

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 107

Regular Second Appeal No.4132 of 2017 (O & M)
Date of Decision: *September 01, 2017*

Chief Administrator, HUDA, Panchkula & others

..... PETITIONERS

VERSUS

Prem Singh

..... RESPONDENT

. . .

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

. . .

PRESENT: - Mr. Padamkant Dwivedi, Advocate, for the appellants.

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Jaspal Singh, J

CM Nos.10714-C & 10715-C of 2017

For reasons given in the applications, delay in filing and
refiling the appeal is condoned.

Applications stand allowed.

RSA No.4132 of 2017

The appellants, through the instant regular second appeal,
have challenged judgment & decree dated December 16, 2016 passed by the
Additional District Judge, Karnal, whereby appeal filed by the respondent –
plaintiff has been partly accepted; orders dated January 19, 2011 & February
10, 2011, withdrawing increments for the period February 01, 1997,
February 01, 1998 & February 01, 1999 have been set aside; and defendants

are directed to pay the recovered amount of ₹ 2,24,345/- alongwith interest @ 6% per annum from the date of recovery till actual payment.

Respondent – plaintiff had filed a civil suit for declaration with consequential relief of mandatory and permanent injunction submitting that he was employed as Junior Engineer with defendant No.2 on July 23, 1977 and was promoted as Sub Division Engineer vide order dated July 07, 1995. His services were regularised vide order dated February 20, 1996 and was granted regular annual increments for the period February 01, 1997; February 01, 1998,; February 01, 1999; February 01, 2000; and February 01, 2001 vide various office orders. However, defendant No.2 i.e. Executive Engineer, HUDA, Panipat withdrew the aforesaid benefit for the period February 01, 2000 and February 01, 2001, without affording any opportunity of hearing to the respondent – plaintiff. Thereafter, vide order dated January 19, 2011, appellants – defendants also withdrew the already granted increments for the period February 01, 1997 to February 01, 1999. Respondent – plaintiff retired from the post of Sub Divisional Engineer. In the promotion order, there was a condition that he was required to clear departmental examination within a period of three years, failing which, further increments in the promotional post was not to be allowed. He was granted increments for three years and on February 01, 1999, his basic pay was ₹ 9,375/- and his pay, in the revised pay scale of ₹ 9,300 – 34,800 + ₹ 5,400/-, was required to be fixed at ₹ 27,600/-, but he continued to draw same pay upto the date of his superannuation. Even persons junior to him were drawing more pay. Accordingly, through the civil suit, he prayed pay on the substantive post of Junior Engineer from February 20, 1996 to December 31, 2010 and arrears of difference of pay alongwith penal interest

Defendants contested the suit by filing written statement, taking preliminary objections of maintainability, locus standi, estoppel, suppression of material facts, cause of action and jurisdiction etc. It was submitted that plaintiff was required to pass a departmental examination within three years from the date of his joining against the post of SDE, failing which he would not be allowed annual increments, and that, annual increment shall accrue to him from the date he passes the aforesaid exam, but he will not be allowed the arrears for the period during which he could not pass the prescribed examination. This conditional order was duly received and accepted by him. As he could not pass the aforesaid examination, therefore, he was not entitled to annual increments. However, due to inadvertence, he was being afforded benefit of increments which was withdrawn lateron.

Replication was filed reiterating the averments taken in the plaint. From the pleadings of parties, issues were framed by the trial court. Parties led evidence. After hearing learned counsel for the parties and perusing the evidence, oral as well as documentary, suit of the respondent – plaintiff was dismissed by the trial court vide judgment & decree dated March 30, 2013 holding that plaintiff has no locus standi; cause of action to file & maintain present suit; plaintiff has not come to the court with clean hands; suppressed the true & material facts; and the plaintiff is estopped from filing the present suit by his own act & conduct.

Aggrieved plaintiff challenged the decision of trial court in appeal which was partly allowed vide judgment & decree dated December 16, 2016 by the lower appellate court, as briefed in first paragraph of this judgment.

While assailing the impugned judgment rendered by the lower appellate court, learned counsel for the appellants has vehemently argued that findings recorded by the lower appellate court are not sustainable in the eyes of law. Misreading of evidence has resulted into miscarriage of justice. Since, respondent – plaintiff has failed to pass departmental examination, therefore increments granted to him were rightly withdrawn.

This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellants, but does not find any legal substance therein.

Undisputably, plaintiff was recruited as Junior Engineer and was promoted as Sub Divisional Engineer vide order dated February 20, 1996 (Ex.P2). A perusal of Ex.P2 shows that plaintiff was required to pass a departmental examination within three years from the date of his joining as SDE, failing which he was not entitled to annual increment, and that, annual increment due shall accrue to him from the date he passes the examination but will not be allowed arrears for the period he remains unable to pass the prescribed departmental examination. Admittedly, plaintiff could not pass the requisite examination but he was granted annual increments due to mistake on the part of department and there was no misrepresentation on behalf of the respondent – plaintiff in this regard. As per the settled proposition of law, in the absence of any fraud or misrepresentation on the part of employee, recovery of excess amount cannot be effected from him. In the case in hand, respondent – plaintiff was granted increments on February 01, 1997, February 01, 1998, February 01, 1999, February 01, 2000 and February 01, 2001. At the time of withdrawing increments of February 01, 2000 and February 01, 2001 vide order dated March 30, 2001,

1999. Order dated March 30, 2011 (Ex.P7) was never challenged by the respondent – plaintiff and attained finality. After a gap of more than 10 years, vide orders dated January 19, 2011 and February 10, 2011 benefit of increments for the period February 01, 1997, February 01, 1998 and February 01, 1999 have been withdrawn, which act not only causes great hardship to a retired employee but would also allow the defendants to take advantage of their own wrong. Thus, this Court is of the considered opinion that the action of appellants – defendants, withdrawing the benefit of increments vide orders dated February 19, 2011 & February 10, 2011, that too, after a gap of more than 10 years, being arbitrary and illegal, is not sustainable in the eyes of law. As such, it is held that lower appellate court has rightly set aside the aforesaid impugned orders and directed the appellants to pay the recovered amount alongwith interest to the respondent.

Accordingly, in view of the aforesaid discussion, instant regular second appeal is dismissed with no order as to costs. Consequently, judgment & decree dated December 16, 2016 passed by the lower appellate court does not warrant any interference by this Court and the same is upheld & affirmed.

September 01, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No