

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 5392 of 2014
Date of Decision: 19.2.2016.

Sham Lal Singla

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ashok Bhardwaj, Advocate
for the appellant.

SABINA, J.

Appellant-plaintiff had filed suit for declaration claiming
the following reliefs:-

1. *Plaintiff is entitled to get his pay fixed as Rs. 8100/- instead of 7000/- w.e.f. 10.6.1996.*
2. *And to the effect that memo No. 98-3/1-2001 Budget-2(4) dated Chandigarh 1-2-2002 regarding the recovery amount of Rs. 37703/- against the plaintiff, is null and void ultrevires and against the rules and regulations, governing the services of the plaintiff.*
3. *And further to the effect that plaintiff is entitled to C.P.F. 10% of his basic pay w.e.f. 10.6.1996 and alongwith consequential benefits and arrears @ 18% P.A. for delayed payments w.e.f. entitlement till the date of actual realization with costs.*

Case of the appellant, in brief, was that he was serving
in Punjab Education Department as a Social Studies Master.

Appellant remained posted at Government High School, Mangwal upto 9.6.1996. Thereafter, the appellant applied for the post of Head Master in Prem Sabha High School, Sangrur through proper channel. Appellant was selected by the selection committee of the school. Appellant submitted his resignation to the Education Department and was relieved from duty on 9.6.1996. Thereafter appellant joined the post of Head Master with defendant No. 5. Pay of the appellant was liable to be protected on his joining the post of Head Master with defendant No. 5. Defendant No. 5 had fixed the pay of the appellant in the scale of ₹ 7000-10980 whereas the appellant was drawing the pay scale of ₹ 8100/- at the time of submission of his resignation to defendants No. 1 to 4. So far as relief Nos. 2 and 3 sought by the appellant are concerned, it has been stated by the learned counsel for the appellant during the course of arguments that the dispute qua the said reliefs has been settled and now the dispute is only with regard to fixation of the pay of the appellant in the pay scale of ₹ 8100/- instead of ₹ 7000/- with effect from 10.6.1996.

Defendants No. 5, in its written statement, averred that the appellant had sought premature retirement from his previous employer and had joined as Head Master with defendant No. 5 which was a privately managed recognized aided school. Hence, the appellant was not entitled for his pay protection.

On the pleadings of the parties, following issues were framed by the Trial Court:-

- “1. Whether the plaintiff is entitled to get his pay fixed as Rs. 8100/- w.e.f. 10.6.1996 ? OPP*
- 2. Whether the order dated 01.02.2002 regarding*

recovery amount of Rs. 37703/- against the plaintiff is null and void ? OPP

3. *Whether the plaintiff is entitled to CPF @ 10% of his basic pay w.e.f. 10.06.1996 along with consequential benefits and arrears ? OPP*
4. *Whether the plaintiff is entitled to interest @ 18% per annum for delayed payment ? OPP*
5. *Whether the plaintiff is entitled to declaration prayed for ? OPP*
6. *Whether the plaintiff is entitled to mandatory injunction prayed for ? OPP*
7. *Whether the suit is bad for non-joinder of necessary parties ? OPD*
8. *Whether the suit is barred by limitation ? OPD*
9. *Whether the case of plaintiff is not covered for benefit of CPF ? OPD*
- 9-A. *Whether the present suit is not maintainable? OPD*
- 9-B. *Whether the plaintiff has no cause of action or locus standi to file the present suit ? OPD 5*
10. *Relief.”*

Suit filed by the appellant-plaintiff was dismissed by the Trial Court vide judgment/decreed dated 17.12.2010. Aggrieved against the said judgment and decree, appellant preferred an appeal and the same was dismissed by the First Appellate Court vide judgment/decreed dated 4.12.2013. Hence, the present appeal by appellant-plaintiff.

I have heard the learned counsel for the appellant and

have gone through the record available on the file carefully.

In the present case, the question that requires consideration is as to whether the appellant is entitled for protection of his pay at the time when he joined the services of defendant No. 5 *vis-a-vis* his earlier employer.

The case of the appellant is that he was entitled to get his pay fixed at ₹ 8100/- instead of ₹ 7000/- with effect from 10.6.1996. Appellant had joined the services of defendant No. 5 on 10.6.1996. At that time, the pay of the appellant was fixed at ₹ 7000/-. However, the appellant did not challenge the said action of defendant No. 5 within a period of three years. Rather, the suit was filed by the appellant on 16.5.2002. In these circumstances, the Courts below rightly held that the suit filed by the appellant was time barred.

Appellant had sought premature retirement from the previous employer before joining the post of Head Master in Prem Sabha High School. Apparently, the appointment of the appellant in Prem Sabha High School was a fresh appointment. Hence, the appellant could not seek protection of his pay *vis-a-vis* his earlier employer.

The Courts below had, thus, rightly held that the appellant was not entitled for the relief sought by him qua fixation of his pay at ₹ 8100/- instead of ₹ 7000/- with effect from 10.6.1996.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

February 19, 2016
Gurpreet