

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5601 of 2015 (O&M)

Date of Decision: 10.05.2016

Union of India and others

....Appellants

Vs.

Des Raj

....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr. Amit Sheoran, Advocate
for the appellants.

Amol Rattan Singh, J (ORAL)

1. This is the second appeal by the appellants-defendants, in a suit filed by the respondent-plaintiff seeking mandatory injunction directing the defendants to release the payment of Rs. 23,970/-, allegedly illegally and unreasonably deducted from his service benefits/GPF account. He also sought interest @ 18% per annum, upon the delayed release of the amount.

The case set up by the plaintiff was that he had been appointed to the Military Engineer Services on 13.10.1970 and had retired on 30.06.2007. After his retirement, a letter dated 29.08.2007 was issued for final payment from his General Provident Fund (GPF) Account, in which a credit balance of Rs. 1,41,605/- was shown as in March 2006, but the defendants (appellants herein) were not releasing it with *mala fide* intention and, in fact, had also deducted Rs. 3,936/- alongwith interest thereupon, of an amount of Rs. 20,034/-, totaling Rs. 23,970/-, from his account.

Upon having served a legal notice on 12.06.2009, allegedly a “baseless reply” to the legal notice was given by the defendants, but the aforesaid amount was not released to him (respondent-plaintiff).

Consequently, the suit had been filed on 24.09.2009.

2. Upon notice, the appellants-defendants filed a written statement taking preliminary objections with regard to bar on the jurisdiction of the Civil Court, in view of the fact that service matters pertaining to the Military Engineer Services were within the purview of the Central Administrative Tribunal, Chandigarh Bench (hereinafter to be referred to as the CAT).

On merits, it was contended that Rs. 3,936/- had been erroneously credited in excess to the GPF account of the plaintiff-respondent, between the years 1974-75 to 1983-84, which was never pointed out by the plaintiff-respondent, during his service period. As such, as per rules governing the issue, deduction of the excess amount, alongwith interest accruing thereupon, was correctly made from the GPF account of the plaintiff.

3. The following issues were framed consequently, by the learned Civil Judge (Junior Division), Pathankot:-

1. Whether the plaintiff is entitled for mandatory injunction as prayed for? OPP
2. Whether the jurisdiction of this Court is barred? OPD
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Relief.

4. The plaintiff examined himself as PW-1 and tendered in evidence the letter dated 14.08.2007 as Ex. P-1; the legal notice issued by him as Ex. P-2 and the postal receipts as Ex. P-3 & P-4, alongwith the reply

to his notice, as Ex. P-5.

5. The appellants-defendants examined one Prem Singh as DW-1 and tendered the authority letter dated 29.08.2007 as Ex. D-2, an account statement as Ex. D-3 and the reply to the legal notice as Ex. D-4.

6. Upon appraising the aforesaid evidence, the learned Civil Judge found that the defendants had admitted to the recovery of the aforesaid amount of Rs. 23,970/- from the plaintiff's GPF account. Consequently, relying upon various judgments, that Court held that the plaintiff was not at fault for the deposit of the excess amount in his account, and being from the lower rung of service, he would have spent the small additional amount credited to his account.

Hence, firstly holding that there was no fraud or misrepresentation by the plaintiff by which he had been paid the excess amount, and also holding that no notice was served upon him before deduction of the excess amount, as admitted by DW-1 (Prem Singh) in his cross-examination, with the principles of natural justice thereby violated, the suit of the plaintiff was decreed, but by awarding him interest @ 6% per annum on the withheld amount, and not 18% as prayed for, in his suit.

7. On the issue of jurisdiction of the Civil Court, and maintainability of the suit, i.e. issue Nos. 2 & 3, the issues were held to be not pressed and accordingly, decided in favour of the plaintiff.

8. The first appeal filed by the present appellants before the learned District Judge, Pathankot, was also dismissed on the same reasoning, though the learned Lower Appellate Court also went into the issue of service matters pertaining to the Union of India/Central Government being only within the jurisdiction of the CAT. That Court held

that as per Section 2 (A) of the Administrative Tribunals Act, 1985, the Act was not to apply to any member of the Naval, Military or Air Force or any other Armed Forces of the Union. Hence, it was held that the said Act was not applicable to the case at hand and, as such, the Civil Court had jurisdiction to entertain and adjudicate upon the suit filed by the plaintiff.

9. Before this Court, learned counsel for the appellants submits that the civil Court not having any jurisdiction at all, the plaintiff-respondent being a civilian employee with the Military Engineering Service, jurisdiction in service matters, including with regard to recovery of excess provident fund paid into the account of the plaintiff-respondent, would not be with the civil Court but only with the Central Administrative Tribunal.

Though in that respect learned counsels' contention cannot be faulted, however, it is seen that the recovery sought to be made from the respondent-plaintiff is in respect of a principal amount of Rs.3,936/-, stated to have been deposited in excess into his account by the appellants, between the years 1974-75 to 1994 i.e. an average of about Rs. 200/- per year.

It is contended that such excess payment was discovered only in the year 2007, when the respondent-plaintiff was retiring from service and his provident fund account was looked into. Learned counsel points to a clause in the instructions (Ex.D-3 before the learned Courts below), in which it is stated as follows:-

“The Closing Balance reflected in the Annual Statement of GPF A/c is subject to modifications after review and recasting of actuals at the time of Final Withdrawal/Final Settlement/Transfer of Fund Balance in the light of the OM Circulated under DOPT No.13(3)/84-PU dated 12.6.1985.”

10. Without a doubt, it is very possible that the excess payment

was actually discovered only when the final account of payment of provident fund had to be drawn up, at the time of the respondents' retirement.

However, even if that be so, the fact remains that the recovery ordered, as was challenged by the respondent-plaintiff in the civil suit out of which the present appeal arises, was for the period between the years 1974 to 1994, and such recovery was ordered only in the year 2007. No connivance on the part of the respondent-plaintiff was proved before the Courts below, to the effect that it was due to his fault that excess payment (amounting to Rs.3,936/- over a period of 20 years), was made to him.

The recovery sought to be made in the year 2007, i.e. 13 years later, also added about Rs.20,000/- as interest on the aforesaid sum of Rs.3,936/-.

In my opinion, even though the learned counsel is wholly right that the civil Court did not have jurisdiction and on that account the suit itself may not have been maintainable; however, to put a retired employee through another round of litigation at this stage, for a sum of Rs.3,936/- paid into his provident fund in excess, over a period of 20 years, for no fault of his, adding thereto 5 times interest on the principal amount, would be highly inappropriate, especially when it has been held by the hon'ble Supreme Court, in the case of **State of Punjab and others Vs. Rafiq Masih (Whitewasher) etc.** (2015) 4 SCC 334, that in such a situation (where the employee is not at fault), recovery should not be allowed.

In case any connivance of the plaintiff had been shown at any stage, obviously fraud would vitiate everything else; however, that not being so in the present case, in the opinion of this Court, it would amount to

a travesty of justice to put him through another round of litigation.

11. Of course, it must be stated here that the learned lower Appellate Court erred in holding that the Administrative Tribunals Act, 1985 does not cover the service of the plaintiff inasmuch as, though Section 2 (A) of the said Act is correctly referred to by that Court, however, the subsequent notification bringing the Military Engineering Service within the purview of the Act of 1985, was obviously not brought to the notice of the Courts below. Hence, that finding is to be set aside and is accordingly set aside.

12. With the above observation, even though it is a departure from procedure, which otherwise would not be acceptable in civil appellate jurisdiction, this appeal is dismissed; however, with no order as to costs.

It needs to be noticed here that while pronouncing judgment in Court, this Court obviously missed out that the Courts below have decreed the suit of the respondent-plaintiff, including by way of granting him interest on the amount withheld by the appellants, from his provident fund account. Obviously, if the amount was wrongly credited to his account, then, even though interest on the original amount of Rs. 3,936/- would accrue over the years and be payable to the plaintiff, however, for delayed payment now, if the amount that was withheld from the plaintiff, was actually not due to him, then, in the opinion of this Court, interest would not be payable for such delayed payment by the appellants. However, since the judgment was pronounced in open Court, and it would be now unfair to issue notice to the respondent simply on this small issue of non-payment of interest to him, thereby putting him through litigation again for a small issue, the judgments and decrees of the Courts below, are being upheld in

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Civil Misc. No.13561-C of 2015

Since the appeal has been dismissed as above, the question of condonation of the delay of 90 days in filing the appeal, is rendered academic and is not gone into.

May 10 , 2016

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**(AMOL RATTAN SINGH)
JUDGE**