

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CM Nos.3117-3118-C of 2013 in/and**  
**RSA No.1165 of 2013 (O&M)**  
**Date of Decision: 13.02.2023**

**Uttari Haryana Bijli Vitran Nigam Ltd. and others**

**....Appellants**

**Versus**

**Ram Pal, Lineman (Retd.)**

**....Respondent**

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

Present: Mr. R.S. Longia, Advocate  
for the appellants.

Mr. V.B. Aggarwal, Advocate  
for the respondent.

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

**CM No.3117-C of 2013**

The present application has been filed for condonation of delay of 80 days in filing the appeal.

Notice of the application was issued to the respondent but no reply has been filed.

Keeping in view the facts and circumstances of the case mentioned in the application, which are duly supported by an affidavit, the same is allowed. Delay of 80 days in filing accompanying Regular Second Appeal is condoned.

**RSA No.1165 of 2013**

The present Regular Second Appeal has been filed

challenging the judgment and decree passed by the Civil Court dated 24.02.2010 as well as the judgment and decree of the Lower Appellate Court dated 20.09.2012 by which, the suit filed by the respondent-plaintiff wherein, he had challenged the recovery of ₹7,66,527/- imposed upon him vide order dated 28.04.2006 was decreed in his favour and the appeal filed by the appellants was dismissed.

Certain facts which need to be stated are that the respondent-plaintiff joined the service as Trade Mate on work charge basis and, thereafter, the service of the respondent-plaintiff was regularized on the post of Assistant Lineman. At the time when he joined, he had mentioned his date of birth as 23.09.1947. The respondent-plaintiff took voluntary retirement w.e.f. 31.10.2001 i.e. prior to the date when respondent-plaintiff was to attain the age of superannuation and all his retiral benefits were also released to him.

Approximately after 1-1/2 years of voluntary retirement, a charge-sheet was served upon the respondent-plaintiff by the department on 23.03.2003 on the ground that the date of birth submitted by the respondent-plaintiff at the time of seeking appointment was not correct and in fact, keeping in view the date of birth of the respondent-plaintiff, he would have attained the age of superannuation on 28.02.1994 hence, the salary which was made admissible to respondent-plaintiff for a period of seven years i.e. from 01.03.1994 till 31.10.2001 needs to be recovered and he should be deemed to have retired on 28.02.1994.

Ultimately, on the basis of said charge-sheet, after a period of more than five years of retirement, an order was passed on 28.04.2006 declaring that the retirement date of the petitioner would be treated as

28.02.1994 instead of 31.10.2001 and salary amounting to ₹7,66,527/- which he had received while working from 01.03.1994 till 31.10.2001 be recovered from the monthly pension being admissible to the respondent. Accordingly, the department started recovering the said amount @ ₹1350/- per month from the respondent-plaintiff w.e.f. 02.05.2006.

The said order was challenged by the respondent-plaintiff before the Civil Court by filing Civil Suit. Keeping in view the evidence which came on record, the Civil Suit was allowed by the trial Court vide judgment and decree dated 24.02.2010 and held that the order dated 28.04.2006 Ex.P-2 as well as order dated 02.05.2006 Ex.P-3 are null and void and were set aside and the action of the department in changing the date of retirement of respondent-plaintiff was held to be bad and the defendants were restrained from effecting any recovery from the pensionary benefits of the respondent-plaintiff.

Feeling aggrieved against the said decision of the trial Court, the appellants filed an appeal before the Lower Appellate Court, which was dismissed by the judgment and decree dated 20.09.2012 and the order passed by the trial Court dated 24.02.2010 was upheld.

Hence the present Regular Second Appeal.

Learned counsel for the appellants argues that the judgment of the trial Court as well as Lower Appellate Court are perverse to the evidence on record and the Rule being relied upon to hold the disciplinary proceedings as bad and setting aside the order dated 28.04.2006 Ex.P-2 as well as order dated 02.05.2006 Ex.P-3 is without jurisdiction. On being asked, as to under which Rule governing the service, a charge-sheet was

issued to the respondent-plaintiff after his retirement and that too, on the basis of an incident which was more than two decades old at the time when the said charge-sheet was served, learned counsel for the appellants very fairly concedes that there exist no such Rule under which, after the retirement, the charge-sheet can be served upon an employee relating to an incident which is more than four years old on the date of serving of the charge-sheet.

Learned counsel for the appellants also concedes that the charges, which were alleged against the respondent-plaintiff in the charge-sheet which was served upon him on 23.03.2003 related to the allegations of declaring wrong date of birth, which information was declared by the employee at the time of seeking appointment in 1972.

Learned counsel for the appellants very fairly concedes the factum that the Rule 2.2 (b) of the Punjab Civil Services Rules as applicable upon Haryana, which was in operation at the time when the charge-sheet was served in the year 2003 clearly barred the issuance of charge-sheet also. That being so, not only the findings recorded by the Courts below are in consonance with the evidence and Rules governing the service but the appeal preferred by the appellants is totally frivolous and without there being any application of mind as to whether any question of law arise in the present case to be adjudicated by this Court in this Regular Second Appeal.

Further, by the impugned order, a sum of ₹7,66,527/- was sought to be recovered on the ground that the respondent-plaintiff was to be treated retired w.e.f. 01.03.1994 and the salary which he withdrew after working for the period w.e.f. 01.03.1994 till 31.10.2001, could not have

been recovered. Once it is a conceded position that an employee has worked for the period in question he was entitled for the payment of work done by him/her hence, even the recovery which was being done from him by changing the date of his retirement was totally arbitrary and illegal, which findings of the Courts below are perfectly correct and in consonance with the evidence which has come on record coupled with the Rules governing the service.

Once no perversity has been pointed out by the learned counsel for the appellants in the findings recorded by the Courts below qua the facts or Rules governing the service, no question of law arise for determination in the present Regular Second Appeal.

From the facts and circumstances mentioned hereinbefore, the present appeal is totally frivolous. This appeal is consequently dismissed subject to payment of ₹25,000/- as costs for consuming the valuable time of this Court, to be deposited in the account of the Institute for Blind, Near Homeopathic Medical College and Hospital, Sector 16, Chandigarh-160019.

**CMA No.3118-C of 2013**

As the main case is dismissed, the application also stands dismissed.

**February 13, 2023**  
**jt**

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

*Whether reasoned/speaking?*    *Yes/No*  
*Whether reportable?*            *Yes/No*