post of Superintendent is less than his substantive pay in respect of the old post i.e. Senior Assistant in the Language Department. The lower appellate

Court has given a specific finding that the pay scale of the old post of Senior Assistant in the Language Department was 5800-9200 and the pay scale of the post of Superintendent in the office of defendant-respondent No.3 was Rs.6400-10640.

After going through the impugned judgment passed by the lower appellate Court, this Court is of the view that since the pay scale of plaintiff-appellant on being promoted as Superintendent in respondent No.3-department was higher than the scale of Senior Assistant, on which post he was working in the Language Department, therefore, he could not claim additional increment of higher responsibility as well as the benefit of PROP Scheme. Hence, the suit of the plaintiff-appellant has been rightly dismissed after appreciation of evidence in the right perspective. No illegality, much less perversity has been found in the judgment passed by the lower Appellate Court, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

July 22, 2015
ajp