

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

RSA-2216-2014 (O&M)
Date of Decision :20.02.2023

Nirmal Singh

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. D.R. Bansal, Advocate for the appellant.

Mr. Gurvinder Singh, AAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

In the present regular second appeal, the challenge is to the judgment and decree dated 10.02.2014 of the Lower Appellate Court by which, the appeal filed by the respondents-State challenging the judgment and decree of the trial Court dated 13.11.2010 was allowed and the suit filed by the appellant-plaintiff was dismissed.

Certain facts needs to be noticed herein for the appreciation of the controversy in a correct perspective.

Appellant-plaintiff joined Indian Army and served the country from 1962 to 1971. Thereafter, the appellant-plaintiff resigned from the Indian Army and joined police force as Constable in the Punjab Police in the year 1971 and he remained in service for 33 years and retired on attaining the age of superannuation on 31.10.2004. Two days prior to his retirement i.e on 29.10.2004, a notice was issued to him that there was some

discrepancy in his age hence, the said issue needed to be enquired into to ascertain his correct date of birth and consequent right age of superannuation. After the retirement of the appellant-plaintiff, departmental proceedings were initiated against him under Rule 16.24 of the Punjab Police Rules, 1934 and the enquiry officer gave a finding that the date of birth of the appellant-plaintiff was proved to be 25.03.1946 instead of 15.10.1946 and keeping in view the said finding in the departmental proceedings, the respondent-department issued an order dated 19.05.2005 by which, the salary which the appellant-plaintiff was paid for serving the department from 01.04.2004 till 31.10.2004 amounting to Rs.1,24,000/- was ordered to be recovered from him and penalty for stoppage of two annual increments which the appellant-plaintiff had already drawn, was also imposed.

The said punishment was challenged by the appellant-plaintiff before the trial Court wherein, it was agitated that once the appellant-plaintiff had already worked with the respondent-department up to 31.10.2004 and the salary has been paid for the period for which he had actually discharged the duty, the said salary could not have been recovered from the appellant-plaintiff and punishment of stoppage of two annual increments, which the appellant-plaintiff had already drawn, is not as per the punishment envisaged under the rules hence, imposition of said punishment after the retirement of the appellant-plaintiff was beyond the jurisdiction of the respondent-department. It was further contended by the plaintiff that his date of birth could not have been changed after the retirement.

Keeping in view the facts and evidence which had come on

record, the trial Court allowed the civil suit holding that once the appellant-plaintiff had already worked up to 31.10.2004, merely by changing the date of birth after his retirement, recovery of the salary for the period for which, the appellant-plaintiff had actually discharged his duty, is not at all warranted and hence, the punishment imposed vide order dated 19.05.2005 by the respondent-department was set aside.

Feeling aggrieved against the said judgment and decree dated 13.11.2010 of the trial Court, an appeal was preferred by the respondent-State before the Lower Appellate Court and vide judgment and decree dated 10.02.2014, the said judgment and decree dated 13.11.2010 of the trial Court was set aside by the Lower Appellate Court and the suit filed by the appellant-plaintiff was dismissed by holding that once there was an departmental enquiry done against the appellant-plaintiff and the said enquiry is permissible against the retired employee, keeping in view Rule 2.2(B) of the Punjab Civil Services Rules hence, the Courts cannot interfere in the punishment imposed. Hence, the present regular second appeal has been filed by the appellant-plaintiff, challenging the order dated 10.02.2014 of the Lower Appellate Court.

Learned counsel for the appellant-plaintiff argues that the punishment has been imposed upon the appellant-plaintiff after retirement and that too by changing his date of birth in their record which act has been performed after the retirement of the appellant-plaintiff hence, there was no jurisdiction with the respondent-department to change the date of birth of the appellant-plaintiff after his retirement.

Learned counsel for the appellant-plaintiff further submits that even otherwise, once for a particular period, the appellant-plaintiff has

actually discharged the duty and was paid salary for the said period, recovering the said salary on the ground that the appellant-plaintiff should have retired on date prior to the said service that has been rendered by him, is also not permissible.

Learned counsel for the respondents-department submits that once it has been established during the departmental enquiry that the date of birth of the appellant-plaintiff was 25.03.1946 instead of 15.10.1946, the same was changed in the record though, after retirement but as the appellant-plaintiff was to retire on attaining the age of superannuation on 31.03.2004 as per the amended date of birth, the salary paid to the appellant-plaintiff from 01.04.2004 to 31.10.2004 was beyond his entitlement and said salary has rightly been recovered from him hence, the judgment and decree of the Lower Appellate Court dated 10.02.2014 is perfectly valid and the same may kindly be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

First question which needs to be decided is whether the date of birth of an employee can be changed by an employer at the fag end or not. The Hon'ble Supreme Court of India in **Civil Appeal No.2858-2022** titled as **Shankar Lal vs. Hindustan Copper Limited and others** decided on 20.04.2022 has held that in case an employee is not entitled to get his date of birth changed at the fag end of the career, the same rule also apply upon the employer so as not to change the date of birth of an employee at the fag end of his career. Relevant paragraph of the judgment is as under:

“21. We do not think the appellant's complaint over the dispute was belated so

as to nonsuit him on this count alone. VRS benefit is an entitlement and assumes the character of property to the employee concerned once his application for VRS is accepted. It is the right of a person under [Article 300A](#) of the Constitution of India to have the VRS benefit to be given on accurate assessment thereof, the employer here being a public sector unit. If at the time of quantifying the VRS benefit after accepting an employee's application for voluntary retirement, the employer take any step that would reduce such benefit in monetary terms, such step shall have to be taken under the authority of law. We find the action of the employer lacking in authority of law in this case on two counts. First, it fails for not adhering to the principles of natural justice. The decision not to follow the service book recordal was taken without giving an opportunity of hearing to the appellant. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e., 21st September 1949 was the birth date of the appellant and this was a long established position. Moreover, since in the own records of the employer two dates were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake had crept in. That process would also have had to involve participation of the appellant, which would have been compatible with the principles of

natural justice. There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth.”that would have the effect of extension of the length of their service. We are not referring to those authorities in this judgment as the ratio laid down on that count by this Court is not relevant for adjudication of this appeal. The very reasoning on which an employee is not permitted to raise age correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. It is the employer here who had proceeded on the basis of age of the appellant reflected in his service book during the latter’s service tenure and they ought not to be permitted to fall back on the Form “B” which would curtail the VRS benefit of the appellant.”

In the present case, the judgment in Shankar Lal (supra) is fully applicable for the reason that in the present case, the date of birth of the appellant-plaintiff has been changed from 25.03.1946 to 15.10.1946 and that too after his retirement. The said action of the respondent-department is not permissible keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in Shankar Lal (supra) hence, any recovery of amount, which is being imposed upon the employee by changing his date of birth at the fag end of his service is also without any jurisdiction and cannot be upheld. Hence, the act of the respondent-department to change the date of birth of the appellant-plaintiff at the fag end of his career is held to

be bad in the facts and circumstances of the present case, keeping in view the settled principle of law noticed hereinbefore.

Even otherwise, the evidence had come on record that the appellant-plaintiff had actually discharged the duty up to 31.10.2004. That being so, it is clear that appellant-plaintiff was paid for the services which he had actually rendered with the respondent-department. No recovery of the amount can be done for the period for which the actual service has been rendered by an employee. No rule or law has been cited that the amount paid for rendering the service, can be withdrawn subsequently in case the appointment is held to be bad.

In the present case, recovery which is being imposed by the respondent upon the appellant-plaintiff is without any jurisdiction. The Lower Appellate Court has failed to appreciate the said fact. Rather in the present case, which is clear from the charge sheet, even the action was being initiated against the appellant-plaintiff under Rule 16.24 of the Punjab Police Rules, 1934 and not under Rule 2.2(B) of the Punjab Civil Services Rules Vol-II. Findings by the Lower Appellate Court to give jurisdiction to the respondent-department have been recorded without appreciating the actual evidence and facts on record and, hence, the same are perverse and cannot be upheld.

Even otherwise, it is a settled principle of law that even if, an employee has been paid emoluments beyond his/her entitlement but there was no misrepresentation on the part of the employee concerned as per the judgment of the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, recovery

of the said amount cannot be done.

In the present case, nothing has come on record that there was any misrepresentation on the part of the appellant-plaintiff at the time of securing appointment with the Punjab Police as it was only after due medical check up/physical test by the CMO, the age of the appellant-plaintiff was recorded as 25 years at the time of recruitment in the department of police and the said fact was entered in the record. Even otherwise, recovery of the excess amount should not have been done.

Once there was no jurisdiction with the department to initiate the departmental proceedings after retirement so as to change the date of birth, even the punishment of stoppage of two increments imposed is not permissible in law. Once, there was no jurisdiction with the department to conduct the departmental proceedings on the said issue after retirement, the question of imposing any punishment does not arise hence, even punishment of stoppage of two increments imposed upon the appellant-plaintiff was beyond the jurisdiction of the respondent-department. The Lower Appellate Court has failed to consider the said aspect also.

Keeping in view the above, judgment and decree of the Lower Appellate Court dated 10.02.2014 is perverse to the facts and evidence on record as well as the settled principle of law cited hereinbefore and the same cannot be sustained in the eyes of law and is accordingly set aside. Judgement and decree of the trial Court dated 13.11.2010 is restored.

CM-5367-C-2014

Application is also disposed of.

February 20, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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