



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

978

RSA-552-2006
Reserved on: 06.11.2024
Pronounced on: 08.11.2024

TEJ PAL

... Appellant

Vs.

STATE OF HARYANA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Khushika Setia, Advocate (*amicus curiae*)
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.

1. The appellant through instant second appeal is seeking partly setting aside of judgement and decree dated 12.09.2003 passed by learned Civil Judge (Jr. Div.), Faridabad in allowing Civil Suit No. RBT 415 of 04.10.2000 filed by the appellant for declaration to the effect that respondents-defendants have no right to reduce his salary under the garb of order of his re-designation/reversion and have no right to recover Rs.81,075/- or any other amount on the ground of excess payment made to him on 01.08.1980 onwards till 25.07.2000 as well as for mandatory injunction directing the respondents-defendants to release an amount of Rs.7,000/- illegally deducted from his salary for the month of August, 2000 and for payment of his pension and other retiral benefits. At the same time, prayer is also made in the instant second appeal for setting aside the judgement and decree dated 18.08.2005 passed by learned Additional District Judge (I), Faridabad vide which the first appeal filed by the appellant was dismissed whereas the appeal filed by the

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respondents was allowed.

2. Succinctly, the facts as per the plaint are that the appellant-plaintiff was initially appointed as T. Mate w.e.f. 18.02.1970 by the respondent-department. Thereafter, he was appointed as Drag Line Operator w.e.f. 01.06.1978 in the grade of 120-10-225 vide order no.1426/26F dated 13.06.1978. Subsequent thereto, vide order no.153/26F dated 07.01.1980, his pay was fixed at the scale of 160-10-280/15-400 w.e.f. 01.06.1978. Thereafter, the respondents-defendants re-designated the appellant-plaintiff from the post of Drag Line Operator to that of a Charge Man without giving any show cause notice or opportunity of hearing. However, his pay was protected vide order No.569/26F dated 27.01.1981 at the scale of Drag Line Operator with retrospective effect. But his salary for the month of August, 2000 was reduced by an amount of Rs.700/-. Upon representation made by the appellant-plaintiff, he was informed by the department that his salary had been reduced albeit without any reason. Subsequently, the salary of the appellant-plaintiff was reduced and re-fixed vide order 882/5 dated 25.07.2000 and order 4580-81/7A dated 09.08.2000 respectively in an arbitrary manner. Furthermore, recovery of Rs.81,075 /- was ordered by respondents-defendants to be affected from the appellant-plaintiff vide orders dated 09.08.2000 and 14/15.09.2000 on account of excess payment made to him from 01.08.1980 to 25.07.2000. Despite several requests, the respondents-defendants remained steadfast on their decision to affect recovery from his gratuity and other retiral benefits, causing him to approach the learned Civil Court and file the present suit.

3. Upon notice, the respondents appeared before the learned trial

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Court and contested the suit. In their written statement, the respondents took preliminary objection on technical grounds of cause of action, locus standi, jurisdiction and maintainability of the suit. On merits, it was pleaded by the respondents that salary of the appellant was reduced in view of the instructions issued by Finance Department, Haryana, vide notification No.1/1/98-IPR/Fd dated 13.01.1998. It was also pleaded that his salary was re-fixed after completing necessary formalities and in accordance with the undertaking given by the appellant himself, wherein, it was mentioned that if any excess payment was made to him, the same would be refunded. It was further pleaded on merits that the appellant was duly served with order dated 15.09.2000 with regard to the recovery of excess payment. All other averments were denied in *toto*. In the replication filed by the appellant-plaintiff, the allegations made in the written statement were controverted while the averments made in the plaint were reiterated. Consequently, as many as 4 issues were framed by the learned trial Court including the issue of relief.

4. Ultimately, the suit filed by the appellant was partly decreed in his favour. It was held that the respondents-defendants are not within their legal right to withdraw the amount of Rs.81,075/- from the gratuity of the plaintiff in lieu of recovery of excess salary paid to him. The respondents-defendants were also directed to pay back the aforesaid amount within 2 months from passing of the decree. However, the respondents-defendants were awarded the liberty to recover the said amount in due course of law, if desired. Affronted by the observations of the learned trial Court, both the parties approached the learned lower Appellate Court with their respective appeals,

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which were clubbed and heard together. Ultimately, the appeal filed by the present appellant was dismissed in view of the undertaking given by him to the respondent department whereas the appeal filed by respondents-defendants was allowed. Aggrieved by the same, the appellant-plaintiff has come before this Court by way of the instant regular second appeal.

5. In view of the judgments passed by the Hon'ble Supreme Court in *Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157*, *Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71* and *Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others*, questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act. This Court has proceeded to adjudicate the present matter on the basis of rival contentions of the parties on merits.

6. Learned counsel for the appellant vociferously contended that recovery of any excess amount paid to the appellant-plaintiff could not have been made from his gratuity, that too after 20 years of his service. She further contended that as per the settled law, any excess payment cannot be recovered from the pensionary benefits of a person except in exceptional circumstances as enumerated in Rule 2.2(b) and (b)(ii) of the Punjab Civil Rules Volume II. To buttress her argument, learned counsel for appellant placed reliance upon the judgment rendered in the case of *State of Punjab vs. Rafiq Masih (white washer)*, 2015 AIR (SC) 696.

7. Learned State counsel submitted that impugned judgements and



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decrees have been passed after correct appreciation of the evidence on record in accordance with the law and therefore, did not deserve any interference by this Court.

8. I have heard the learned counsel for the parties and perused the paper-book with their able assistance. Before proceeding further, it is quite relevant to discuss certain situations where recovery by the employer is prohibited by law as enunciated by a two Judge Bench of the Hon'ble Supreme Court in **Rafiq Masih (supra)**. Relevant portion is being reproduced hereunder: -

“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. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to



upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimising monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

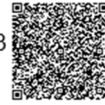
10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all Governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

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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. Reverting back to the facts of the case at hand, it has remained undisputed throughout that the appellant-plaintiff was appointed to the post of Drag Line Operator on 01.06.78. Thereafter, he was re-designated and regularized for the post of Chargeman as on 01.08.1980 which is lower than the post of Drag Man Operator. However, pay of the appellant-plaintiff was protected vide order dated 569/267 dated 27.01.1981 at the scale of 160-10-280/15-400, i.e., of Drag Line Operator. It has come to the fore that his pay was re-fixed upon his furnishing an undertaking to the effect that in case of

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excess payment of salary, the appellant-plaintiff would be liable to refund the excess amount. Pertinently, the appellant-plaintiff retired on 31.10.2000. The impugned order was passed on 09.08.2000 whereby an amount of Rs.81,075 was ordered to be recovered on account of excess salary paid to him for the period of 01.08.1980 to 25.07.2000 from his gratuity. Clearly, the recovery amount in the present case is for a period of 20 years. In the light of observations made by the Hon'ble Supreme Court in **Rafiq Masih (supra)**, the impugned order dated 09.08.2000 finds itself to be in contravention of the settled law.

10. Ex-consequenti, the present regular second appeal stands allowed. The judgment and decree dated 12.09.2003 passed by learned Civil Judge (Jr. Div.), Faridabad and the judgment and decree dated 18.08.2005 passed by learned Additional District Judge (I), Faridabad are hereby set aside in accordance with the observations made above.

11. The respondents are directed to refund the amount recovered from the appellant along with interest at the rate of 7% p.a. from the date of recovery till its realization, within a period of 4 weeks from today.

12. Decree sheet be prepared accordingly.

13. The Secretary, High Court Legal Services Committee, is directed to pay remuneration to *amicus curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

Reserved on : 06.11.2024

Pronounced on : 08.11.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No