IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.991 of 2015 (O&M)
Date of decision:20.03.2015

State of Punjab and others

...........Appellants

Versus

Surjit Singh

...........Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Ritu Bahri, J.

CM No.2956-C of 2015

For the reasons mentioned in the application, same is allowed and delay of 33 days in filing the appeal is condoned.

RSA No.991 of 2015

This appeal has been filed against the judgment dated 05.11.2014 passed by the Additional District Judge, Pathankot, dismissing the appeal filed by the defendant-appellants against the judgment and decree dated 27.09.2010 passed by the Civil Judge (Junior Division), Pathankot, whereby suit filed by the plaintiff-respondent has been decreed.

Surjit Singh-plaintiff (respondent herein) was retrenched from Shah Nehar Project on 23.04.1984. Thereafter, he joined RSD Project in January 1985 and retired from there on 30.06.1998. Earlier, the plaintiff-respondent had served in Shah Nehar Talwara from April, 1967 to 28.10.1974 for a period of about seven years. He was getting basic pay of

Rs.680/- (in the pay scale of Rs.510/-, unrevised) plus allowances when he was retrenched from Shah Nehar, Talwara. When he joined the RSD Project, his basis pay was fixed at Rs.400/- per month in the pay scale of Rs.400-660. Thereafter, a policy was framed to give one increment per two years service at the previous project vide office order No.7216/18-5/TDC/81 dated 27.11.1981 and No.9814-25 dated 19.09.1989. The plaintiff was given six retrenchee increments and entries in this regard were made in his service book. The defendants-appellants also gave special increments for the excellent work of the employee. After his retirement on 31.12.2003, defendant Nos. 2 to 4 withheld the gratuity and other retiral benefits. No enquiry was pending against him at the time of retirement. Defendants-appellants had issued LPC and NDC to the plaintiff. Consequently, the plaintiff-respondent filed a suit seeking payment of death-cum-gratuity and retiral benefits along with interest at the rate of 18% per annum from the date of retirement till actual realization of the amount.

Upon notice, defendants-appellants filed written statement, stating therein that as per policy dated 27.11.1981 and Punjab Civil Services Rules, the plaintiff-respondent was not entitled to special increments. After retirement, all the necessary payments i.e. GPF, GIS, Leave Encashment and regular pension had been paid to him. Payment of gratuity had been withheld due to excess payment drawn on account of special and retrenchee increments, which were given inadvertently. The suit of the plaintiff-resondent was hopelessly time barred. The plaintiff-respondent was entitled to the payments of increments as per instructions dated 27.11.1981 by counting his previous service in other projects. His pay was increased from Rs.430/- to 480/- w.e.f. 01.09.1987. He was not entitled for the basic pay of

Rs.680/- as claimed. After granting him the retrenchment increments, his basic pay was increased from Rs.430/- to 480/- w.e.f. 01.09.1987. Thereafter, he was promoted for dumper operator in the scale of Rs.510/- to 940/- as per letter dated 17.11.1987. He was also granted eight special increments during his work charge tenure. His services were regularized w.e.f. 13.03.1996 and Punjab Civil Services Rules became applicable upon him. An amount of Rs.34,326/- was liable to be recovered from him. A show cause notice was given to the plaintiff-respondent for withdrawing of special increments. As per defendants-appellants, the plaintiff had retired on 30.06.1998. After giving him necessary payments of GPF, GIS, Leave Encashment and regular pension, payment of gratuity to the tune of Rs.53,244/- had been withheld due to excess payment drawn on account of retrenchee increments and special increments, which were given inadvertently as the total recoverable amount came to Rs.65,980/-.

The trial Court decreed the suit of the plaintiff-respondent with costs and held that he was entitled to get his delayed retiral benefits i.e. payment of death-cum-retirement gratuity and other funds amounting to Rs.65,980/- without any deduction along with interest @ 18% per annum. The lower appellate Court dismissed the appeal filed by the State of Punjab-appellant on the ground that once after retirement, the defendants had issued no due certificate and last pay certificate after finalizing the pension case, then they cannot recover any amount from an employee/retired employee, if that amount was not given on any misrepresentation or fraud played by the said employee. It was further observed that 18% interest on the withheld amount of gratuity was rightly given as per the judgment of the Hon'ble Supreme Court in ***R. Kapoor Vs. Director of Inspection (Printing and***

Publication, 1995 (10) Recent Service Judgments 71.

A perusal of the judgments passed by both the Courts below shows that after the plaintiff-respondent was retrenched on 23.04.1984, he was absorbed in RSD Project in January, 1985, from where he retired on 30.06.1998. His basis pay was fixed and benefits of six increments as applicable to the retrenched employees, as per instructions dated 27.11.1981, were given to him. After he retired, the Accountant General, Punjab released death-cum-retirement gratuity (DCRG) of the plaintiff vide release order dated 04.10.2000, Ex.P10. But, despite that the DCRG was not released to the plaintiff-respondent by the defendant-department. At the same time, a letter for illegal recovery was issued on account of wrong fixation of pay. The lower appellate Court has rightly dismissed the appeal of the State of Punjab-appellant(s) by observing that once after retirement, no due certificate and last pay certificate had been issued, no recovery could be effected from the retired employee, if that payment received by him was not on account of misrepresentation and fraud. In the present case, even the release order had been issued by the office of Accountant General, Punjab. At this stage, reference can be made to the judgment passed in ***Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others,*** Civil Appeal No.5899 of 2012 (decided on 17.08.2012), whereby the Hon'ble Supreme Court was examining a case where on account of wrong fixation of 5th and 6th pay scale of teachers, recovery was being effected from serving teachers. It was held that where there was no concept of fraud or misrepresentation and the wrong fixation of pay was on account of negligence and carelessness and the mistake was mutual, the recovery could not be made as a matter of right. The excess payment could be made from the serving employees in installments. However, keeping in view the hardship, which would be caused to the teachers, especially in view of the fact that some beneficiaries had retired and some were on the verge of retirement, it was held that no recovery of the excess amount paid to the teachers be made. By referring to the judgment delivered in ***Sayed Abdul Qadir and others Vs. State of Bihar and others,*** (2009) 3 SCC 475, the Hon'ble Supreme Court observed as under:-

> "13. Later, a three-Judge Bench in Sayed Abdul Qadir case (supra) after referring to Shyam Babu Verma, Col. B.J. Akkara (retd.) etc. restrained the department from recovery of excess amount paid, but held as follows:
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> Undoubtedly, the excess amount that has been paid to the Appellants-teachers was not because of any misrepresentation or fraud on their part and the Appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which, the Appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the Appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the Appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the Appellants-teachers should be made."

In the facts of the present case, the plaintiff-respondent had already been retired and had been issued his Last Pay Certificate and No Due Certificate. Even the release orders of death-cum-retirement gratuity had been issued vide order dated 04.10.2000, Ex.P10. After this, the show cause notice for recovery of excess amount was not maintainable in view of the law laid down by the Hon'ble Supreme Court in ***Sayed Abdul Qadir's*** case (supra). The plaintiff had already retired and it is not the case of the defendants-appellants that the excess amount was given on account of misrepresentation or fraud played by the plaintiff-respondent.

After going through the impugned judgments passed by the Courts below, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
20.03.2015 **JUDGE**
ajp