

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

(107)

RSA-2913-2022 (O&M)

Date of Decision : January 06, 2023

Gurcharan Singh

.. Appellant

Versus

**Chd. Admn. Through Secretary, Transport, UT, Chd. And another
.. Respondents**

(107-A)

RSA-2917-2022 (O&M)

Gurcharan Singh

.. Appellant

Versus

**Chandigarh Administration Through Secretary Transport UT
Chandigarh and another
.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present: Mr. Pratap Singh Gill, Advocate, for the appellant(s)
in both appeals.**

**Mr. Anil Kumar Sharma, Sr. Standing Counsel, with
Mr. Deepak Malhotra, Standing Counsel, for U.T. Chandigarh.**

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, two Regular Second Appeals, the details of which have been given in the heading of the order, are being disposed of as both the appeals involve the same question of law on similar facts.

First, leading to the filing of the present Regular Second Appeal needs to be noticed in order to appreciate the controversy.

The appellant joined as a Clerk with the Chandigarh Transport Undertaking in April, 1990. As the appellant was an ex-serviceman, after the approval given by the Finance Secretary on 02.09.1992, the pay of the appellant for which he was entitled for was fixed in the cadre of Clerk. The appellant kept on drawing the said pay until the same was re-fixed vide order dated 13.10.1998 keeping in view the objections which were raised by the Department of Accountant General in October 1997. The said order of re-fixing the salary of the appellant was challenged before the Central Administrative Tribunal and the said order of re-fixation dated 13.10.1998 was upheld by the Tribunal and the original application filed was dismissed.

The order passed by the Central Administrative Tribunal dated 04.06.2000 was challenged by the appellant by filing CWP No.7006 of 2003 which was allowed by the Division Bench of this Court on 20.03.2008 and held that the fixation of the pay keeping in view the approval given by the Finance Secretary dated 22.11.2010 was perfectly valid and legal, hence, the order dated 13.10.1998, re-fixing the salary of the appellant was bad and the same was set aside.

The order passed by the Division Bench dated 20.03.2008 was challenged by the Chandigarh Administration before the Hon'ble Supreme Court of India and the SLP was converted into ***Civil Appeal No.9873 of 2013 titled as U.T. Chandigarh and others vs. Gurcharan Singh and another*** and the same was decided vide order dated 01.11.2013. The Hon'ble Supreme Court of India held that the order re-fixing the salary of the appellant dated 13.10.1998 was perfectly valid and legal and the order

passed by the Division Bench dated 20.03.2008 was set aside. Further, the respondent-Chandigarh Administration was permitted to calculate as to whether, any amount was paid to the appellant over and above his entitlement so as to adjust the same.

After the decision of the Hon'ble Supreme Court of India dated 01.11.2013, the respondents calculated the amount paid to the appellant and keeping in view the order of re-fixation dated 13.10.1998, the appellant was paid a sum of Rs.1,78,219/- over and above his entitlement, which needs to be recovered along with interest. As the said amount was not paid, the Chandigarh Administration filed a civil suit for recovery of the said amount along with interest @ 9% per annum. During the pendency of the civil suit, the appellant also filed a counter claim for the recovery of Rs.2,80,302/-.

The civil suit along with the counter claim was decided by the trial Court vide order dated 08.01.2020 and the suit filed by the Chandigarh Administration for the recovery of Rs.1,78,219/- along with interest from the year 1997 was allowed and the counter claim filed by the appellant was dismissed. Against the said order, the appellant filed the appeal being Civil Appeal No.112 of 2020 which was dismissed by the Lower Appellate Court on 07.09.2022.

Present two Regular Second Appeals have been filed. One against allowing of the suit filed by the Chandigarh Administration for the recovery of the amount as envisaged in the order dated 17.04.2014 along with interest and the dismissal of the appeal filed by the appellant qua the said relief of the trial Court and the 2nd Regular Second Appeal has been filed qua the dismissal of the counter claim filed by the appellant, which order was upheld by the trial Court.

Learned counsel for the appellant argues that though in the Regular Second Appeal, the prayer of the appellant is for declining the claim of Chandigarh Administration with regard to the recovery of amount of excess payment made to him, but the same be treated as not pressed keeping in view the order passed by the Hon'ble Supreme Court of India in ***Civil Appeal No.9873 of 2013 titled as U.T Chandigarh & others vs. Gurcharan Singh & others, decided on 01.11.2013.*** Learned counsel for the appellant further argues that the only claim of the appellant is qua the grant of interest on the excess payment by the trial Court and also the rate of interest which have been allowed in favour of the Chandigarh Administration.

Learned counsel for the appellant submits that as the Hon'ble Supreme Court of India only allowed the recovery of the excess amount, paid to the appellant, the claim of the Chandigarh Administration for grant of interest on the said excess amount paid is beyond the permission given by the Hon'ble Supreme Court of India, hence, allowing of the interest on the excess payment given to the appellant by the trial Court and the rate of interest @ 9% interest and that too from the year 1997 onwards is totally arbitrary and illegal and contrary to the settled principle of law.

Learned counsel for the appellant further submits that the grant of interest as well as rate of interest as allowed by the Courts below be set aside as the appellant is ready to discharge his liability of the excess amount which he has received in pursuance to the wrong fixation of his pay, which re-fixation of pay has already been upheld by the Hon'ble Supreme Court of India.

Learned counsel for the appellant further submits that the counter claim filed by the appellant which has been disallowed by the trial Court as well as the lower Appellate Court, though challenged in the present Regular Second Appeals but the same may kindly be treated as not pressed.

Learned counsel appearing on behalf of the respondents submits that once it was found that the pay of the appellant was wrongly fixed in the year 1992 and the same was re-fixed in the year 1998. The amount of excess payment paid to the appellant needs to be recovered along with interest as the said amount was retained by the appellant beyond his entitlement. Learned counsel for the respondents argues that even the grant of 9% interest is perfectly valid and legal, hence, the prayer of the respondents qua the grant of interest and the quantum of interest by the trial Court, which order has been upheld by the lower Appellate Court, be maintained and the Regular Second Appeals filed by the appellant may kindly be declined.

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

The pay of the appellant was fixed after he joined the service of the Chandigarh Transport Undertaking in the year 1990. The said pay was fixed by the respondents themselves without there being any intervention by the appellant and that too after getting an approval from the higher authorities i.e Finance Secretary. Though in the year 1997, the objections were raised by the office of Accountant General qua the said fixation and later on, the pay of the appellant was re-fixed on 13.10.1998 whereas the said order was under litigation upto November, 2013. At one point, the

Division Bench of this Court quashed the order of re-fixation i.e.

13.10.1998 and held that pay of the appellant was wrongly fixed in the year 1992. The final adjudication was done by the Hon'ble Supreme Court of India qua the order of re-fixation dated 13.10.1998 while passing the order dated 01.11.2013. While passing the said order dated 01.11.2013, qua the excess payment, the Hon'ble Supreme Court of India recorded as under:-

“ 12. Though a submission had been made on behalf of the respondent that no amount should be recovered from the salary paid to the respondent, the said submission can not be accepted because if any amount had been paid due to mistake, the mistake must be rectified and the amount so paid in pursuance of the mistake must be recovered. It might also happen that the employer might have to pay some amount to the respondent as a result of some mistake and in such an event, even the appellant might have to pay to the respondent. Be that as it may, upon settlement of the account, whatever amount has to be paid to the respondent employee or to the appellant employer shall be paid and the account shall be adjusted accordingly.”

No question of interest on the excess payment was raised by the Chandigarh Administration or was allowed by the Hon'ble Supreme Court of India even while giving permission to recover the excess amount paid. Hence, keeping in view the direction given by the Hon'ble Supreme Court of India, only the excess amount could have been recovered from the appellant.

It is a conceded case of the respondents that the excess payment was computed for the first time in October 2014 after which, notice was sent to the appellant for deposit of the same and upon failure to do so, the suit of recovery was filed for recovery of the amount along with interest @ 9%.

Hence, the claim and the interest on the excess amount from the year 1997,

even before the re-fixation of the salary of the appellant, which was done on 13.10.1998 or demand of recovery of excess amount made for the first time in April, 2014 is not at all correct and cannot be allowed.

Further, even upto the date when the judgment was rendered by the Hon'ble Supreme Court of India on 01.11.2013, only permission granted was to recover the excess amount paid to the appellant and that too in case it is found to have been paid to the appellant. The said amount was calculated for the first time in April 2014.

A bare perusal of order of re-fixation dated 13.10.1998 would show that only order of re-fixation of salary was passed but no order of recovery was ever passed then, hence, once there was no order of recovery in the year 1997 or even in the year 1998, how can an interest on the said amount be awarded by the trial Court for the year 1997 especially when the refund of the excess amount was concededly made for the very first time in April 2014, hence, the grant of interest by the trial Court from 1997 onwards is without appreciating the actual facts on the record.

Further, no justification has been given in the judgment itself for granting the interest from the year 1997 as being claimed. All the discussion in the judgment is qua the liability of the appellant to refund the excess amount to him. That being so, allowing the interest as being claimed by the Chandigarh Administration only in the "relief para" is not within the scope of pleadings and have been made without appreciating the controversy in the correct perspective.

Further, once the claim from the appellant of the excess amount was made in April 2014, and the excess amount received is not refunded by the appellant in a reasonable time, the Chandigarh Administration can be

held entitled for the grant of interest keeping in view the judgment of the Hon'ble Supreme Court of India according to which, the appellant was liable to refund the excess amount paid to him in view of the wrong fixation of his salary as done in the year 1992. The reasonable period for refund of payment could be two months, hence it can be safely said that once the amount paid in excess to the appellant was demanded back for the first time on 14.04.2014, the reasonable period for the refund would be by 14.06.2014 and the said amount should have been refunded back by the appellant and as the appellant concededly did not refund the said amount by 14.06.2014 and forced the Chandigarh Administration to file a recovery suit, the Chandigarh Administration is held entitled for the grant of interest as amount belonging to the Chandigarh Administration, was not released by the appellant and was retained and used by the appellant, the Chandigarh Administration is held entitled for interest on the said excess payment starting from 01.06.2014 onwards.

Now the question comes as to what should be quantum of interest. Whether the claim of 9% interest by the Chandigarh Administration and the grant of the same by the trial Court and upheld by the lower Appellate Court, is valid or not.

As per Section 34 of the CPC, the Court has to award the reasonable interest rate while passing a decree for the payment of money.

In the present case, there is not even a single averment in the order passed by the trial Court dated 08.01.2020 as to how, a sum of 9% per annum has been held to be reasonable. Rather, there is no discussion with regard to the entitlement of the interest in the judgment of the trial Court

and the interest has been granted in the relief clause. As per Section 34 of

the CPC, the reasonable interest has to be granted, which interest along with rate of interest should be commensurate to the landing or advancing of the money by the nationalized bank in the absence of any such consideration in the judgment of the trial Court as well as the lower Appellate Court, grant of interest on the excess payment liable to be refunded by the appellant is held to be bad.

Keeping in view the fact that the appellant is an ex-serviceman, who is litigating with the respondents for the last 22 years and is 80 years old now, the interest is granted @ 6% on the amount of excess payment liable to be refunded by the appellant w.e.f. 01.06.2014 onwards till the actual refund of the excess payment.

Learned counsel for the appellant argues that keeping in view 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***, no recovery can be made from a retired employee especially where there is no misrepresentation on part of the employee to get the excess payment. Though, there is no dispute with the said proposition but prior to the said judgment, which was delivered in the year 2015, the question qua the recovery of the amount from the appellant has already been settled intra party by the Hon'ble Supreme Court of India while passing order dated 01.11.2013. Once, there is a specific order allowing the recovery from the appellant, the subsequent general law will not over ride the said decision of the Hon'ble Supreme Court of India dated 01.11.2013, hence, the liability of the appellant to refund the excess payment keeping in view the order passed by the Hon'ble Supreme Court of India dated 01.11.2013, recovery of the excess amount from the appellant in pursuance to the order dated

17.04.2014 is upheld.

Learned counsel for the appellant submits that keeping in view the order passed, on the next date of hearing before the Executing Court, the appellant will tender the excess amount alongwith interest assessed by this Court.

The present appeals are disposed of in above terms.

CM-9956-C-2022 and CM-9966-C-2022

As the main appeals are disposed of, present applications also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

January 06, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes