

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

RSA No.4499 of 2011 (O&M)

Date of decision : 29.10.2015

Joginder Singh

...Appellant

Versus

UHBVNL and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. K.L. Dhingra, Advocate for the appellant.

Mr. Mohnish Sharma, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal, whereby Civil Court vide judgment and decree dated 28.03.2008, had dismissed the suit. However, the Lower Appellate Court partly decreed the suit by directing that defendants are liable to pay emoluments to the plaintiff from the date he assume the charge of the post of JE/F till he worked as such upto his retirement i.e. 30.06.2002 and vis-a-vis the claim of ₹1,67,796.80/-, has been dismissed.

Mr. K.L. Dhingra, learned counsel appearing on behalf of appellant-plaintiff submits, that the undertaking given by the appellant-plaintiff cannot be treated as estoppel as the Department has not given any information, much less, cogent reasons for withholding the retiral benefits

aforementioned. The appellant-plaintiff has not been charge sheeted, much less, no enquiry has been held and, therefore, the Department could not withhold the retiral benefits and prays that impugned judgment and decree of the lower Appellate Court be modified and respondent be directed to pay the aforementioned amount.

Mr. Mohnish Sharma, learned counsel appearing on behalf of respondents-defendants submits, that the plaintiff in cross-examination admitted that he vide writing dated 22.07.2002 Ex.D1 and Ex.D2 admitted that recovery be made from him and whatever the recovery was made from him, the same was correct, therefore, he was not entitled to alleged amount. The Lower Appellate Court on finding the aforementioned admission in the cross-examination, declined such relief.

I have heard learned counsel for parties and appraised the paper book.

The Lower Appellate Court while dealing with the contentions gave following findings:-

“11. After hearing the arguments of both the sides and going through the case file, it has been observed that insofar as the recovery of amount of Rs.1,67,796.80 is concerned, the same is perfectly legal and valid and in this regard the statement of plaintiff Joginder Singh in his cross-examination himself, is very material because he has stated that vide writing dated 22.7.2002 a copy of which has been proved on the file as Ex.D1 as well as Ex.D2, he had admitted that the recovery be made from him. He has also admitted in his further cross-examination that whatever recovery was made from him, the same was correct. As such, it cannot be said that the recovery of

*Rs.1,67,796.80 is illegal in any manner. There is no dispute about the observations made in **Om Parkash Versus State of Haryana and another**, 1998(1) Judicial Reports (Labour and Services) 595 (P&H), **Narinder Dev Sharma Versus State of Punjab and another**, 1996(1) SCT 623 (P&H), **Kashmir Singh and others Versus State of Punjab and others**, 2003(3) RSJ 388 (P&H), **Amar Nath Versus The State of Haryana and another**, 2001(1) RSJ 357 (P&H) and **Madan Lal Versus State of Punjab and others**, 2003(1) RSJ 732 (P&H) that when the competent authority has not passed any order after hearing the petitioner that any amount is due against him, it cannot be said that he is actually liable to pay any such amount and further that the order of recovery can only be passed after following the procedure prescribed under the Rules but the same are of no help to the case of the plaintiff because in this case the plaintiff himself in his cross-examination has admitted that whatever recovery was made from him, was correct.”*

I do not intend to differ with the findings in view of categorical admission and undertaking. The factum of executing and undertaking was also not disclosed in the suit and this fact had surfaced from during the cross-examination. In my view, the findings of the Lower Appellate Court declining the relief of payment of ₹1,67,796.80/- along with interest is fair, legal and justified. There is no illegality and perversity, much less, no substantial question of law arises for determination.

Accordingly, the appeal is dismissed.

29.10.2015

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(AMIT RAWAL)
JUDGE