(2014) 10 GUJ CK 0027

In the Gujarat High Court

Case No : Letters Patent Appeal Nos. 17 and 960 of 2010 in Special Civil Application No. 9981 and 9979 of 2002

Anil M. Vaidya APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Citation : (2014) 10 GUJ CK 0027

Hon'ble Judges : V.M. Pancholi, J;Jayant M. Patel, J

Bench : Division Bench

Advocate : Simranjeetkaur A. Riyait and V.H. Desai, Advocate for the Appellant; Ritvij Oza, AGP, Advocate for the Respondent

Judgement

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Jayant M. Patel, J.—As common questions arise for consideration in both these appeals, they are considered simultaneously.

2. The short facts in Letters Patent Appeal No. 17 of 2010 are that the original petitioners - appellants herein were working in the urban agglomeration of Vadodara, viz. Padra and Bajwa. Similar is the fact situation in the case of original petitioners of Letters Patent Appeal No. 960 of 2010. House Rent Allowance (for short ''H.R.A.'') and City Compensatory Allowance (for short ''C.L.A.'') were being paid to them as per the Government Resolution dated 29th May 1981 from time to time at par with the Government employees working in the city of Vadodara. Such arrangement continued upto the year 2000-01. However, in the year 2002, vide order dated 28th June 2002, a decision was taken by the Government that after 28th February 1985 such benefits were not available on account of recommendation of Third Pay Commission as there was reclassification of the cities vide Government Resolution dated 18th April 1983, and Padra was not included, and therefore, the decision was taken to recover the amount of H.R.A./C.L.A. which were already paid to the petitioners. All the original petitioners - appellants herein were not communicated with the decision,

but they were orally conveyed that the difference amount of H.R.A./C.L.A. already paid to them is to be recovered. It is under these circumstances, the petitioners preferred respective Special Civil Applications. The learned Single Judge in the impugned order found that as the amount was paid in excess, the same can be recovered. The learned Single Judge also referred to the earlier decision in Special Civil Application No. 7347 of 1997 decided vide order dated 17th August 1999 and found that the amount of overdue payment of H.R.A./ C.L.A. could be recovered in thirty installments, and the learned Single Judge further found that the recovery cannot be said to be illegal or arbitrary, and the learned Single Judge, therefore, dismissed the petition. It is under these circumstances, these appeals.

3. We have heard Ms. Simranjeetkaur A. Riyait, learned advocate appearing for Mr. V.H. Desai, learned advocate for the appellant, and Mr. Rutvij Oja, learned Assistant Government Pleader, for the respondents.

4. It was submitted by the learned counsel appearing for the appellants that similar aspects came up for consideration before another learned Single Judge of this Court in Special Civil Application No. 235 of 2003, and vide order dated 2nd December 2011, learned Single Judge found that recovery of the amount after a period of twenty years cannot be sustained, and by relying upon a decision of the Apex court in case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, , the learned Single Judge quashed the order for recovery. It was submitted that the Letters Patent Appeal against the very decision of the learned Single Judge being Letters Patent Appeal No. 329 of 2014 has been dismissed by a Division Bench of this Court vide order dated 21st March 2014, and the Division Bench has concurred with the view taken by the learned Single Judge, and therefore, it was submitted that since the fact situation in the present appeal is similar, the appeal be allowed.

5. Whereas, Mr. Rutivij Oza, learned Assistant Government Pleader, submitted that in the affidavit-in-reply filed in Letters Patent Appeal No. 960 of 2010, it has been contended on behalf of the respondent that if there was over payment on account of the mistake, the same can be recovered. He submitted that in the affidavit-in-reply filed on behalf of respondents No. 3 and 4 in Letters Patent Appeal No. 960 of 2010, another decision of another learned Single Judge of this Court in Special Civil Application No. 7347 of 1997 is relied upon, and accordingly, the recovery could be said as legal and valid. He relied upon the decision of the Apex court in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, , and contended that Syed Abdul Qadir (supra) was considered by the Apex Court, and the Apex Court has held that the excess money, if paid, can be recovered barring few exceptions of extreme hardships, but not as a matter of right it can be said that such amount may not be recovered, and it was contended that the order passed by the learned Single Judge may not be interfered with in the present appeal.

6. We may deal with the aspects of case law. In the case of Chandi Prasad Uniyal

(supra), the Apex Court has not taken a different view than the one taken by the Apex Court in case of Syed Abdul Qadir (supra), but while considering the earlier decision of Apex Court in Syed Abdul Qadir (supra) at paragraph No. 12, it was observed thus:-

"13. Later, a three-Judge Bench in Syed Abdul Qadir case after referring to Shyam Babu Verma, Col. B.J. Akkara (retd.) etc. restrained the department from recovery of excess amount paid, but held as follows: (Syed Abdul Qadir case SCC pp. 491-92, para 59)

"59. Undoubtedly, the excess amount that has been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."

(emphasis added)

14. We may point out that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them."

(Emphasis supplied)

The Apex Court found that in view of the peculiar facts and circumstances that the beneficiaries have either retired or were on the verge of retirement so as to avoid hardship to them, the Apex Court had passed the order for not maintaining the recovery or rather quashing of the recovery. After considering the above referred decision of Syed Abdul Qadir (supra), the Apex Court further observed at paragraphs No. 14, 15 and 16 as under:-

"14. We are concerned with the excess payment of public money which is often described as "tax payers'' money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

16. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant''s salary in twelve equal monthly installments starting from October 2012."

7. In our view, even if the observations made by the Apex Court are considered, the excess amount paid can be recovered but barring few exceptions of extreme hardship, and not as a matter of right. It is true that in the present case, the excess amount was paid towards H.R.A./C.L.A., and there may be a ground for recovery since the area at which the original petitioners were staying was not classified in the schedule so as to make it at par with Vadodara city, but at the same time we need to keep in mind two exceptional circumstances for extreme hardship. One is that the payment so made is sought to be recovered after about more than fifteen years. It has been further stated that the recovery uptil now is not effected, and if now to be effected, all the petitioners are on the verge of retirement. If the period is counted from today, the recovery would relate back to about a period of thirty to thirty four years. In our view, if the recovery is sought to be made after more than fifteen years, and that too at a time when the employee concerned has reached the age which is near the age of retirement, or on the verge of retirement, such recovery would cause extreme hardship. Therefore, the case may rather be said as covered by the decision of the Apex Court in the case of Syed Abdul Qadir (supra). As the Apex Court in the case of Chandi Prasad Uniyal (supra) has not overruled the decision, but has rather concurred with the view limiting to the exceptional circumstances of extreme hardship. Hence, we do not find that the decision of the Apex Court in Chandi Prasad Uniyal (supra) would be of any help to the respondents in maintaining the recovery, which is after a period of about more than fifteen years, and if

considered as on today, it would be on the verge of retirement or nearing age of retirement of employee concerned.

8. The aforesaid is coupled with the circumstances that another learned Single Judge of this Court in Special Civil Application No. 235 of 2003 vide decision dated 2nd December 2011 in similar fact situation as that of the present case has quashed the recovery by relying upon the decision of the Apex Court in the case of Syed Abdul Qadir (supra). Further, the matter was carried against the very decision of the learned Single Judge in Special Civil application No. 235 of 2003 before the Division Bench in Letters Patent Appeal No. 329 of 2014, and the Division Bench of this Court vide decision dated 21st January 2014 has concurred with the view expressed by the learned Single Judge that the recovery could not have been ordered.

9. In view of the aforesaid, we find that as the case is falling in the exceptional category of extreme hardship, recovery of H.R.A./C.L.A. which was challenged in the main petition cannot be maintained, and the same deserves to be quashed and set aside.

10. Under the circumstances, the orders of the learned Single Judge in respective Special Civil Applications are quashed and set aside. The recovery of H.R.A./ C.L.A. already paid to the original petitioners - appellants herein is quashed and set aside. Appeals are allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.