

CM-2983-C-2023 ;  
CM-2984-C-2023 in/and  
RSA-4082-2005

2023:PHHC:042857

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(112) CM-2983-C-2023 ;  
CM-2984-C-2023 in/and  
RSA-4082-2005  
Date of Decision : 23.03.2023

State of Haryana and others

...Appellants

Versus

Roop Ram

...Respondent

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. Krishan K. Chahal, Additional Advocate General, Haryana  
for the appellants.

Mr. G.S. Gopera, Advocate for the respondent.

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**Harsimran Singh Sethi J. (Oral)**

**CM-2984-C-2023**

Present application has been filed for fixing the RSA No. 4082  
of 2005 to an early actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Krishan K. Chahal, learned Additional Advocate General,  
Haryana, who is present in court, accepts notice on behalf of appellants-  
State and raises no objection for the grant of prayer as raised in the present  
application.

Keeping in view the above, application is allowed and the RSA

No. 4082 of 2005 is taken up for hearing today.

**CM-2983-C-2023**

Present application has been filed for placing on record Annexure A-1 as well as seeking exemption from filing certified copy of the same.

Application is allowed and Annexure A-1 is taken on record.

**RSA-4082-2005**

The present regular second appeal has been filed challenging the judgment and decree of the lower appellate court dated 04.08.2005 by which, the appeal preferred by the respondent-plaintiff against the judgment and decree of the trial court dated 09.12.2002 has been accepted and the suit filed by the respondent-plaintiff has been allowed.

Certain facts need to be mentioned for the correct appreciation of the controversy in hand.

The respondent-plaintiff was appointed as a Fitter Coolie on 02.06.1984. The State of Haryana revised the pay scale of the employees of the Government of Haryana vide Notification dated 28.08.1990 but w.e.f. 01.01.1986. Under the Notification, the posts, for which technical qualification was required for appointment, were placed in a pay scale of ₹950-1400. The respondent-plaintiff claimed the benefit of the said pay scale on the ground that he was having I.T.I. Diploma. The benefit of pay scale of ₹950-1400 was extended to the respondent-plaintiff vide order dated 28.05.1994 but w.e.f. 01.05.1990.

Later on, the appellants-defendants realized their mistake that the post on which the respondent-plaintiff was working i.e. Fitter Coolie, is not a technical post as no technical qualification is required for appointment

to the said post and the pay scale of ₹950-1400 allowed in favour of the respondent-plaintiff, was withdrawn vide order dated 04.06.1998. The said order was challenged by the respondent-plaintiff by filing a civil suit.

Keeping in view the evidence, which came on record, though the trial court also noticed the fact that withdrawal of the pay scale in the year 1998 by the impugned order has been passed without giving any show cause notice but trial court held that as the respondent-plaintiff failed to substantiate his claim to get the pay scale of ₹950-1400, the order dated 04.06.1998 cannot be set-aside and the suit filed by the respondent-plaintiff was dismissed.

Feeling aggrieved against the decision of the trial court dated 09.12.2002, appeal was preferred by the respondent-plaintiff before the lower appellate court. The lower appellate court decided the appeal on 04.08.2005 and held that as the qualification required for appointment to the post of Fitter Collie is Matric/I.T.I., the same is technical in nature and, therefore, the impugned order passed dated 04.06.1998 is bad. It was further held by the lower appellate court that even otherwise, no show cause notice was served upon the respondent-plaintiff and the impugned order withdrawing the pay scale was passed in violation of the rules of natural justice. The judgment and decree of the trial court dated 09.12.2002 was set-aside and the suit filed by the respondent-plaintiff was allowed. Hence, the present regular second appeal.

Learned counsel for the appellants-defendants argues that the pay scale of ₹950-1400 being extended to the respondent-plaintiff was in

the cadre of Fitter Collie, but lower appellate court without reproducing the rules of the post of Fitter Collie and the claim of the respondent-plaintiff has been allowed by recording a finding that for the post of Fitter Collie, the required qualification was Matriculation/ I.T.I. Diploma so as to treat the said post as a technical post. Learned counsel argues that no such evidence was on record to prove the said finding.

Learned counsel for the respondent-plaintiff has not been able to substantiate from the evidence that for the post of Fitter Collie, the minimum qualification required was Matriculation/I.T.I. Diploma so as to treat the same as technical hence, the findings recorded by the lower appellate court is not supported by the evidence on record and cannot be upheld. Either of the counsel has not been able to show from the evidence qua the essential qualification required for the post of Fitter Collie.

Further, it is a conceded position that before passing the impugned order, the pay scale of ₹950-1400, which was already allowed in favour of the respondent-plaintiff in the year 1994, w.e.f. 01.05.1990 has been withdrawn without giving any show cause notice. The findings recorded by the courts below is based upon the evidence. Learned counsel for the appellants-defendants conceded the fact that no show cause notice was given to the respondent-plaintiff prior to the passing of the impugned order.

It is a settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 2265 of 2011 titled as ***Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprandhak and another***

*vs. Raghunath Singh Rana and others*, 2016(12) SCC 204, decided on 17.05.2016 and in Civil Appeal No. 9417 of 2019 titled as *M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another* 2019 (12) JT 283, decided on 13.12.2019 that where any order passed by the authority concerned causes prejudice to an employee especially, financial liability, an opportunity of hearing is must and no order causing prejudice to an employee can be passed by an employer unilaterally.

Keeping in view the settled principle of law, no order causing prejudice to an employee can be passed without giving any opportunity of hearing to him. In the present case, even the qualification required for the post of Fitter Collie is in dispute. That being so, the impugned order withdrawing the pay scale from the respondent-plaintiff dated 04.06.1998 cannot be sustained and quashing of the same by the lower appellate court is upheld on the ground of violations of rules of natural justice.

As the impugned order is being set-aside on the basis of a technicality due to the violations of the rules of natural justice, the case is remanded back to the authorities concerned to pass a fresh order in accordance with law after giving due opportunity of hearing to the respondent-plaintiff. Though, the impugned order has been set-aside but the benefit of the pay scale of ₹950-1400 to the respondent-plaintiff will depend upon the fresh order, which will be passed by the appellants-defendants in pursuance to the present order.

In case, it is found by the appellants-defendants that the grant of pay scale of ₹950-1400 to the respondent-plaintiff w.e.f. 01.05.1990 was

valid, all the consequential benefits including the revision of the pay scale as well as of the pensionary benefits along with arrears as, it has been conceded that in the integrum the respondent-plaintiff has already retired from service. As per the fresh order, if the respondent-plaintiff was not found entitled for pay scale of ₹950-1400, due reasons will be given to support the said contention. In these circumstances, the respondent-plaintiff will not be entitled for any other benefit but he will be entitled to avail appropriate remedy in case, he is aggrieved against the said order.

Appeal is partly allowed in above terms.

**March 23, 2023**  
*kanchan*

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

*Whether speaking/reasoned : Yes/No*

*Whether reportable : Yes/No*