



**1001 IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RSA-1145-2006(O&M)
Date of decision: 11.11.2024

State of Haryana through Collector, Rohtak and another
...Appellants

Versus

Ram Pal
...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG, Haryana.

None for the respondent.

HARPREET SINGH BRAR J.(Oral)

1. The present regular second appeal is preferred by the appellant-State against the judgment and decree dated 30.11.2005 passed by the learned Additional District Judge, Rohtak whereby the judgment and decree dated 13.06.2005 passed by the learned Civil Judge (Jr. Division), Rohtak, was upheld.

FACTUAL BACKGROUND

2. The respondent-plaintiff was appointed as Canal Patwari on 25.07.1980 and his services were regularized w.e.f. 15.09.1982. An order bearing no. 5966/24-E dated 19.12.2001 was passed by XEN (Water Supply), Feeder Division, whereby it was instructed that services rendered on *ad hoc* basis would not be counted and the pay fixed while counting the same as regular service was immediately withdrawn. Consequently, the pay

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of the respondent-plaintiff was re-fixed vide order bearing no.6155/22-A dated 31.12.2001.

3. Consequently, the respondent-plaintiff filed a suit before the learned Civil Court seeking declaration of the orders dated 19.12.2001 and 31.12.2001 as illegal. The following issues were framed for the consideration of the Court-

1. Whether the impugned orders bearing No.5966/24-E dated 19.12.2001 and order bearing No.31.12.2001 are illegal, null and void and not binding upon the rights of the plaintiff and are liable to be set-aside? OPP.

2. Whether the suit is not maintainable? OPD.

3. Whether the plaintiff has no locus-standi to file the present suit ? OPD.

4. Whether the suit of plaintiff is bad for joinder of necessary parties? OPD.

5. Whether the suit is bad for want of notice U/s 80 CPC? OPD.

6. Relief.

4. After considering all the material available on the record, the abovementioned issues were decided in favour of the respondent-plaintiff vide judgment dated 13.06.2005 and the appellant-State was restrained from implementing orders dated 19.12.2001 and 31.12.2001 as well as from affecting any recovery from the respondent-plaintiff.

5. Aggrieved by the same, the appellants preferred an appeal before the lower Appellate Court, which was partly allowed vide judgment dated 30.11.2005 and it was concluded that orders dated 19.12.2001 and 31.12.2001 were legal and binding on the respondent-plaintiff. However, the steps taken by the State to recover the amount already paid to the



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respondent-plaintiff were held illegal and the State was directed to refund the same to him. Subsequently, the present second appeal was moved by the State before this Court.

CONTENTIONS

6. Learned State counsel for the appellants *inter alia* contends that the learned lower Appellate Court has erred in directing the State to refund the amount collected from the respondent-plaintiff. The learned Court failed to appreciate that the respondent-plaintiff had filed an application under Order XXXIX Rules 1 and 2 CPC along with the suit requesting the State-defendants to be restrained from recovering the amount. The said application was dismissed as was the appeal against the said order. It was only after this that the State-defendants recovered the amount from the respondent-plaintiff. Moreover the judgment relied upon by the learned lower Appellate Court i.e. ***State of Punjab vs. Ishar Singh 2002 AIR SC 2422*** is not applicable to the facts and circumstances of the present case. Finally, the learned Court below also misinterpreted the suit to the extent that the same was filed only for declaration and permanent injunction; therefore, there was no occasion for ordering refund of the recovered amount.

OBSERVATIONS AND ANALYSIS

7. Having heard learned State counsel and after perusing the record with his able assistance, it transpires that undisputedly, the respondent served as Canal Patwari from 25.07.1980 and his services were regularized on 15.09.1982. Vide order dated 19.12.2001, the XEN (Water Supply (defendant no.2) withdrew benefits accrued to the respondent if the



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services rendered by him on *ad hoc* basis were counted towards total service duration. Subsequently, his pay was re-fixed to accommodate the said changes vide order dated 31.12.2001. The issue pertaining to counting of *ad hoc* services as regular service stands settled by the learned lower Appellate Court and has not been agitated again in the present appeal. However, State-defendants had recovered a certain amount from the higher pay scale granted to the respondent-plaintiff by taking into account his *ad hoc* services.

8. A two Judge bench of the Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334*** has opined that even if the State has mistakenly granted excess benefit to the employee, the order of recovery cannot be absolutely made subsequently, especially against employees belonging to Group C and Group D. Speaking through Justice K.S. Khehar, the following was held:

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover”



9. Moreover, in *Ishar Singh(supra)*, a two Judge bench of the Hon'ble Supreme Court, speaking through Justice D.B. Mohapatra took the following categoric stance:

“5. However, we make it clear that if any of the respondents has drawn any amount on the basis of the higher scale of pay granted to him taking into account the adhoc service then the such amount already drawn by the employee shall not be recovered, though his cadre seniority and other consequential benefits will be governed by decision rendered herein.”

The *ad hoc* service of the respondent-plaintiff was not counted as regular service in view of *Ishar Singh (supra)*. The same judgment also proscribes the recovery of the amount withdrawn by the plaintiff before the benefits were withdrawn vide order dated 19.12.2001 and the pay was refixed vide order dated 31.12.2001. As such, the State cannot be allowed to cherry pick the parts of the ratio that suit its needs.

10. Moreover, the learned Civil Court has categorically restrained the State-defendants from recovering any amount from the respondent-plaintiff as the suit was decreed in his favour. Further, the findings of the learned Civil Court were reversed by the learned lower Appellate Court with respect to counting of services rendered on *ad hoc* basis towards regular service. Thus, it became necessary to opine on the aspect of recovery affected from the respondent-plaintiff.

CONCLUSION

11. In view of the discussion above, the present appeal is dismissed and the judgment and decree dated 30.11.2005 passed by the learned Additional District Judge, Rohtak, is upheld.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

11.11.2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No