

Regular Second Appeal No.833 of 2015

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

Sr. No.101

RSA No.833 of 2015

Date of Decision: July 21, 2017

NARESH KUMAR

...APPELLANT

Versus

**DIRECTOR, MAHARAJA AGGARSAIN INSTITUTE OF MEDICAL
RESEARCH AND EDUCATION AGROHA, HISAR & ANR.**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Jaswant Jain, Advocate,
for the appellant.

JASPAL SINGH, J.

Challenge in this appeal is to the judgment and decree dated October 14, 2014 passed by learned Additional District Judge, Hisar in Civil Appeal No.36 of 2011 captioned as “*Naresh Kumar Driver vs. The Director, Maharaja Aggarsain Institute of Medical Research and Education Agroha, Hisar and another*”, whereby an appeal preferred against judgment and decree dated April 20, 2011 passed by learned Civil

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Judge (Jr. Divn.) Hisar in Civil Suit bearing No.292-C of 2011 vide which suit preferred by Naresh Kumar, Driver for declaration to the effect that he is entitled to get his pay fixed in the pay scale of driver i.e. 4000-100-EB-100-6000 as has been granted to his counter parts w.e.f. November 21, 1998 as well as he is entitled to receive difference of revised pay scale w.e.f. January 01, 1996 AND mandatory injunction directing the defendants/respondents to complete his service book after granting him arrears of revised pay scale and all other consequential benefits along with interest @ 24% per annum from due date till realization, was dismissed.

2. Undisputed facts of the case are that appellant/plaintiff was appointed as an Attendant by Maharaja Aggarsain Institute of Medical Research and Education, Agroha vide appointment letter No.2951 dated July 17, 1996. He was designated as Driver in his own pay scale vide order dated November 21, 1998 (Exhibit P-10). His services were terminated by the Institute on account of paucity of funds vide order dated April 15, 1999. He challenged order dated April 15, 1999 before Labour Court, Hisar and Award dated December 08, 2004 (Exhibit P-26) was passed, whereby respondent No.1 was directed to reinstate him in service with 50% back wages. In compliance of aforesaid Award dated December 08, 2004, appellant/plaintiff was reinstated and back wages were paid to him. At the time, his services were terminated he was working as Driver in his own pay scale which otherwise stands established from various documents available on record.

3. Here it would be pertinent to mention that appellant/plaintiff was never appointed as Driver against any regular or sanctioned post. He

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was just designated as Driver in his own pay scale, in which, he was appointed as an Attendant.

4. Assailing the impugned orders, it has been submitted by learned counsel for the appellant-Mr. Jaswant Jain, Advocate that both the courts below have committed an error while relying upon letter dated April 05, 2005 (Exhibit D-7) written by the appellant to the Director of Institute as well as affidavit dated April 01, 2005 (Exhibit D-8). But, these documents do not in any way scuttled down the rights of appellant/plaintiff to which he is otherwise legally entitled. Undoubtedly, appellant/plaintiff has been working as Driver w.e.f. November 21, 1998 and on the doctrine of equal pay for equal work, appellant/plaintiff is entitled to the emoluments and salary of a Driver as is being paid to his counter parts. Moreover, letter dated April 05, 2005 (Exhibit D-7) as well as affidavit dated April 01, 2005 (Exhibit D-8) were only submitted by appellant/plaintiff under some pressure or coercion as he could be allowed to join the duties by respondents and on the same post from which he was retrenched. But mere submission of the aforesaid documents does not absolve respondents/defendants of their liability to fix pay scale of appellant/plaintiff as Driver especially when it has already been granted to his counter parts. Accordingly, learned counsel for the appellant/plaintiff has submitted that impugned judgment and decrees passed by learned trial court as well as lower appellate court are not sustainable in the eyes of law and are liable to be set aside. Consequent upon setting aside of impugned judgment and decrees, suit of the plaintiff deserves to be decreed.

5. This Court has given an anxious thought to the aforesaid

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submissions put forth by learned counsel for the appellant, but does not find any legal and factual substance therein.

6. Undisputed facts have been recapitulated in para No.8 of the judgment. According to undisputed facts, appellant/plaintiff was appointed as an Attendant, though he was designated as Driver but in his own pay scale. At that time, he also furnished vide letter dated April 05, 2015 (Exhibit D-7) besides furnishing an affidavit dated April 01, 2005 (Exhibit D-8). The relevant portion of Exhibit D-7 reads as under:-

“I will not claim higher scale and back wages if I am allowed to join duties in the same pay scale and on same post from which I was retrenched. I will not proceed further in any court of law against this decision, affidavit in this regard is attached herewith.”

7. It was only in pursuance of aforesaid undertaking, Director of the Institute vide letter dated April 26, 2005 (Exhibit D-9) accepted the offer made by appellant/plaintiff to join the duty of an Attendant (Driver) in his own pay scale. Appellant/plaintiff cannot wriggle out from undertaking given to the respondents. Otherwise also, appellant/plaintiff stands estopped to claim contrary to the accepted position. In case ***High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, 2016(4) SCT 286; 2016(3) Apex Court Judgments (SC) 336***, it was observed that when officer/official furnish an undertaking while opting for revised pay scale, he is bound by undertaking and cannot say that excess amount paid to him cannot be recovered from him or that Government is not entitled to refund of excess amount paid. In the aforesaid case, appellant/plaintiff retired from service and when he was granted revised pay scale and selection grade, he had

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furnished an undertaking while opting for revised pay scale to refund any excess payment if it was so detected and demandant subsequently.

8. Adverting to the facts of the case in hand, in view of letters Exhibit D-7 and Exhibit D-9, appellant/plaintiff is estopped from claiming benefits which have been claimed through instant appeal for the reasons recorded above as well as for the reason that he was never appointed as Driver against any vacant or sanctioned post, that too, by adopting due process meant for selection for appointment of a Driver. Thus, this Court does not find any infirmity, illegality or perversity in the impugned judgment and decrees passed by both the courts below. Rather, same are absolutely in consonance with evidence as well as settled proposition of law.

9. As a sequel to the aforesaid discussion, this Court does not find any merit in the instant appeal. Moreover, there is no question what to say any substantial question of law involved in this appeal which requires consideration by this Court. Accordingly, instant appeal stands dismissed, whereby impugned judgment and decrees passed by both the courts below are upheld.

10. No order as to costs.

July 21, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**