IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 294

Regular Second Appeal No.4718 of 2013 (O & M)
Date of Decision: *July 20, 2017*

S.K. Bansal

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

. . .

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

. . .

PRESENT: - Mr. J.S. Maanipur, Advocate, for the appellant.

Ms. Sudeepti Sharma, Additional Advocate General, Punjab.

• • •

Jaspal Singh, J

1. By virtue of the instant appeal, Mr. S.K. Bansal, Superintendent Engineer (Retd.), has challenged judgment & decree dated July 25, 2013 whereby while accepting Civil Appeal No.73-T dated April 18, 2012/June 05, 2012, the Additional District Judge, Patiala, has set aside judgment & decree dated March 13, 2012 passed by the Civil Judge (Senior Division), Patiala, and has decreed the suit of State of Punjab for recovery of ₹ 1,44,183/- on account of excess salary paid to him while giving benefit of bunching of increments.

2. Briefly stated the facts giving rise to the instant regular second appeal are that respondent – plaintiff State of Punjab filed a suit

for recovery of ₹ 1,44,183/- against the appellant – defendant on account of excess salary paid by wrongly giving benefit of bunching of increments. The said suit was decreed by the trial court vide judgment & decree dated March 13, 2012. However, aggrieved against the said judgment & decree, State of Punjab preferred an appeal before the lower appellate court i.e. District Judge, Patiala which was entrusted to the court of Additional District Judge, Patiala for its disposal. After hearing learned counsel for the parties and appraisal of record, vide impugned judgment & decree dated July 25, 2013, appeal preferred by State of Punjab was accepted. Consequently, suit was decreed to the effect that plaintiff – State of Punjab is entitled to recovery ₹ 1,44,183/-
.

3. Aggrieved against judgment & decree dated March 25, 2013, appellant – defendant has approached this Court by way of instant appeal.

4. Learned counsel for the appellant has contended that substantial question involved in this appeal is whether appellant, a retiree, can be burdened with recovery of excess amount wrongly paid to him during service without there being any fraud or misrepresentation on his part? In this regard, it has been argued with vehemence by learned counsel for the appellant that lower appellate court has mis-interpreted the law laid down by the Hon'ble Apex Court in case **Chandi Prasad Uniyal and others vs. State of Uttrakhand and others, 2012(1) RSJ 138** as well as the guidelines issued in case **State of Punjab and others vs. Rafiq Masih (White Washer) and**

others, 2015(1) RSJ 177 which clearly provide that recovery from the retired employee or employees, who are due to retire within one year of order of recovery, cannot be effected and further, that no recovery can be effected by the employer of any monetary benefit wrongly extended to the employees. While relying upon judgment in case **Budh Ram & others vs. State of Haryana & others, 2009(3) SCT 333**, learned counsel for the appellant has contended that since there was no fraud or misrepresentation on the part of appellant, suit was rightly dismissed by the trial court. Moreover, suit itself was not maintainable. Thus, taking the case of the appellant from any of the angles, impugned judgment & decree dated March 25, 2013 passed by the lower appellate court is not sustainable in the eyes of law and liable to be set aside by way of acceptance of the instant appeal.

5. This court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant but does not find any legal and factual force therein.

6. No doubt in view of judgments rendered in cases of **Rafiq Masih; Chandi Prasad Uniyal; and Budh Ram (supra)**, recovery of monetary benefits based on a mistaken belief at the hands of employer and without there being any fraud or misrepresentation on the part of employee, excess amount cannot recovered and in the instant case, there is no fraud or misrepresentation on the part of appellant yet, the aforesaid judgments are not applicable in the facts & circumstances of the instant case and also distinguishable. In case of **Chandi Prasad Uniyal (supra)** which deals with pay fixation and

recovery of excess payment made to an employee, judgment **Syed Abdul Qadir & others vs. State of Bihar & others, 2009(2) Apex Court Cases 412** was also considered, discussed and dealt with. Para 16 of **Chandi Prasad Uniyal's case (supra)** reads as under:-

> "16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona-fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favoritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

7. In the latest case, captioned as **High Court of Punjab & Haryana and others vs. Jagdev Singh, 2016(4) SCT 286; 2016(3) Apex Court Judgments (SC) 336**, principles highlighted in case of **Rafiq Masih (supra)** were also discussed at length and it was observed by Hon'ble Apex Court that those principles cannot be applied to a situation where an employee or officer has furnished an undertaking while opting for revised pay scale and he is bound by the same. In **Rafiq Masih's case (supra)**, Hon'ble Apex Court held that though it is not possible to postulate all situations of hardship where payments have

mistakenly been made by an employer, in the following situations, a recovery by the employer 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 recovery."

8. While dealing with the aforesaid situation, specially enunciated in proposition (ii), the Hon'ble Supreme Court, while dealing with the case **Jagdev Singh (supra)**, held as under:-

> "11. The principle enunciated in proposition (ii) above cannot be apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

9. Adverting to the facts of the case in hand, appellant had given consent Ex.P7 vide letter dated March 13, 2003, authorizing the respondents to effect recovery of the amount paid in excess on account of wrong fixation by bunching of increments. Thus, observations made in cases **Syed Abdul Qadir (supra)**, **Budh Ram (supra)** as well as

Rafiq Masih (supra) are of no help to the appellant, rather, in view of the particular situation i.e. undertaking given by the appellant, all these judgments come under the eclipse of the latest judgment of Hon'ble Apex Court delivered in case **Jagdev Singh (supra)**. Thus, this Court is of the considered view that lower appellate court, vide impugned judgment & decree dated March 25, 2013 has rightly accepted the appeal and consequently, decreed the suit preferred by the State of Punjab for recovery of amount in question.

10. In the light of what has been discussed above, instant appeal being devoid of merits is dismissed while upholding that impugned judgment & decree dated July 25, 2013 passed by the Additional District Judge, Patiala.

11. No order as to costs.

(Jaspal Singh)
Judge

July 20, 2017
avin

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