

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

**RSA No.627 of 1994
Date of Decision:06.06.2016**

**R.C. Chetu Sub Divisional Officer (Retired) Irrigation
Department, Punjab, Chandigarh**

.....Appellant

Vs

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. H.C. Arora, Advocate
for the appellant.

Mr. B.M. Vinayak, DAG, Punjab

RAJ MOHAN SINGH, J.

[1]. Plaintiff-appellant is in regular second appeal against the judgment and decree dated 03.09.1993 passed by District Judge, Faridkot whereby judgment and decree dated 23.01.1993 passed by Sub Judge, Second Class, Muktsar was set aside and the suit was dismissed.

[2]. Plaintiff filed a suit for declaration that he was entitled to senior pay scale of Rs.3700-5300/- on completion of 18 years of service w.e.f. 03.10.1986. He also claimed arrears of pay till retirement on 31.08.1987 and pension on the basis of revised pay and arrears thereof on account of enhanced revised pay scale.

[3]. Plaintiff alleged that he was working as Sub Divisional Officer (SDO) in the Irrigation Department of Punjab State and was posted at Muktsar at the relevant time. He stood retired and on retirement, he was allowed pensionary benefits on the basis of pay scale of Rs.2200-4000/- and he had received salary in the said pay scale till 02.10.1986.

[4]. Plaintiff further alleged that he was allowed senior pay scale of Rs.3700-5300/- on completion of 18 years of service w.e.f. 03.10.1986 vide Government letter No.14388-40/4/GD/89 dated 15.07.1989 issued by the Chief Engineer, Irrigation Branch, Chandigarh to the Superintending Engineer, Canal Lining Circle, Ferozepur, but the plaintiff was not allowed his due pay scale w.e.f. 03.10.1986 and thereafter, he retired from the post. With this background, suit came to be filed. Suit was filed after issuance of notice under Section 80 CPC.

[5]. Suit was contested by the defendants on all counts.

[6]. On filing replication, both the parties went to trial on the following issues:-

“1. Whether the plaintiff is entitled to scale of Rs.3700-5300/- as claimed? OPP

2. Whether the suit is not maintainable in this form? OPD

3. Whether this Court has got no territorial jurisdiction to try the present suit? OPD

4. Relief.”

[7]. Both the parties led their respective evidence. Trial Court decreed the suit vide judgment and decree dated 23.01.1993. However, the said judgment and decree was reversed in appeal before the lower Appellate Court, who decided the appeal on 03.09.1993. That is, how, the present regular second appeal came to be filed at the instance of the plaintiff.

[8]. In view of Full Bench judgment of this Court in **Ganpat Vs. Smt. Ram Devi and others 1977, PLR Page 1**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[9]. Though no substantial questions of law were formulated by the appellant at the time of hearing, this Court in order to appreciate the contentions between the parties proposed to frame the following substantial questions of law for consideration:-

- “1. Whether grant of senior scale on completion of 18 years of service can be denied on the ground of inefficiency which was never reflected in the service record of the plaintiff?*
- 2. Whether any prior notice was required for passing the order Ex.D1?*
- 3. Whether stopping of proficiency step up amounted to punishment as the order was not in innocuous terms, rather it was camouflage of misconduct?”*

[10]. Having heard the submissions made on either side and after perusal of record, this Court found that the scale of Rs.3700-5300/- was denied to the plaintiff on the ground that the Department had considered that he was responsible for causing loss of Rs.20,795.35/- to the Government for which the order of recovery was made on 27.12.1988 Ex.P10/Ex.D2 and order dated 20.01.1990 Ex.P11/D3. These orders of recovery were set aside by the Competent Court on the ground that the same could not have been passed after expiry of period of 6 months after retirement of the plaintiff. On that premise, while relying upon Rule 9.2 A (b) (iv) of Punjab Civil Services Rules, Volume-II, the orders of recovery were set aside and were held illegal by the Court of Additional District Judge vide judgment and decree dated 08.03.1990. Thereafter, only issue was that whether case of the plaintiff with regard to grant of senior scale of Rs.3700-5300/- could have been considered negatively by the defendants on the

alleged plea of inefficiency leading to imposition of recoveries against him.

[11]. Learned counsel for the respondent-State vehemently submitted that it was only a right of consideration which was to be considered by the respondent for granting proficiency step up after 18 years of service. The case of the plaintiff was considered and was rejected on the ground that he could not pass the test of consideration being instrumental in causing shortages to the Department for which recovery proceedings were initiated against him and in fact recovery of Rs.20,795.35/- was ordered against him after issuance of proper show cause notice. The allegations of financial irregularities were made against the plaintiff and he along with Ram Chand J.E. were burdened with the liability in terms of recovery of Rs.34,983.70/- cumulatively. According to learned counsel for the respondent, liability was fastened as per inquiry conducted by the Inquiry Officer. The allegations of inefficiency were not reflected in the service record, nor the service record was produced by the defendant-department for consideration of this Court. No adverse entry was pleaded and produced on record.

[12]. It is a settled principle that in terms of Rule 9.2 A (b) (iv) of the Punjab Civil Services Rules, Volume-II no recovery could have been effected after 6 months of retirement of the delinquent. Admittedly, the plaintiff was retired on 31.08.1987 and therefore, the recovery proceedings were rightly done away by the

interference of the Court.

[13]. Apparently, no evidence has come forth on record showing the inefficiency of the plaintiff in terms of service record and therefore, the denial of proficiency step up could not be made by the defendants under the garb of right of consideration only. When the resultant effect of shortages was the exoneration from recovery of the amount, the allegation cannot persist any more. It cannot be an academic issue only, rather the consideration should have been made on the basis of overall assessment of service record of the plaintiff. In the absence of any adverse entry in the Annual Confidential Report, the denial to the claim of the proficiency step up as a measure of punishment was not simply tenable in law. The conduct of the plaintiff was alleged to be stigmatic, but the same was never reflected in the service record of the plaintiff as brought on record.

[14]. In view of above, substantial question of law No.1 has to be decided inaffirmatively to say that there was nothing in terms of service record which would have prevented the plaintiff from claiming benefits of proficiency step up on completion of 18 years of service. Secondly, the refusal of the relief of proficiency step up w.e.f. 03.10.1986 vide Ex.D1 being stigmatic was passed as a measure of punishment and for that notice was required to be given to the delinquent.

[15]. Apparently, the stoppage of proficiency step up vide order

Ex.D1 was penal in consequence and therefore, a lawful notice was required to be issued to the plaintiff because of his alleged inefficient working during his service career. The observation made by the lower Appellate Court that no notice was required to be given does not stand to reasons. In this way, questions No.2 and 3 are also required to be held in favour of the plaintiff.

[16]. In the light of observations made above, I am of the considered view that the impugned judgment and decree dated 03.09.1993 passed by District Judge, Faridkot is not sustainable in law and is accordingly set aside. Appeal is allowed, decreeing the suit of the plaintiff with costs throughout.

06.06.2016

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**(RAJ MOHAN SINGH)
JUDGE**