

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(210)RSA-495-1999 (O&M)
Date of Decision : April 01st, 2024

Managing Director, Punjab State Cooperative Supply and Marketing
Federation Limited
.. Appellant

Versus

Ramesh Kumar.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. P.S. Thiara, Advocate and
Mr. A.P.S. Virk, Advocate, for the appellant.

Mr. Mohinder S. Nain, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present appeal has been filed against the judgment and decrees of the Courts below by which, the suit filed by the respondent-plaintiff claiming the benefit of fixation of pay by taking into consideration the adhoc service rendered by him, has been allowed.
2. Learned counsel for the appellant submits that the judgments and decrees of the Courts below are contrary to the settled principle of law settled by the Hon’ble Supreme Court of India in **Civil Appeal No.13423 of 1996 titled as State of Haryana vs. Haryana Veterinary and A.H.T.S. Association, decided on 19.09.2000**, according to which, the adhoc service rendered by an employee cannot be taken into account for the grant of selection grade or even for fixation of pay. Hence, the judgments and decrees of the Courts below are liable to be set aside being perverse to the

settled principle of law.

3. Learned counsel for the respondent submits that the present appeal was filed in the year 1999 and as there was no interim order, the judgments and decrees of the Courts below have already been executed and further, the respondent has already retired from service and in case, the judgments and decrees of the Courts below are set aside, the benefit already extended to the respondent-plaintiff will be withdrawn so as to modify his retiral benefits as well as pension which he is receiving, which will be too harsh for a retired employee at this stage.

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

5. Though, there is a merit in the submission made by the learned counsel for the appellant that adhoc service rendered by the respondent-plaintiff could not have been taken into account for fixing his pay keeping in view the judgment of the Hon'ble Supreme Court of India in ***Haryana Veterinary's case (supra)*** but as there was no interim order and judgments under challenge in the present appeal have already been complied with and executed and the respondent-plaintiff has also retired from service and is leading a retired life, it will be harsh to withdraw the said benefit so as to re-fix his salary and recover the amount paid to him.

6. The question of law settled by the courts below is set aside and keeping in view the settled principle of law, it is held that adhoc service rendered by an employee cannot be taken into account for fixing his salary or grant of selection grade.

7. The next question which arises is that as there was no interim order, the judgments under appeal have already been executed and the benefit admissible under those judgments has already been extended to the

respondent-plaintiff. Not only this, the respondent-plaintiff has already retired and as a pensioner drawing the pension. Keeping in view the said factum, whether the benefit extended under the judgment is liable to be withdrawn or not is to be adjudicated.

8. The question of excess payment made beyond the entitlement has been considered by the Hon'ble Supreme Court of India in ***Civil Appeal No.11527 of 2014 titled as State of Punjab and others vs. Rafiq Masih (White Washer) and others, decided on 18.12.2014.*** The Hon'ble Supreme Court of India has held that where the payments have been made by mistake in excess of the entitlement, in order to avoid hardship to the employees, recovery is not permissible. In paragraph 12 of the said judgment, certain eventualities where recovery from the employee will amount to hardship have been detailed. Relevant paragraph 12 of the said judgment is as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been

required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

9. A bare perusal of the paragraph 12 of the judgment would show that the recovery from the retired employee is covered under the category of hardship and has been made impermissible.

10. In the present appeal, though under the judgments of the Courts below, the respondent-plaintiff has been paid the amount and upon setting aside the said judgments, the claim will be raised by the appellant for the recovery of the amount paid in excess to the respondent-plaintiff than his entitlement, hence, it is directed that keeping in view the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***, as the respondent-plaintiff has already retired and is drawing pension as a pensioner, despite the fact the judgments of the Courts below have been set aside, the benefit already extended be not recovered as an exceptional case.

11. The present appeal is disposed of in above terms.

12. Any civil miscellaneous application pending if any, also stands disposed of.

April 01st, 2024

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No