

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

(238)

**RSA No. 1005 of 2017
Date of Decision : 21.02.2023**

Darbara Singh

...Appellant

Versus

The Registrar Co-operative Societies, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajinder K. Singh, Advocate for
Mr. Deepak Sharma, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana
for respondents No. 1 and 2.

Mr. Rajinder Singh Mann, Advocate for respondent No. 3.

Harsimran Singh Sethi J. (Oral)

In the present regular second appeal, the challenge is to the judgments of the courts below by which, the suit filed by the appellant-plaintiff was dismissed by the trial court on 14.12.2015 and the appeal preferred by the appellant-plaintiff against the said judgment and decree of the trial court was also dismissed by the lower appellate court on 05.09.2016.

Certain facts needs to be noticed herein for the ready reference.

In the year 1998, the appellant-plaintiff had joined on the post of Tractor Driver in a Co-operative Society on which post, he continued to work till the year 2011. The Tractor, which was being driven by the appellant-plaintiff, was sold and the appellant-plaintiff became surplus and vide application dated 17.11.2011, the appellant-plaintiff requested the

Mandour PACS Ltd., Ambala (hereinafter referred to as 'Society') to appoint him as a Sewadar, which post was lying vacant. Keeping in view the fact that the appellant-plaintiff had worked for more than 10 years, the said request was accepted by the Society and by passing a Resolution, the appellant-plaintiff was directed to work as a Peon on the salary admissible for the said post.

As, while working as a Tractor Driver, the appellant-plaintiff was getting salary of ₹9,000/- per month whereas, the salary fixed for the post of Peon was ₹6,000/- per month, he was being paid ₹6,000/- per month. By filing a civil suit, a prayer was made by the appellant-plaintiff that his salary has wrongly been reduced hence, he should be paid a salary of ₹9,000/- per month even while working as a Peon.

After notice was issued in the suit, the respondent-defendant-Society concerned filed its reply stating that all the equipment of the Society was sold as the Society was having a financial crunch and even the Tractor on which the appellant-plaintiff was employed as Tractor Driver, was sold and he became surplus and it was thereafter only on the request of the appellant-plaintiff vide application dated 17.11.2011 Ex. D1, the appellant-plaintiff was allowed to work as a Peon on the salary fixed for the said post hence, it is not a case of reduction of the salary as the salary for the post of Peon is ₹6,000/- per month, the same was being extended to the appellant-plaintiff.

Keeping in view the evidence, which came on record, wherein, the appellant-plaintiff conceded filing of the application dated 17.11.2011, Ex. D1 and also conceded his signatures on the said application, according

to which, he had made a request to adjust him as a Peon after the post of Tractor Driver became surplus, the trial court dismissed the suit filed by the appellant-plaintiff vide order dated 14.12.2015.

Feeling aggrieved against the judgment and decree of the trial court dated 14.12.2015, an appeal was preferred by the appellant-plaintiff before the lower appellate court, which was also dismissed on 05.09.2015 hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that the finding of the courts below is perverse as PW1 has conceded that there is no provision under the rules governing the service of the Society to reduce the salary of an employee hence, the judgments of the courts below are liable to be set-aside. Learned counsel for the appellant-plaintiff further argues that before reducing the salary, no show cause notice was served upon the appellant-plaintiff hence, reduction of the salary of the appellant-plaintiff has been done without following the due process of law and by violating the rules of natural justice. Learned counsel for the appellant-plaintiff also contended that even in the application dated 17.11.2011, Ex. D1 by which, the appellant-plaintiff agreed to work as a Peon, he never agreed for the reduction of the salary, which he was already getting while working on the post of Tractor Driver. Learned counsel raised an argument that though the signatures on the said application Ex. D1 are of the appellant-plaintiff but the same have been taken by misrepresentation without telling the actual contents of the said application.

With regard to the first argument of the learned counsel for the appellant-plaintiff that the findings of the courts below are perverse as it has

already come on record that there was no rule governing the service of an employee available with the Society, according to which, the salary of an employee can be reduced, it may be stated that present is the case of extending the salary of the post on which the appellant-plaintiff was working. Concededly, the Tractor on which the appellant-plaintiff was employed as Tractor Driver, was sold by the Society and the appellant-plaintiff was thereafter working as a Peon upon his own request. Nothing has come on record to show that the salary of a Peon at any time was ₹9,000/- per month but he was being paid ₹6,000/- per month. Rather, it has already come on record that the salary for the post of Peon was ₹6,000/- per month, which was being paid to the appellant-plaintiff as he was discharging the duties of the said post hence, the present is not the case of reduction of the pay rather, the appellant-plaintiff was being extended the pay of the post on which he was discharging the duties hence, the findings, which have been recorded by the courts below qua the said aspect are perfectly inconsonance with the evidence on record.

In respect of argument of the learned counsel for the appellant-plaintiff that the application dated 17.11.2011, Ex. D1 was not given voluntarily but the said application has been obtained by way of fraud. On being asked to show as to how the said fraud has been proved before the courts below, learned counsel for the appellant-plaintiff has not been able to show any evidence on record to show that Ex. D1, which is the application submitted by the appellant-plaintiff to allow him to work as a Peon after he became surplus from the post of Tractor Driver, is in any way obtained by way of fraud. In the absence of any evidence on record, the said argument

cannot be accepted so as to treat the findings of the courts below as perverse.

Learned counsel for the appellant-plaintiff has raised an argument that before reducing the salary, no show cause notice was given to him, which amounts to the violation of the rules of natural justice. The present case is not of reduction of salary but paying of a salary on the post on which the appellant-plaintiff was working. Once, it has already come on record that the appellant-plaintiff himself requested to work as a Peon, he was only entitled for the salary of the said post while discharging the duties of the post of Peon. Hence, the argument that his salary was reduced and that too without notice, is against the facts on record and cannot be accepted and is accordingly rejected.

Learned counsel for the appellant-plaintiff further contended that in the present case, it is a change of cadre, which is not permissible. In this regard, as noticed hereinbefore, the appellant-plaintiff had already become surplus from the post of Tractor Driver as the Tractor was concededly sold by the Society concerned. Even in the cadre of Peon, the appellant-plaintiff was accommodated on his own request. In case, the appellant-plaintiff was not interested to discharge the duties of the post of Peon, Society was not liable to appoint him as Peon and the respondent-defendant-Society would have been within its jurisdiction to declare the post of Tractor Driver surplus and discharge the appellant-plaintiff from the said post. Rather, in the present case, the Society accepted the plea of allowing the appellant-plaintiff to work as a Peon so that he remains in the employment. In case, the appellant-plaintiff is not interested in working as

a Peon, he is free to approach the respondents for passing appropriate order qua the said effect.

Keeping in view the above, no ground is made out for interference by this Court in the present regular second appeal as no perversity in the orders of the courts below either on facts or on law has been pointed out by learned counsel for the appellant-plaintiff.

Dismissed.

February 21, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No