



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

217

RSA-3613-2013 (O&M)

Date of decision: 16.09.2024

Kehar Singh

... Appellant

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Simranpreet Singh Multani, Advocate for
Mr. Rakesh Gupta, Advocate for the appellant.

Mr. Anil Bansal, DAG, Punjab

SUVIR SEHGAL J.

1. Appellant-plaintiff is in second appeal before this Court assailing the judgment and decree dated 16.07.2013, passed by the First Appellate Court, whereby the judgment and decree passed by the trial Court has been set aside and plaintiff's suit has been dismissed in entirety.

2. Facts leading to filing of the appeal are that the appellant-plaintiff retired from the post of Registrar on 30.04.2005 on attaining the age of superannuation and he was allotted a PPO number. Vide sanction letter dated 07.12.2006, his pension was commuted and he was disbursed an amount to the tune of Rs 3,22,046/-. Another amount of Rs.10,164/- was paid to him vide letter dated 11.04.2007, Ex.P-4 and it was mentioned that the commuted portion of the pension of



Rs.4458/- shall be restored after a period of 15 years. He submitted a representation Ex.P-9, with the defendants on 07.02.2007 and claimed that as the commuted pension had not been correctly calculated, he was entitled to amount of Rs.5,59,569/- as per Government Circular dated 07.12.2006, Ex.D-9. Acting on his representation, commuted pension was revised and he was paid an additional amount. Realising that the excess amount of Rs.2,27,358/- had been paid to him, a letter was sent by the Accountant General to the defendants to initiate steps to recover the excess amount. An amount of Rs.91,000/- already stood deducted from the commuted pension by the Treasury. Challenging the recovery, plaintiff filed a suit for declaration to the effect that the said recovery had been made from the date of his retirement instead of 07.12.2006, when the payment was actually made and claimed refund of deducted amount along with interest. Upon being served, suit was contested by the defendants by filing separate written statements, wherein various preliminary objections were taken. It was submitted that at the time of retirement, vigilance inquiry was pending against the petitioner and the provisional pension clearance certificate was not issued. Upon receiving the clearance certificate, pension was sanctioned by defendant No.3 on 07.12.2006. Vide letter dated 05.02.2007, plaintiff misrepresented that he is entitled to commutation of pension as per circular dated 31.10.2006, Ex.D-10 and the commutation of pension was revised. A stand



was taken that the circular is not applicable to the plaintiff and the notice for recovery has been rightly issued. Plaintiff filed a replication reasserting the claim. On the basis of the pleadings of the parties, trial Court framed issues. After the parties led evidence and were heard, Trial Court by judgment dated 03.12.2012 decreed the suit. In appeal filed by the defendants, learned District Judge, Patiala reversed the findings recorded by the trial Court and dismissed the suit resulting in the institution of the present appeal at the hands of the appellant-plaintiff.

3. I have heard counsel for the parties and considered their respective submissions.

4. The entire controversy revolves around the interpretation of circular dated 13.10.2006, Ex.D-10, which is reproduced hereunder:-

"I am directed to invite a reference to the subject cited above and to state that the entire matter regarding the revision of present table of commutation of pension has been engaging the attention of the State Government for some time past. The Governor of Punjab is pleased to reduce the discount rate from existing 8% to 4.7% and revise the existing table (copy enclosed) for the calculation of the commutation of pension in place of present table incorporated



as annexure to Chapter XI of the Punjab CSR Vol.II. This revised table supersedes the existing table and shall apply to all cases of retirement arising on or after 30.10.2006. Annexure to Chapter XI of the Punjab Civil Service Rules Vol.II shall be deemed to have been substituted accordingly.”

5. An examination of the above reproduced Circular shows that it is applicable to employees, who retired from service on or after 31.10.2006. It is not in dispute that the appellant-plaintiff retired on 30.04.2005 on attaining the age of superannuation and he was granted pension as per the applicable rules, which on his request was commuted. The revised commuted pension had been paid to the appellant-plaintiff on the representation made by him wherein he claimed the benefit of the Circular Ex.D-10. The circular is definitely not applicable to the case of the appellant-plaintiff as he had retired prior to 31.10.2006. The appellant-plaintiff, therefore, had availed the benefit of a circular by misrepresentation to which he was not entitled. The respondents-defendants are, therefore, within their power to make the recovery of the excess amount paid to him. This Court, therefore, does not find any perversity in the judgment passed by the learned District Judge, Patiala, which is affirmed.

6. Though, a submission has been made on behalf of the appellant that the recovery of the excess amount paid to the



appellant-plaintiff be not made from pension payable to him but this plea cannot be accepted. Had the amount been paid due to an error committed by the respondents, the argument could still be accepted. However, facts of the present case clearly amplify that the excess amount had been paid on a mis-representation made by the appellant-plaintiff. Furthermore, appellant has retired from a Class I post and cannot claim the benefit of the judgment rendered by the Supreme Court in **State of Punjab Versrus Rafiq Masih (2015) 4 SCC 334,** therefore, submission made on behalf of the appellant-plaintiff is rejected.

7. For the afore-stated reasons, this Court does not find any merit in the appeal, which is dismissed with no order as to costs.

8. As the main appeal has been decided, all pending applications shall stands disposed of.

16.09.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No