

(2008) 02 P&amp;H CK 0024

## High Court Of Punjab And Haryana At Chandigarh

Case No: None

Sant Ram and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** Feb. 19, 2008**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151, 21
- Constitution of India, 1950 - Article 226
- Legal Services Authorities Act, 1987 - Section 20, 21

**Citation:** (2008) 152 PLR 592 : (2008) 4 RCR(Civil) 39**Hon'ble Judges:** Rakesh Kumar Jain, J; Mehtab S. Gill, J**Bench:** Division Bench

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**Judgement**

Rakesh Kumar Jain, J.

This order shall decide Civil Miscellaneous Application No. 15650 of 2007 filed by State of Punjab and others u/s 151 CPC for revival of the above noted Civil Writ Petition No. 5152 of 2001.

2. The brief the facts of the case are that the petitioners Sant Ram and others filed above-stated Writ Petition bearing No. 5152 of 2001 under Article 226 of the Constitution of India with the following prayer-

a writ in the nature of certiorari/mandamus be issued to the respondents thereby declaring the entitlement of commutation value of pension to the petitioners on the basis of multiplier 15, which has been applied in the case of C.W.P. No. 16531 of 1998 and with same rate of interest as was allowed in the writ petition titled Harinder Pal Singh Sidhu v. State of Punjab as decided by the Hon"ble Lok Adalat of this Hon"ble High Court.

On 5.4.2001, a Division Bench of this Court passed the following order:

Present: Mr. S.B. Nagpal, Advocate for the petitioners.

Mr. S.C. Sibal, Addl. A.G. Punjab with Mr. Surinder Kumar, A.A.G. Punjab for the respondents.

Rule. Mr. Surinder Kumar, Assistant Advocate General, Punjab, accepts notice on behalf of the respondents. Written statement may be filed within four weeks. Replication, if any, within four weeks thereafter.

Keeping in view the subject matter of the case, we are satisfied that it would be appropriate, if cognizance is taken by Lok Adalat.

Learned Counsel for the parties have no objection to it. Accordingly, reference of the case is made to the Lok Adalat u/s 20 of the Legal Services Authorities Act, 1987.

Notice of further proceeding will be published by the concerned authority in the cause list.

Sd/-

(Arun B. Saharya)

Chief Justice

Sd/-

(V.K. Bali)

Judge

Pursuant to the above order, the writ petition was placed before Permanent Lok Adalat-I, where the State was represented by Mr. K.K. Beniwal, D.A.G., Punjab. The Permanent Lok Adalat vide its order dated 3.10.2001 passed the following order:

In the above circumstances, we are of the considered view that the State Government should retrieve the original position by giving either of the following two reliefs to the retiree government servants on or after 1.1.1996:

Since undisputedly 40% of the commuted amount of compensation inclusive of interest shall be recovered within about 12 years, as was the case prior to 1.1.1996 when 1/3rd of the amount of pension reproduced by us above in the order dated 21.7.1998 the commuted portion of pension would be eligible for restoration after 15 years of the actual date of commutation should be omitted and the original policy of restoration of commuted amount of pension after 12 years or on attaining the age of 70 years, whichever is later, should be restored.

Since the State Government would be recovering the amount of 40% of the pension from the retiree government servant on the strength of the order Annexure P-2 for a period of 15 years instead of such recovery for a period of 12 years, the State Government should allow to the retirees 25% additional sum of the commuted amount of pension worked out on the basis of the Table referred to in Rule 11.5(2) *ibid*. Such a relief alone could give real benefit to the retirees and at the same time would cause no tangible loss to the State exchequer.

Orders granting either; of the above two reliefs shall be passed by the State Government within a period of four months from today.

This order is a settlement and an award of this Court executable as a decree u/s 21(1) of the Legal Services Authority Act, 1987.

3. After the order of the Permanent Lok Adalat, the petitioners filed an execution application under Order 21 Rule 11 of CPC read with Section 21 of Legal Services Authorities Act, 1987 for the execution and implementation of the order dated 3.10.2001 passed by the Permanent Lok Adalat-I. In this application No. 14163 of 2005 notice was issued by learned Single Judge on 25.8.2005 for 8.12.2005. This application, however, was withdrawn by the petitioners with liberty to file an application before the Civil Court for the execution of the order of the Permanent Lok Adalat-I. Permission was granted by learned Single Judge on 31.7.2006. Thereafter, the above stated C.M. No. 15650 of 2007 was filed by the respondents before the Lok Adalat wherein notice was given to the Counsel for the petitioners for 1.11.2007 who had filed reply to the application duly signed by petitioner No. 1 for himself, and on behalf of other petitioners. On 11.12.2007, Permanent Lok Adalat passed the following order:

State Counsel moved this application for revival of the writ petition which was earlier disposed of by the 1st Permanent Lok Adalat. This application is opposed on behalf of the writ petitioners by filing reply, which is placed on the record.

In view of the circumstances as stated above, by concurrence no order can be passed. Miscellaneous application is returned to the High Court for disposal on merits according to law.

Thereafter, the above Civil Miscellaneous Application No. 15650 of 2007 has been placed before us for adjudication.

We have heard learned Counsel for the applicants.

4. During the course of arguments, it has been brought to our notice that State of Punjab had challenged order dated 3.10.2001 passed by the Permanent Lok Adalat by way of C.W.P. No. 10014 of 2006 seeking the following prayer:

issue a writ in the nature of certiorari quashing the order/award, dated 3.10.2001 passed by the Hon"ble Lok Adalat in Civil Writ Petition No. 5152 of 2001 Sant Ram and Ors. v. State of Punjab (Annexure P-1) whereby it has been ordered to grant the multiplier of 15 instead of 12 months while commuting pension.

5. It was also brought to our notice that the said writ petition was dismissed on the ground that it cannot be entertained by Division Bench on 10.7.2006 in which the following order was passed:

In view of judgment of this Court in Kamal Mehta v. General Manager, Rajasthan Roadways Transport Corporation and Anr. F.A.O. No. 798 of 1999 decided on

7.11.2001, holding that unless the award of the Lok Adalat is based upon consent, the same will be nullity, this petition cannot be entertained.

Dismissed.

6. On 18.9.2007, State of Punjab filed C.M. No. 15650 of 2007 u/s 151 CPC for revival of the writ petition No. 5152 of 2001 referring to the aforesaid order, passed by the Division Bench in C.W.P. No. 10014 of 2006. In para Nos. 3 and 5 of "he application, it was categorically mentioned that award dated 3.10.2001 passed by the Lok Adalat was without their consent though it is required u/s 21 of the Legal Services Authorities Act, 1987.

7. The non-applicants-petitioners vide their reply dated 11.12.2007, contested the application on the ground that the same has been fudged after a lapse of more than 6 years without filing any application for condonation of delay after dismissal of C.W.P. No. 10014 of 2006, the applicants are estopped from filing the present application and no review or SLP has been filed against the order dated 10.7.2006 passed in C.W.P. No. 10014 of 2006.

8. However, on merits, it is nowhere stated that the State Counsel had given consent to the settlement. Rather it was pleaded that the order has been passed in the presence of State Counsel and as per the concluding part of the order which refers the award as a settlement, it was pleaded that the same is passed on consent.

9. We have seen the pleadings contained in the application and the reply. From the order of the Lok Adalat, we could not find that any consent was given by the State of Punjab for settlement by the Lok Adalat. From the tenor of the order passed by the Lok Adalat, it appears that the same has been passed on merits, after there being a contest, it was ordered that the State Government should retrieve the original position by giving either of the two reliefs to the retiree government servants on or after 1.1.1996 which referred to earlier part of the order.

10. There is no quarrel with the decision of the Division Bench rendered in the case of Kamal Mehta v. General Manager, Rajasthan Roadways Transport Corporation and Anr. wherein it has been held as under:

It will be clear from the above discussion that the Lok Adalats have been conceptualised as agencies wherein matters can be mutual agreement. These words have been repeatedly used in the statute and if such an agreement can not be reached, the Lok Adalat must divest itself of the controversy and must itself refer or advise the parties to approach a Court. It is true that the respondent Corporation has been left with the liberty to file objections but this procedure is unknown to proceedings under the Act and clearly violates the principle of the finality of an award of Lok Adalat envisaged u/s 21. This is a clear transgression on the powers of the appellate court.

11. Since we find that the order of the Lok Adalat has not been passed on consent or compromise, therefore, the same is unsustainable and is, thus, set aside. The writ petition is, thus, revived to its original number and is ordered to be decided on merits.

12. The case is now adjourned to 24.4.2008 for hearing on merits of the writ petition. The registry is directed to inform Counsel for both the parties about the date fixed.