

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

RSA-972-2014

Date of decision: January 14, 2016

GURU ANGAD DEV VETERINARY AND ANIMAL
SCIENCES UNIVERSITY, (GADVASU) LUDHIANA

...Appellant

Versus

DR. PROBODH CHANDRA MANDAL

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: MR. HAR NARESH SINGH GILL, Advocate
for the appellant

SABINA, J

Respondent had filed suit for declaration challenging the order whereby recovery of ₹46439.20P was ordered to be effected from him.

The case of the respondent, in brief, was that he had joined Punjab Agricultural University as Lecturer in the Department of Anatomy and Histology, College of Veterinary Science on 06.5.1970. Thereafter, respondent was promoted as Assistant Professor on 11.10.1975 and was designated as Assistant Scientist with effect from 27.7.1985. Respondent applied for study leave with effect from 17.10.1997 to 30.9.1980 and the same was sanctioned by the competent authority with pay. Respondent could not complete his

Ph.D and joined his duty on 1.10.1980. Respondent again applied for leave and his leave was sanctioned from 6.5.1988 to 19.6.1991 without pay. Respondent got his Ph.D degree in the year 1991 from Punjab Agricultural University, Ludhiana. Respondent came to know that ₹ 46439.20P were sought to be recovered from him on account of the leave availed by him from 17.10.1977 to 30.9.1980. Respondent moved an application before the Vice Chancellor for waiving off the said recovery. The request of the respondent was declined vide letter dated 26.10.1998. Hence, suit for declaration was filed by the respondent.

Defendants, in their written statement, asserted that in the meeting of the Board of Management on 26.3.1996, the representation moved by the respondent was considered and was declined. Respondent was granted study leave from 15.10.1997 to 30.9.1980 but he has failed to get Ph.D degree within the prescribed period.

On the pleadings of the parties, following issues were reframed by the trial Court on 26.8.2002:-

- “1.Whether plaintiff is entitled for declaration as prayed for?OPP
- 2.Whether plaintiff is entitled for mandatory injunction, as prayed for?OPP
- 3.Whether the suit of the plaintiff is not maintainable in the present form?OPD
- 4.Whether plaintiff has no cause of action and locus standi to file the present suit?OPD

5. Whether this Court has no jurisdiction to entertain the present suit? OPD

6. Whether the suit is barred by time? OPD

7. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment and decree dated 5.6.2012 decreed the suit of the plaintiff-respondent. The said judgment and decree were upheld in appeal filed by the defendants by the First Appellate Court vide judgment and decree dated 26.10.2013. Hence, the present appeal by the appellant-defendant University.

I have heard the learned counsel for the appellant and have gone through the record available on the file carefully.

Facts, in the present case, are not in dispute. Admittedly, respondent was granted study leave from 17.10.1977 to 30.9.1980 with full pay to enable him to complete his Ph.D. However, respondent could not get the degree within the said period and joined back his duty on 1.10.1980. Thereafter, respondent was granted leave without pay from 6.5.1988 to 19.6.1991 and he successfully got his Ph.D degree. The Board of Management on 19.4.1986 passed a resolution and amendment was made in the rules that if in service teacher, after taking study leave fails to complete his Ph.D within the maximum permissible period of five years, the salary paid to him during the study period should be recovered from him. In view of the said resolution/amendment, recovery of ₹46439.20P was sought to be effected from the respondent.

The Courts below rightly held that when the respondent for the first time availed the study leave from 17.10.1977 to 30.9.1980, there was no such rule that the employee was liable to refund the salary paid to him during the study period in case he failed to complete his Ph.D. The resolution/amendment in the rule was made in the year 1986. Although, the respondent had executed a bond that all the rules applicable to the study rule as amended from time to time would be binding upon him but the fact remains that in the present case, the rule was amended much after the period in question. Hence, the amendment in rule had no bearing on the present case.

In these circumstances, the Courts below rightly decreed the suit of the plaintiff as the amendment/resolution dated 19.4.1986 could not be said to be effective retrospectively .

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

Dismissed.

**(Sabina)
Judge**

January 14,2016

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