

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

**Regular Second Appeal No.5780 of 2014 (O&M)
Date of decision: 13.07.2015**

Harkanwal Kaur

.....Appellant

Versus

The State of Punjab and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jagdish Singh Tanwar, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgments of concurrent findings of facts dated 23.02.2010 and 19.07.2014 passed by the Civil Judge (Junior Division), Chandigarh and the Additional District Judge, Chandigarh respectively, whereby her suit for declaration, has been dismissed.

Harkanwal Kaur-plaintiff (appellant herein) was working as Head Teacher in Government Primary (Elementary) School, Phase-5, Mohali. She had joined as Government JBT Teacher in District Hoshiarpur, on 21.11.1969 and remained there up to 18.03.1970. Again she worked there from 21.03.1970 to 20.05.1970 and then from 23.05.1970 to 12.06.1970. Thereafter, she was appointed on regular basis w.e.f. 17.08.1972. She had completed one year regular service on 30.01.1973 and got first grade increment on the same day. After completion of two years, she got her second increment on 30.01.1974. Thereafter, she was transferred from District Hoshiarpur to Ropar in the month of November, 1973. The pay scales of Punjab Government employees were revised from 01.01.1986 with

the provisions that the employees would get next higher scale of pay after

completion of 8 years service and next higher scale after completion of 18 years of service in case the employee is not promoted to the next grade post. As per plaintiff, she had completed 18 years of service on 30.01.1990 and was entitled to next higher pay scale of Rs.1640-2950 (revised to 1650-2950) from 30.01.1990 and the next date of increment was 01.01.1991. However, due to inadvertence, she was given this pay scale on 17.08.1990. The plaintiff was promoted to the post of Head Teacher after filing a suit and was posted at Government Primary School, Mataur on 30.03.1995. Thereafter, she was transferred to Government Primary School, Phase-5, Mohali in May 1995. She continued to work in the said school till retirement on 31.10.2003. In January, 1998, Punjab Government again revised the pay scales of its employees w.e.f. 01.01.1996. Accordingly, her pay was revised at the rate of Rs.6200/- from 01.01.1996 with next increment on 01.08.1996 raising her pay to Rs.6400/- per month; at the rate of Rs.6600/- per month on 01.08.1997 and at the rate of Rs.6800/- per month on 01.08.1998. She had drawn her pay at such rate upto November, 1999, which was paid in December, 1999. However, her salary for the month of December 1999, payable in January 2000, was reduced by one increment from Rs.7000/- per month to Rs.6800/- per month. Thereafter, the plaintiff filed a civil suit, which was decreed with costs directing the defendant-State Government to make payment of full salary/allowances to the plaintiff with liberty to recover the excess payment, if any, after serving a notice/seeking reply and then pass a speaking order. Consequently, the pay of the plaintiff was restored to normal from December 1999 at the rate of Rs.7000/- per month, from 01.08.2000 at the rate of Rs.7220/- and onwards. It is alleged that BPEO Rajinder Kaur acting like a clerk in the

service book at the reduced rate with malafide intention in order to harm the interest of the plaintiff in pensionary benefits. The plaintiff had completed 8 years service as Head Teacher on 30.03.2003 on the same post without any promotion. She was entitled to the next higher grade increment. She had retired from Government service from 31.10.2003 and proceeded on pension from 01.11.2003.

Upon notice, the defendants-respondents filed written statements and controverted the allegations levelled by the plaintiff-appellant.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for declaration to pay at the given rate of Rs.7660/- from 01.08.2002 and Rs.7880/- from 30.03.2004 and Rs.8100/- from 30.03.1995 as prayed for? OPP
2. Whether the plaintiff is entitled for revision of her pension and other benefits in the salary drawn period from 17.08.1990 to 31.10.2003 as prayed? OPP
3. Whether the present suit is not maintainable as alleged? OPD
4. Whether no cause of action has accrued against the defendants No. 4 to 7 for filing the present suit as alleged? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. The lower appellate Court affirmed the finding of the trial Court and dismissed the appeal. Hence, this appeal.

Both the Courts below proceeded to examine the case of the plaintiff-appellant as per deposition of Harnek Singh Mavi (DW-1), who testified regarding all the facts mentioned in the written statement. In the

08.11.2002 (Ex.P11), vide which pay of the plaintiff was ordered to be refixed by passing a speaking order. The plaintiff's pay was restored to normal from December 1999 at the rate of Rs.7000/- per month, from 01.08.2000 at the rate of Rs.7220/- and onwards. Trial Court examined the judgment and decree dated 08.11.2002 (Ex.P11), wherein it had been held that the plaintiff had been given excess salary of Rs.200/- per month w.e.f. 01.01.1996 to 01.08.1999 as her salary had never been fixed up till 16.1.1998. An amount of Rs.200/- was being deducted from the salary of the plaintiff without issuing any show cause notice. Accordingly, the suit was decreed vide judgment (Ex.P11) and the defendants were directed to make payment of full salary to the plaintiff. They were given liberty to serve a notice upon the plaintiff regarding excess payment, if any and after providing her an opportunity of personal hearing, pass a speaking order.

Accordingly, the plaintiff was given a show cause notice and after considering her reply, order dated 19.09.2003 (Ex.D5 and 13.10.2003 (Ex.D7) had been passed. Thereafter, her pay was refixed. As per judgment passed by this Court in **Budh Ram and others Vs. State of Haryana and others**, CWP No.2799 of 2008 (decided on 22.05.2009), the Government had every right to correct the wrong fixation of pay. However, if the wrong fixation was not on account of any fraud or misrepresentation on the part of the employee, no recovery should be effected.

Grievance of the plaintiff-appellant was that her service book had been lost/torn and after manipulation, new entries were made therein. These allegations were found to be baseless and had been rejected by the trial Court on the ground that pursuant to the judgment (Ex.P11), a show cause notice dated 04.08.2003 (Ex.D1) was given informing her that she was

getting one increment more than her entitlement w.e.f. 01.01.1996. The

plaintiff gave reply (Ex.D2) stating therein that her basis in old pay scale was 1970/- and on that basis the pay had been rightly fixed. Thereafter, the defendants issued a notice dated 18.08.2003 (Ex.D3), stating that as per record, her basic pay in the old revised pay scale was Rs.1920/- and not Rs.1970/- as on 01.08.1995. Plaintiff gave her reply dated 26.08.2003 (Ex.D4) taking the plea that her service book had been torn and after manipulation, new entries had been made. Finally, vide order dated 19.09.2003 (Ex.D5) her pay was refixed on the basis of the record available with the defendants. Before the trial Court, both the parties had agreed that no recovery was made from the plaintiff-appellant and after issuing notice dated 13.10.2003. Hence, the suit of the plaintiff was dismissed by holding that she was not entitled to pay at Rs.7660/- from 01.08.2002; Rs.7880/- from 30.03.2004 and Rs.8100/- from 30.03.2005.

After going through the impugned judgments passed by both the Courts below, this Court is of the view that in the absence of any personal enmity or bias against any of the officials of the department, the order correcting wrong fixation of salary of the plaintiff had been rightly passed after giving her notice and after receiving reply from her. The plaintiff has miserably failed to lead any evidence to show that her service record had been manipulated or misinterpreted. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

13.07.2015
ajp

(RITU BAHRI)
JUDGE