

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

RSA-3948-2014(O&M)

Reserved on:-18.4.2023

Date of Pronouncement:-25.4.2023

Dharam Pal Sharma

...Appellant

Versus

State of Haryana through Commissioner & Special Secretary and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjeev Manrai, Sr.Advocate with
Mr.S.P. Garg, Advocate
for the appellant.

Mr.Karan Jindal, AAG, Haryana.

H.S. MADAAN, J.

1. Briefly summed up, the facts of the case are that plaintiff Dharam Pal Sharma had brought a suit for grant of permanent injunction against defendants i.e. Director, Archives Department, Haryana, Panchkula as well as the State of Haryana through Commissioner and Special Secretary to Government, Archives Department, Chandigarh, seeking a restraint order against the defendants from reducing his pay on the basis of order dated 27.11.2009.

2. As per the version of the plaintiff, he had joined the office of Director, Haryana State Archives, Chandigarh (defendant no.1) on

18.1.1983 as Binder in the pay scale of Rs.350-500; one post of Binder was created in the pay scale of Rs. 90-140 by Government vide letter dated 20-06-1976 and another post of Binder was created in the pay scale of Rs. 100-160 vide Government letter dated 27-03-1979 and thereafter two more posts of Binder were created in the pay scale of Rs. 100-160 vide letter no. 4/750-EDU-II(3) dated 19-07-1985; subsequently grade of Rs.90-140 and that of Rs.100-160 was revised to the scale of Rs. 350-500 and 400-600 w.e.f. 01-04-1979. According to the plaintiff since he had been appointed in the year 1982, he had a legal right of being placed in the scale of Rs.400-600 w.e.f. 18.1.1983 i.e. the date of his appointment, however, he was wrongly placed in the scale of Rs.350-500, whereas the persons appointed thereafter with the same qualification had been placed in the pay scale of Rs.400-600.

It is the further case of the plaintiff that he had submitted a representation in that regard on 13.5.1987 but his request was turned down without any reason; the pay scale of plaintiff was revised to Rs.775-1025 from 1.1.1986; subsequently both the scales were clubbed and modified to Rs.950-1400 w.e.f. 1.5.1990, which was a wrong action on the part of the Government. As the version of the plaintiff goes, he was recruited against sanctioned post of Binder after following due process of interview by the competent authority and although his appointment was shown as temporary in nature but he continued in service without any interruption and was later on regularized vide order dated 24.2.1998 w.e.f. 1.11.1986. According to the plaintiff in terms of Government notification dated 20.8.1986, he was allowed additional increment w.e.f. 1.7.1992 by

counting his service from 1.8.1983, however, on 21.4.2009, defendant No.1 had wrongly issued show-cause notice to the plaintiff for reduction of pay scale and pay of the plaintiff; later on on 27.11.2009 defendant No.1 passed other orders for reduction of the pay of the plaintiff and for recovery of the amount on the basis of the impugned order. According to the plaintiff, since the impugned order was highly improper and illegal, therefore the plaintiff had already filed a separate civil suit and even otherwise the salary and allowances, which were paid to the plaintiff were without any fraud or misrepresentation on the part of the plaintiff and such amounts could not be recovered from him. Feeling aggrieved by the action/threatened action by the defendants, the plaintiff had filed the suit in question.

3. On notice, the defendants appeared and filed a written statement contesting the suit contending that the department had created two posts of Binder, out of which one post was created in pay scale of Rs.90-140 in the year 1976, whereas another post was created in the pay scale of Rs.100-160 vide Government letter dated 20.6.1976; thereafter two posts of Binder were created in the pay scale of Rs.400-600 for the regional offices in 1985; as regards the plaintiff, he was appointed as Binder in the pay scale of Rs.350-500 on 18.1.1983 on ad hoc basis, as such he was not entitled for fixation of his pay in the scale of Rs.400-600 w.e.f. 18.1.1983 instead of scale of Rs.350-500; the services of the plaintiff was regularized vide order dated 24.2.1998 w.e.f. 1.11.1986 in pursuance of letter written by Chief Secretary to Government of Haryana dated 28.4.1997; for the reason that service of the plaintiff was regularized

on 1.11.1986, he was not entitled for service benefits from 18.1.1983 as claimed by him in the suit because his initial appointment was made on ad hoc basis so his seniority is to be reckoned from the date of regularization. With regard to the scheme of grant of additional increment to group C and D employees of Haryana Government on completion of 8/18 years of regular satisfactory service, it was introduced w.e.f. 7.8.1992 because the plaintiff was not covered under the scheme for the reason that he did not fulfill the condition of the prescribed length of regular service; thereafter the Government had decided that the period of ad hoc service, which was followed by a regular appointment under the State Government would be taken into consideration while calculating the prescribed length of service under the scheme, therefore, additional increment was given to the plaintiff w.e.f. 1.7.1992, thereafter the Government had issued instructions vide letter dated 15.3.2002 that ad hoc service was not to be counted for the purpose of grant of additional increment and given benefits had to be withdrawn. Nevertheless, the additional benefits are still continuing; the ACP Scheme was introduced by the Government at the time of revision of pay scales w.e.f. 1.1.1996, which continues till date; the scheme provided the facility of ACP scales on completion of 10 and 20 years of regular service with reference to their first entry in the Government service and should be fit to be promoted to the next higher post in the functional hierarchy in his cadre; in this case the the plaintiff had completed 10 and 20 years satisfactory regular service as a Binder on 31.10.1986 and 31.10.2006 respectively when he was given benefit of first and second ACP scales but subsequently it came to notice of the

Department during pay fixation of Ishwar Singh, Binder that ACP was wrongly granted to the plaintiff because he did not fulfill the required academic qualification for promotion to next higher post in functional hierarchy in his cadre; as regards the requisite qualification of Matriculation, the plaintiff was just a middle class pass having three years experience in binding. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

4. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for a decree for permanent injunction, as prayed for? OPP.

2. Whether the civil Court has no jurisdiction to try and decide the present suit? OPD.

3. Whether the plaintiff has not affixed proper Court fee with plaint? OPD.

4. Relief.

5. The parties were given opportunities to lead evidence in support of their respective claims.

6. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Panchkula vide judgment and decree dated 30.1.2014 decreed the suit of the plaintiff, in the process restraining the defendants from effecting any recovery in terms of order dated 27.11.2009.

7. Feeling aggrieved by the said judgment and decree, the defendants as well as plaintiff had filed separate appeals before District

Judge, Panchkula, which were assigned to Additional District Judge, Panchkula, who disposed of both the appeals vide a single judgment and decree dated 8.7.2014 inasmuch the impugned judgment decree passed by the trial Court were held to be legal and valid, the impugned order dated 27.11.2009 was also found to be legal and valid to the extent it reduces the pay of the plaintiff. Both the appeals were dismissed.

8. The plaintiff is feeling dissatisfied with the judgment and decree passed by Additional District Judge, Panchkula and he has knocked at the door of this Court by way of filing a regular second appeal, notice of which was issued to the respondents, who have put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

10. When the plaintiff got his statement recorded as PW1, he repeated on oath his case as given in the plaint proving various documents contending that prior to filing of the present suit, he had filed another suit before Civil Court at Panchkula regarding his pay fixation and other service benefits, which was decreed. In that judgment grant of first ACP was held to be correct by the Court. Such judgment and decree were implemented vide letters dated Ex.P10 and Ex.P11. The observations made by the trial Court in para No.13 of the judgment are quite relevant, which for ready reference are being reproduced as under:

13. After taking into consideration the rival contentions and the material available on record, it transpires that it is an admitted fact that the plaintiff joined the defendant department on 18.1.1983 and

he is being treated as a permanent employee since 18.11.1986. It is also admitted that the plaintiff's service with the department was continuous and satisfactory and the plaintiff was granted 1st ACP after expiry of 10 years because he was not granted any promotion. Even though the defendants have asserted that the plaintiff was wrongly granted the ACP but the only witness examined by the defendant has failed to depose about the reasons as to why the defendant department is entitled to recover the ACP and the witness also failed to place on record any document to justify the defendant's action. On the other hand the defendant witness has categorically admitted the grant of ACP to the plaintiff as correct and witness has admitted the plaintiff claim in totality. It is settled principle that admission is the best piece of evidence, so when the defendant witness has admitted the plaintiff's claim and has failed to point out any reasons as to why the defendant shall be allowed to effect the recovery then this Court finds no justification for defendant's claim. At this stage, reliance is placed upon authority titled as Delhi Transport Corporation Versus Shyam Lal, 2004(4) RSJ 6 wherein, it has been held that it is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. In Subhash Chander Versus State of Haryana[2006(3) SCT 194], it was held by the Hon'ble High Court that once some financial benefits have been extended to an employee and the same had not been done due to any misrepresentation or fraud played by him, on any later stage, if

some other interpretation is put on that rule on which the employee would have not been entitled to the said benefits, no recovery for the said payment can be made from him. In Yogeshwar Prasad and others Versus National Inst. Edu. Planning and Admn. and others [2011(1)RSJ 127]. It was held by the Hon'ble Apex Court that the amount paid to the appellants (employees) pursuant to the grant of higher pay scale should not be recovered as there is neither misrepresentation nor fraud.

11. Learned Additional District Judge, Panchkula has also dealt with the matter in a very proper and appropriate manner observing that the plaintiff having been appointed as a Binder on 18.1.1983 in the pay scale of Rs.90-140, his services were regularized w.e.f. 1.11.1986 vide order dated 24.2.1998 issued by the Government of Haryana; though initially additional increment was not given to him in the year 1992 since he had failed to complete the minimum period of 8 years but in terms of Government scheme, his ad hoc service was counted and additional increment was granted to him and subsequently in the year 2002, the Government issued the instructions and directed that ad hoc service was not to be counted for the purpose of grant of additional increment and given benefits had to be withdrawn. Though the plaintiff kept on getting the benefit; subsequently ACP Scheme was introduced at the time of revision of pay scales w.e.f. 1.1.1996, which continues till date.

12. Learned Additional District Judge, Panchkula has clearly observed that plaintiff Dharam Pal Singh had educational qualification of 8th pass, his next promotion of Archives Restorer for which minimum

qualification required is Matric; the plaintiff had cleared matriculation on 20.11.2010; since as per Rule 3, Ist ACP and II ACP were to be granted only if the Government servant was eligible and fit to be promoted to the next higher post; the plaintiff was having requisite experience of two years but not the necessary qualification, therefore he was not fit to be promoted to next higher post and not entitled for ACP, which was wrongly granted to him, therefore, a show cause notice was issued by the department to the plaintiff and vide order dated 27.11.2009, his pay was reduced and no fault can be found with such reduction of pay but with regard to the recovery of the amount from the plaintiff, the same could not be got effected since there was no misrepresentation or fault on the part of the plaintiff and in terms of judgment by the Apex Court i.e. **Yogeshwar Prasad and others Versus National Inst. Edu. Planning and Admn. and others, 2011(1) RSJ 127**, in such an eventuality no recovery could be effected from the employee. Learned Additional District Judge, Panchkula had reached an inference that though recovery could not be effected from the plaintiff but Government had a right to rectify the order and reduce the pay and such order had been passed after complying with the principles of natural justice and the mistake, which had taken place could be rectified at any stage. It cannot be said that the defendants became helpless in the matter and could not correct the mistake, which had taken place. Since the plaintiff was not fit for promotion in the year 1996 or in the year 2008, he was not entitled to Ist ACP and second ACP scales; though when he obtained education qualification of Matriculation on 20.12.2010, he was granted both the ACPs w.e.f. 1.1.2011.

13. The judgment and decree passed by Additional District Judge, Panchkula are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court by way of accepting the regular second appeal.

14. No substantial question of law arises in this appeal.

15. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

25.4.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No