

**112/1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-6438-2017 (O&M)
Decided on : 19.12.2022

Rajinder Kumar

..... Appellant

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. B.S.Mittal, Advocate
for the appellant.

Mr. Rohit Arya, DAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

CM-9514-C-2022

This is an application under Section 151 CPC for disposal of the appeal in terms of judgment dated 20.04.2022 (Annexure A-1) passed by this Court in RSA No.1457 of 2021.

After hearing learned counsel for the parties, application is allowed and the main case is taken up for hearing today itself.

Main case

The plaintiff is in Regular Second Appeal impugning the judgment and decree dated 13.07.2017 passed by the Lower Appellate Court whereby the judgment and decree dated 23.08.2016 passed by the trial Court was set aside.

Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The pleaded case of the plaintiff may be noticed as thus; plaintiff joined Transport Department on 22.11.1975 as Helper and was promoted to the post of Mechanic on 24.03.1988. He retired from service on 28.02.2015. Employees junior to him namely Het Ram, Mewa Singh and Bhoop Singh, who were working as mechanic, were drawing more salary than him. The said employees were getting pay scale of Rs.3,600/- whereas plaintiff was getting pay scale of Rs.3200/-. The plaintiff pleaded that as per settled law a senior employee could not get less salary than his junior, hence, he was legally entitled to step up his salary equivalent to his junior and also entitled to get the arrears arising out of the same. Even though the plaintiff approached the defendants to admit his claim but they refused. Hence, the present suit has been filed.

In the written statement, defendants submitted that Het Ram, Bhoop Singh and Mewa Singh were given technical pay scale in compliance of orders of this Court. Mewa Singh was given technical pay scale as per decision passed in CWP No.23131 of 2012. Therefore, the pay of above-mentioned junior employee was more than the pay of the plaintiff. It was further submitted that as per Haryana Government notification dated 11.03.2014 and the Haryana (Abolition of distinction of pay scale between technical and non-technical posts) Act 2014, the technical pay scale given as per Haryana Government Instructions dated 30.03.1982, 23.08.1990, 26.07.1991 and 09.08.2010 stood withdrawn. In the circumstances, if after notification dated 11.03.2014, technical pay scale was given to the plaintiff, it would be violative of the Act.

Learned counsel for the plaintiff, at the outset, submits that the

following questions of law are involved in the present appeal:

- i) whether the subsequent withdrawal of instructions by the State Government giving technical pay scale curtails the right of the plaintiff to get pay at par with his juniors;
- ii) whether the plaintiff has a right to seek parity of pay with his juniors, who are drawing salary higher than him, by virtue of directions of the Court.

Learned counsel submits that the above questions of law are identical to the ones as involved in RSA No.1457 of 2021, and already stand settled by this Court vide judgment dated 20.04.2022 in the above-mentioned Regular Second Appeal wherein it has been held that a senior employee would be entitled to stepping up of his pay while in service, if an employee junior to him was drawing higher salary, even if, such raise in salary had been given to the junior employee by virtue of a Court order. He further submits that the aforesaid judgment rendered by this Court has attained finality as the SLP preferred by the State of Haryana against the said judgment has been dismissed by the Hon'ble Supreme Court vide order dated 09.09.2022.

Learned counsel for the plaintiff further submits that Government notification dated 11.03.2014 subsequently withdrawing the technical pay scale given pursuant to the instructions dated 30.03.1982, 23.08.1990, 26.07.1991 and 09.08.2010 would have no bearing on the right of the plaintiff to seek stepping up of his pay, which had accrued to the

plaintiff on account of his junior drawing more salary than him.

Per contra learned State counsel while opposing the prayer made by counsel opposite submits that the plaintiff cannot claim benefit of technical pay scale given to his juniors by virtue of the Court order because the distinction between technical and non-technical pay scale has since been withdrawn by the State Government vide notification dated 11.03.2014. Learned counsel for the State, however, has not been able to controvert the submissions made by the counsel for the plaintiff that the questions of law involved in the present case have been settled by this Court in RSA No.1457 of 2021 and still further, SLP preferred to impugn the judgment rendered in aforesaid RSA stands dismissed by the Hon'ble Supreme Court in SLP No.25095 of 2022 vide order 09.09.2022.

Heard learned counsel for the parties and perused the relevant material available on record.

The questions of law involved in the instant appeal have already been settled by this Court in RSA No.1457 of 2021 vide judgment dated 20.04.2022 and has since attained finality. The factum of the case of the plaintiff being squarely covered by the judgment rendered by this Court in RSA No.1457 of 2021, has not been controverted by the learned counsel for the State coupled with the fact that the SLP preferred by the State against the order passed in RSA No.1457 of 2021 has been dismissed by the Hon'ble Supreme Court vide order dated 09.09.2022.

As a sequel to the above, the present appeal stands allowed and the judgment and decree dated 13.07.2017 passed by the Lower Appellate Court is set aside. Defendant-department is directed to treat the plaintiff at

par with his juniors and grant him the pay scale equivalent to them.

Since main appeal stands disposed of, all pending applications also stand disposed of.

(MANJARI NEHRU KAUL)
JUDGE

19.12.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No