

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

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Regular Second Appeal No.5671 of 2015 (O&M)
Date of Decision: September 26th, 2019

The Union of India and others

...Appellants

Versus

Janak Raj

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amit Sheoran, Advocate
for the appellants.

None for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 11.02.2015 passed by the Civil Judge (Junior Division), Pathankot, whereby the suit for mandatory injunction directing the appellants-defendants to pay an amount of ₹38,242/- along with interest till the date of realization, which was deducted from the General Provident Fund of the plaintiff after his retirement, stands decreed, against which appeal preferred by the appellants-defendants stands dismissed by the District Judge, Pathankot, vide judgment dated 28.04.2015.

2. It is the contention of learned counsel for the appellants that the trial Court has omitted to decide the legal point raised by the appellants-defendants with reference to the jurisdiction of the Civil Court as he contends that the Central Administrative Tribunal Act, 1985, bars the jurisdiction of the Civil Court. As per Section 2-A of the said Act, the provisions of this Act would not apply to any of the members of the Naval, Military or Air Force or any other armed force of the union, which fact has

been taken into consideration by the Courts below to repel the argument of

the appellants-defendants, which is unsustainable keeping in view the fact that the respondent was on civil post. He contends that the respondent was not a commissioned officer and, therefore, would not be covered by the provisions of Section 2-A of the Central Administrative Tribunal Act, 1985. The Civil Court, therefore, did not have the jurisdiction to entertain the suit. That apart, he contends that the respondent-plaintiff should have approach the Central Administrative Tribunal for the relief, if any, which he had claimed through the Civil Court. His contention is that the recovery, which has been made from the General Provident Fund of the respondent-plaintiff because of the excess amount which was paid to him. A wrongful gain on the part of an employee cannot be allowed to be continued and it was only to put the records right and to recover the money which he was not entitled to that such a step was resorted to which cannot be said to be without any basis or justification. He, thus, prays that the appeal be allowed and the impugned judgments be set aside.

3. I have considered the submissions made by the counsel for the appellants and with his assistance, have gone through the records of the case.

4. The facts which are not in dispute are that some excess payment according to the appellants-defendants had been made to the respondent-plaintiff during his service, which was recovered from his General Provident Fund at the time of his retirement. The said recovery which has been made would be contrary to the settled principles of law as laid down by the Supreme Court in *State of Punjab and others Versus Rafiq Masih 2015 (4) SCC 334*. The judgments and decree, therefore, passed by the Courts below on these principles cannot be said to be without any

justification as it is not in dispute that the amount which was paid to the respondent-plaintiff was not because of any misrepresentation or fraud on his part but admittedly was because of a mistake and error committed by the officials appellants-defendants. The plea, therefore, of the counsel for the appellants on this count is not sustainable.

5. As regards the contention of learned counsel for the appellants that the Civil Court did not have jurisdiction, the said aspect has rightly been dealt by the Lower Appellate Court by contending that the respondent-plaintiff was appointed in the Military Engineering Service and was serving the said force.

6. If that be so, he would be covered by the provisions of Section 2-A of the Central Administrative Tribunal Act, 1985, which has rightly been relied upon by learned District Judge, Pathankot, while passing the judgment dated 28.04.2015. The Civil Court, therefore, had the jurisdiction to entertain the same.

7. That apart, there are concurrent findings recorded by the Courts below, which do not call for any interference by this Court. The amount which is being decreed in favour of the respondent-plaintiff is meagre and, therefore, this also dissuades this Court to take any contrary view, as has been returned by the Courts below.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

9. In the light of the dismissal of appeal, the application for stay i.e. CM No.13837-C of 2015 is disposed of as infructuous.

September 26th, 2019

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No