

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

(105)

1)

**RSA No.357 of 2020 (O&M)
Date of Decision : 26.05.2023**

R.C. Sharma

...Appellant

Versus

Uttari Haryana Bijli Vitran Nigam Ltd.

...Respondent

AND

2)

RSA No.456 of 2020(O&M)

R.C. Sharma

...Appellant

Versus

Uttari Haryana Bijli Vitran Nigam Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shubham Budania, Advocate for
Mr. Bhuwan Vats, Advocate
for the appellant.

Mr. Hitesh Pandit, Advocate
for the respondent-UHBVNL.

Harsimran Singh Sethi J. (Oral)

CM No.937-C of 2020

RSA Nos.357 and 456 of 2020

1. By this common order, the two Regular Second Appeals, the details of which have been given in the heading are being decided as the same arise out of the same judgment passed by the Lower Appellate Court by which it has been held that the claim of grant of benefit for the service rendered during the 2nd National Emergency towards increment and seniority has not been proved on record and the same relief has been declined to the appellant-plaintiff.

2. Learned counsel for the appellant argues that the said relief has been declined by the Lower Appellate Court without any valid justification.

3. On being asked to substantiate his claim before this Court on the basis of evidence and facts which have come on record that the appellant-plaintiff was entitled for the 2nd National Emergency towards increment and seniority, learned counsel for the appellant has not been able to show any Rule in support of the said claim.

4. It may be noticed that even the Lower Appellate Court has recorded a finding that though a claim has been raised for the grant of increment and seniority for the period the appellant had served in Air Force during the promulgation of 2nd National Emergency but no such Rule has been cited according to which, the respondent-Corporation is liable to pay any such benefits as claimed in the Civil Suit.

5. As learned counsel for the appellant has not been able to prove that the findings recorded by the Lower Appellate Court qua the claim of benefit of increment and seniority for the period for which the appellant had served the respondent-Corporation during 2nd National Emergency hence, no

interference is called for by this Court in respect of the judgment and decree of the Courts below.

6. Learned counsel for the appellant further submits that a sum of ₹1,80,845/- has been deducted while extending him retiral benefits, which recovery has already been held to be bad by the Courts below as no opportunity of hearing was given to the appellant-plaintiff before recovery of the same amount. Hence, even if an opportunity has to be extended to the respondents to hold an enquiry against the appellant-plaintiff as permissible under the Rules so as to arrive at a decision whether any excess amount has been paid to the appellant, the respondents are under an obligation to return the deducted amount forthwith, which benefit has not been extended by the Court below despite recording a finding that the said recovery of the excess amount was contrary to the settled principles of law.

7. Learned counsel for the respondents on the other hand submits that once an opportunity has been given to the department to hold an enquiry in accordance with law with regard to the shortages being alleged against the appellant-plaintiff, refund of the recovered amount as being claimed by the appellant-plaintiff, will be futile in case he becomes liable for the same in future.

8. The said objection being taken by the respondent-Corporation is frivolous. Firstly, before recovery of any amount from an employee there has to be a substantive order passed in accordance with law then only, any payment for which an employee is entitled for can be withheld or any excess payment can be recovered if permissible under law. In the present case, there is no valid order for withholding an amount of ₹1,80,845/- from the retiral benefits of appellant-plaintiff as of now. Hence, once the Court below has

already returned a finding that the said amount of ₹1,80,845/- has been withheld contrary to the settled principles of law, the respondent-Corporation is liable to refund the said amount to the appellant-plaintiff subject to outcome of any enquiry in case initiated by respondent-Corporation against him.

9. Hence, the present appeals are disposed of by modifying the judgment of the Lower Appellate Court to the extent that the recovery of the amount which has been done from the retiral benefits of appellant for the alleged shortages or for excess payment, the same be refunded back to the appellant forthwith. However, the said refund will be subject to the jurisdiction of the respondent-Corporation to initiate the departmental proceedings against the appellant-plaintiff and any order passed in those proceedings.

CM Nos.936-C of 2020 and
CM No.1314-C of 2020

The Civil Misc. applications are disposed of.

May 26, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No