IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 221

Regular Second Appeal No.4102 of 2013 (O & M)
Date of Decision: *September 01, 2017*

Kehar Singh

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Tribhawan Singla, Advocate, for the appellant.

Ms. Akanksha, Assistant Advocate General, Punjab.

. . .

Jaspal Singh, J

1. The instant regular second appeal has been preferred by the appellant – plaintiff while challenging common order passed by the appellate court of District Judge, Patiala vide judgment & decree dated May 04, 2013 passed in two cross appeals filed by the plaintiff as well as defendants while challenging judgment & decree dated November 22, 2011 passed by the Civil Judge, Patiala, which was partly decreed in favour of plaintiff.

2. The brief facts of the case are that appellant – plaintiff filed a suit for declaration and mandatory injunction claiming that action of the defendants in reducing the pay of plaintiff from ₹ 6,400/- to ₹ 6,000/- w.e.f. January 01, 1996 with further reduction of pay upto the date of retirement;

paying less pension/ pensionary benefits; effecting recovery of ₹ 96,205/- from his Death –cum- Retirement Gratuity vide office order No.102 dated October 13, 2006; late payment of pensionary benefits (DCRG, GPF, GIS, Provisional Pension etc.) without interest, is illegal, arbitrary, null & void, ultra-vires, without jurisdiction and against the principles of natural justice/service rules. He further claimed refixation of his pay @ ₹ 6,400/- w.e.f. January 01, 1996 with consequent increase in pensionary benefits and refund of recovery of ₹ 96,205/- alongwith interest @ 18% per annum from the date of retirement till its realization.

3. The suit was contested by the defendants. Issues were framed by the trial court and parties led their evidence, oral as well as documentary, in support of their case. After hearing learned counsel for the parties and appraisal of record, trial court vide judgment dated November 22, 2011 decreed the suit of plaintiff with costs to the extent that he is entitled to get back ₹ 96,205/- from the defendants, wrongly deducted by them from his DCRG on the basis of order dated No.102 dated October 13, 2006 and directed the defendants to refund the amount of ₹ 96,205/- to plaintiff within three months.

4. Plaintiff approached the first appellate court vide Civil Appeal No.1 dated January 03, 2012. Defendants – State also challenged the judgment & decree passed by the trial court vide Civil Appeal No.5 dated January 04, 2012. Vide common judgment dated May 04, 2013, first appellate court decided both the appeals whereby appeal filed by the plaintiff has been dismissed whereas the appeal filed by the defendants – State has been allowed. Consequently, suit filed by the plaintiff has been dismissed in entirety.

5. Now, appellant – plaintiff has challenged judgment & decree dated May 04, 2013 through the instant regular second appeal.

6. Learned counsel for the appellant has submitted that judgment & decree passed by the first appellate court is against the facts as well as settled canons of law. Misappreciation and misreading of evidence as well as legal proposition has resulted into miscarriage of justice. Consequently, impugned judgment & decree is liable to be set aside by way of accepting the instant appeal.

7. Learned counsel for the respondents – State has supported the impugned judgment & decree submitting that trial court, vide its judgment & decree, had wrongly allowed the refund of amount recovered from the DCRG of appellant – plaintiff which has rightly been set aside keeping in view the evidence as well as proposition of law. The impugned judgment does not suffer from any infirmity or illegality.

8. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and gone through the record available on file but does not find any legal or factual substance in the submissions made by learned counsel for the respondents – State.

9. Plaintiff alleged that his pay was wrongly reduced by the defendants from ₹ 6,400/- to ₹ 6,000/- w.e.f. January 01, 1996. Consequently, he was paid less pension/pensionary benefits after effecting recovery of ₹ 96,205/- from his DCRG vide office order No.102 dated October 13, 2006, whereas plaintiff did not played any fraud or misrepresentation at the time of fixation of his pay w.e.f. January 01, 1996. Moreover, even if his pay was wrongly fixed by the defendants on January 01, 1996, even then, respondents – defendants could not deduct the amount paid in excess, at the time of his retirement, without affording him any

opportunity of hearing in view of various pronouncements of Hon'ble Apex Court as well as this Court.

10. So far as refixation of pay of appellant – plaintiff w.e.f. January 01, 1996 is concerned, plaintiff had agreed with the objections raised by the audit party regarding fixation of his pay vide letter dated August 30, 2006 (Ex.DA). It is apparent from his service book entries (Ex.P1) that on January 01, 1986 pay of plaintiff was ₹ 1,410 and after granting 8 years proficiency step up, his pay was required to be fixed as ₹ 1410 + 30 = ₹ 1,440/-, whereas his pay was fixed at ₹ 1,500/-. Meaning thereby, plaintiff had already been given two more increments. As such, his pay was rightly refixed by defendant No.4 as per the objections raised by the audit party vide para No.5 of audit objection Ex.D1.

11. As regards recovery on account of excess amount paid to plaintiff, it is not the case of respondents – defendants that plaintiff played any fraud or misrepresented the authorities in getting his pay refixed. In case **Syed Abdul Qadir & others vs. State of Bihar & others, 2009(1) Service Cases Today 611**, Hon'ble Apex court held that if excess payment of emoluments/allowances was not aid on account of any misrepresentation or fraud on the part of the employee and it was paid by the employer by applying wrong principles for calculating pay/allowances which is subsequently found to be erroneous, employee is entitled to get relief against the recovery of excess payment of emoluments/allowances. In **Gurdev Kaur & others vs. PSEB**, CWP No.8158 of 2003 decided on August 09, 2005, this Court held that recovery cannot be effected from the petitioner if it appears that he has not played any fraud or made misrepresentation in getting that benefit. Full Bench of this Court in **Budh Ram & others vs. State of Haryana, 2009(3) SCT 333** held that *we have therefore no*

hesitation in holding that in case the employees who after recipient of the benefits extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be recovered from them. The following needs to be extracted from Budh Ram's case (supra), for consideration of the issue raised in this lis:-

> "It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount simply because on a true and correct interpretation of the rules, such a benefit was not due. It does not require much imagination to say that additional monetary benefits going to an employee may not always result in accumulation of his resources and savings. Such a benefit may often be utilized on smaller luxuries of life which the employee and his family may not have been able to afford had the benefit not been extended to him. The employees can well argue that if it was known to them that the additional benefit is only temporary and would be recovered back from them, they would not have committed themselves to any additional expenditure in their daily affairs and would have cut their coat according to their cloth. We have, therefore, no

> hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be recovered from them."

Relying on Budh Ram's case (supra), this Court in **Kaur Chand vs. State of Punjab & others**, CWP No.697 of 2010, decided on March 02, 2010, has held in the following terms :-

> "(6). Following the dictum in Budh Ram's case (supra), the writ petition is allowed in part; the action of the respondents in ordering recovery of the excess payments received by the petitioner as a result of Stepping-up of his pay or grant of ACP is hereby quashed. However, the impugned order(s) to the extent of re-fixation of his pay and consequential re-determination of the retiral benefits are upheld. The recovery, if any, already made from the petitioner shall be refunded to him within a period of four months from the date of receipt of certified copy of this order.
>
> (7). Since the respondents have not filed any counter-reply/affidavit, it shall be open to them to verify the records and if it is found that the petitioner had actually misrepresented the facts and/order played fraud etc. to gain the monetary benefits, to seek review of this order within a period of six months from the date of receipt of a certified copy of this order."

12. It is not a matter of dispute that after the judgment of the Full Bench in *Budh Ram's case (supra),* the matter was considered by the Apex Court in ***Syed Abdul Qadir (supra)*** and in ***Chandi Prasad Uniyal vs. State of Uttrakhand & others, 2012 (8) SCC 417.*** The view of the Apex Court was that where there is excess payment made and the error, if detected within a short period of time, recovery was permissible and the same could be done in easy installments. The view was further crystalized in **State of Punjab & others vs. Rafiq Masih (White Washer) & others, 2015 AIR**

(SC) 696 and the judgments rendered cases of **Syed Abdul Qadir (supra)** and **Chandi Prasad Uniyal (supra)** were all subject matter of consideration. Resultantly, Class III and IV or Group 'C' and 'D' service employees were protected from the recoveries made apart from the retired employees or who were due to retire within one year. Similarly, where excess payment had been made in excess of five years before the order of recovery was issued and where the recovery would be harsh or arbitrary and iniquitous, the employees were to be protected. The relevant observations in ***Rafiq Masih's case (supra)*** read thus:-

> "12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
>
> (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
>
> (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

13. Keeping in view the cumulative aspect in mind and that petitioner would be identically placed as of employees of Punjab Government. Appellant – plaintiff being employee of PWD (B & R), Chandigarh, it would be iniquitous to deny the petitioner similar relief wherein similarly situated persons have got relief from this Court.

14. Adverting to the facts of the case in hand, excess amount on account of wrong fixation of pay w.e.f. January 01, 1996 being paid to the appellant – plaintiff was not because of any misrepresentation or fraud on his part. His pay was wrongly fixed by the authorities due to miscalculation, for which, plaintiff cannot be held responsible. Thus, this Court is of the view that recovery of ₹ 96,205/- effected from his DCRG vide order No.102 dated October 13, 2006 is wrong and illegal.

15. In the light of aforesaid discussion, impugned judgment & decree dated May 04, 2013 passed by the first appellate court is set aside by way of acceptance of the instant appeal. Consequently, respondents are directed to refund the amount of ₹ 96,205/- within a period of three months from the date of receipt of a certified copy of this order, failing which, it shall entail interest @ 9%.

16. No order as to costs.

(Jaspal Singh)
Judge

September 01, 2017
avin

Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No