

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

(Sr. No. 231)

CWP No. 23268 of 2018

Date of decision : 21.11.2022

Raj Singh Rathi

.....Petitioner

Versus

The Vice Chancellor and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Ms. Jasdev Singh, Advocate for the petitioner.

Mr. Dharmender Singh Rawat, Advocate for the respondents.

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DEEPAK SIBAL, J. (Oral)

Through the present petition the petitioner prays for the quashing of order dated 10.07.2018 through which the respondent-University, after retrospective re-fixation of the petitioner's pay, seeks to recover from him excess payment already made to him.

The facts, in brief, which are required to be noticed for the adjudication of the present petition are that in the year 1974 the petitioner was appointed as a Messenger Boy in the respondent-University and thereafter he earned certain promotions. On 31.05.2014, while serving as an Assistant, he retired from service. After his retirement, on the basis of audit objections two notings/orders dated 05.08.2015 and 07.08.2015 were made/passed by the respondent-University in the petitioner's service-book. Through such notings/orders the petitioner's pay was retrospectively

reduced. The petitioner challenged such action of the respondent-University through a civil suit filed by him before the Civil Courts at Hisar. In such civil suit not only did he seek to declare the notings/orders dated 05.08.2015 and 07.08.2015 to be null and void but he also sought the consequential relief of permanent injunction to prohibit the respondents from making recovery of the benefits of pension that he had already received. Through judgment and decree dated 23.05.2017 the Civil Judge (Junior Division), Hisar (for short - the Civil Judge) dismissed the petitioner's suit against which the petitioner filed an appeal which is listed for final arguments before the District Judge, Hisar.

In the meanwhile, after the dismissal of the petitioner's civil suit by the Civil Judge, the respondent-University sought to make recoveries from the petitioner which action of the respondent-University has been assailed by him through the instant petition.

Learned counsel for the petitioner submitted that the impugned recoveries could not have been made from the petitioner after he had retired and that too from a Class-III post.

In support of his afore contention learned counsel for the petitioner placed reliance on the law laid down by the Supreme Court in State of *Punjab Vs. Rafiq Masih (white washer) (2015) 4 SCC 334* and *State of Maharashtra and another Vs. Madhukar Antu Patil and another (2022) 5 SCC 322*.

On the other hand, learned counsel for the respondent-University submitted that the the prayer made by the petitioner through the present petition is the same as made by him in the civil suit already

preferred by him and since after its dismissal by the Civil Judge, the petitioner's appeal against such dismissal remains pending before the Appellate Court, he cannot be allowed to maintain the instant petition and should be relegated to pursue his case before the Civil Court.

Learned counsel for the parties have been heard and with their able assistance the record has been perused.

On 31.05.2014, the petitioner retired from the service of the respondent-University. At that time he was serving on the post of an Assistant. After his retirement certain objections were raised by the auditors with regard to him having been wrongly placed in a higher pay scale. Accordingly, on 05.08.2015 and 07.08.2015, the University made certain notings in his service book and retrospectively reduced his pay as a result whereof the petitioner started to get lower pension. The notings/orders made/passed by the respondent-University on 05.08.2015 and 07.08.2015, which had led to retrospective reduction in the petitioner's pay and consequently receipt of lower pension were challenged by the petitioner through a civil suit. The prayer made by him in his civil suit reads as under:-

“Suit for declaration to the effect that order dated 05.08.2015 and order dated 07.08.2015 passed by defendants whereby they ordered to reaffix the pension of the plaintiff are wrong, illegal, null and void, against the law and facts, without authority, without jurisdiction, arbitrary, mala fide and are not binding upon the rights of the plaintiff and the plaintiff is legally entitled get the pension which was affixed at ‘the time of his retirement and also entitled to interest on GPF amount at the rate of 24% per annum from the date of retirement till its realization with consequential relief of permanent

injunction prohibitory and mandatory to the effect that the defendants be restrained from recovering the benefits of pension from the plaintiff on the basis of above said impugned orders, on the basis of evidence of all kind.”

A perusal of the afore prayer made by the petitioner in his civil suit clearly reveals that through the same he has not only sought to declare the notings/orders 05.08.2015 and 07.08.2015 made/passed by the respondent-University, on the basis whereof his pay and resultantly his pension was reduced, as null and void but has also sought the grant of consequential relief of permanent injunction prohibiting the respondent-University from making recoveries.

Thus, the genesis of the recovery sought to be made through the orders under challenge in the instant petition already stands challenged by the petitioner before the Civil Court. Such challenge remains pending in the form of an appeal filed by him against the dismissal of his civil suit by the Civil Judge. He cannot be allowed to maintain two parallel proceedings. Even if there was a subsequent event resulting from the dismissal of his civil suit by the Civil Judge with which he was also aggrieved, the remedy for him would be to seek an appropriate amendment in the pending civil proceedings and then pray for interim relief.

Dismissed.

21.11.2022

sunil yadav

**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No