

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1169 of 2017 (O&M)
Date of Decision: 23.03.2017**

Kurukshetra University, Kurukshetra

... Appellant

Versus

Dharam Pal Sharma

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amarjit Singh Virk, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. While working as an Assistant in the Kurukshetra University, Kurukshetra, the plaintiff-respondent (hereinafter "plaintiff") was embroiled in case FIR No.189 dated August 19, 2003 registered at Police Station Pehowa under Sections 302/323/324/148/149 IPC. The plaintiff was arrested and remained in custody till he was convicted on July 15, 2006 under Section 304 Part-II IPC along with his co-accused and was sentenced to undergo rigorous imprisonment for seven years vide order of sentence dated July 18, 2006 passed by the learned Sessions Judge, Kurukshetra. He was arrested on August 28, 2003 and convicted on July 15, 2006.

2. He appealed against his conviction and sentence to the High Court in which proceedings his sentence was initially suspended vide order dated November 27, 2006 passed in CRA No.1911-SB of 2006. The Criminal Appeal is still pending. As a result of this, the plaintiff remained under suspension from August 28, 2003 till February 28, 2007 when he would normally have retired on superannuation had he continued to work uninterrupted.

3. The University granted him provisional pension vide letter dated March 20, 2008 and handed over his provident fund dues but other retiral benefits and arrears on account of revision of pay scales w.e.f. January 01, 2006 were not released on account of conviction and pendency of appeal in the High Court. Claiming these dues he filed the present suit in the Court of the Civil Judge (Junior Division), Kurukshetra for declaration with consequential relief of mandatory injunction. He prayed for release of gratuity; GIS; leave encashment; commutation of pension; LTC; arrears of revision of pension w.e.f. January 01, 2006; medical benefits; arrears of revised pay scale w.e.f. January 01, 2006 or any other amount due along with interest @18% per annum from the date of his retirement till final payment. The mandatory injunction was sought to release the amounts in his favour. The facts are not disputed in this case.

4. The learned trial Judge vide judgment dated May 16, 2014 dismissed the suit for several reasons including that the plaintiff concealed the fact that he remained in judicial custody from August 2003 to February 2007 in his plaint. Therefore, he deserved not to be entitled to any equitable relief. The trial Court found conduct of the plaintiff deficient in making a “false statement” that his conviction and sentence was stayed by the High Court in a bail application filed under Section 389 Cr.P.C. and his case should be summarily thrown out being based on “falsehood”. Sentence was suspended but not the conviction. Besides, he had not worked for the period of judicial custody and, therefore, he had no right to claim the benefits. In view of this judgment and decree the plaintiff was granted all but sweet nothing.

5. Aggrieved by the judgment and decree, the plaintiff approached the Court of the learned District Judge, Kurukshetra under Section 96 of the Code of Civil Procedure, 1908 challenging the judgment and decree of the trial Court. The University defended the decree referring to and invoking the provisions of Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II as applicable to Haryana as well as the University, counter-claiming that pension and retiral benefits could be withheld in view of conviction on a criminal charge.

6. The learned District Judge has allowed the appeal and reversed the judgment of the trial Court holding the petitioner entitled to release of revision of pay and retiral benefits as per rules with interest @9% per annum from the date of retirement till realization with consequential relief of mandatory injunction directing the defendant to revise his pay and pay the retiral benefits within three months from the passing of the judgment dated July 29, 2016. The learned District Judge has taken a broad view that the offence alleged to have been committed by the plaintiff is wholly unrelated to his appointment as Assistant or his work in the University. No loss has been caused to the University by his judicial custody. The learned First Appellate Court drew its reasoning from case law in Mukhtiar Singh v. State of Punjab and others, 2007 (2) Recent Services Judgments 261 (Punjab and Haryana High Court) where the petitioners were convicted under Section 307 of the IPC, it was held by this Court that the act of attempt to commit murder is not covered under the term “moral turpitude” and the petitioner cannot be removed from the Chairmanship of the Market Committee.

7. In Kaur Singh and another v. Punjab State Electricity Board and others, 2007 (4) Recent Services Judgments 780 this Court held that conviction *ex facie* could not constitute the basis of an order of dismissal and the competent authority was required to consider the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact his misconduct would likely have on the administration and the other extenuating circumstances and redeeming features. Learned First Appellate Court has applied the ratio of these two cases on analogy as somewhat applicable to the facts of this case. The Judge pointed out that benefit of pension, gratuity and other retiral benefits are hard earned and are in the nature of property and cannot be taken away or withheld without following procedure established by law or what we call the due process of law. To support this view he relied on a selection of judgments, namely, Devki Nandan Prasad v. State of Bihar and others, AIR 1971 SC 1409; State of Punjab and another v. Iqbal Singh, AIR 1976 SC 667, State of Jharkhand and others v. Jitendra Kumar Srivastava and another, AIR 2013 SC 3383 and Darhan Singh v. State of Punjab and others, 2011 (4) Recent Services Judgments 218 (Punjab and Haryana High Court). These are cases where criminal proceedings were initiated by employers against their respective employees while in service. The offences committed had no nexus with the employment. There was no service misconduct committed by any of those who were parties to the aforesaid cases.

8. In the present case, the period of suspension continued from arrest to retirement and no orders were passed keeping the conviction in mind or any action taken due to criminal proceedings. There was no order

withholding these benefits passed till retirement day was crossed or even thereafter. In the cases noticed above Rule 2.2 (b) was held to confer no legal right in the employer to withhold dues which were otherwise payable. On this proposition of law, he relied on two judgments of this Court delivered in Manohar Singh v. Punjab State Electricity Board, 2006 (2) SCT 103 and Atam Bodh Sharma v. State of Haryana, 2006 (4) SCT 768.

9. The Judge reasoned that since no order of dismissal was passed against the plaintiff till the date of his retirement on the ground of his conviction in a criminal case then it would not lie in the defendant to withhold the revision of pay and retiral benefits of the plaintiff in view of statement of law in *Darshan Singh's* case (Supra). So far as the claim of interest was concerned the Judge took the view that retiral benefits were withheld and the money payable was utilized by the defendant. He applied Section 3 of the Interest Act and Section 34 of the CPC and doctrine of unjust enrichment to hold that the plaintiff is entitled to payment of interest on the amount of retiral benefits at the prevalent bank rates for delay in payment. He thought it just and reasonable to award interest @ 9% per annum. He did not make much of non-disclosure of facts regarding detention in custody, suspension and conviction and sentence and I think rightly so on principle of proportion. There may have been concealment but the plaintiff mentioned the fact in the pleadings regarding passing of the judgment and suspension of his sentence and grant of bail to him by the High Court and, therefore, it would not be possible to hold that the claim of the plaintiff is liable to be dismissed on ground of concealment of material facts from the Court. In this way, revision of pay and payment of retiral

benefits as per rules applicable was allowed and the findings of the learned Civil Judge (Junior Division) Kurukshetra on issues No.1 to 3 were held erroneous and were reversed for good and sufficient reason.

10. I have read the decree sheet and find that the plaintiff is held entitled to revision of pay and retiral benefits. Accordingly, the revision would take place from January 01, 2006 but I do not find that arrears of pay has been decreed for the disputed period which could have been the only cause for interference, in case, those amounts were decreed because the University was not at fault when plaintiff in his compelling circumstances could not offer his labour on account of judicial custody when he embroiled himself in a criminal case of his own making where the conviction stands subject to appeal pending in the High Court, the result of which bears no nexus with the appellate decree. Accordingly, I find no legal infirmity in the judgment and decree of the learned Lower Appellate Court nor can the University have any right to withhold those amounts under guise of Rule 2.2 (b) which is beside the point.

11. Accordingly, the University appeal is dismissed *in limini* as no question of law much less substantial either under Section 100 CPC or Section 41 of the Punjab Courts Act, 1918 falls for consideration on the regular second appeal side of this Court. This is not a fit case for admission.

(RAJIV NARAIN RAINA)
JUDGE

23.03.2017
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Whether speaking/reasoned Yes

Whether reportable No