

(2013) 10 BOM CK 0177

In the Bombay High Court

Case No : Writ Petition No. 1662 of 2013

Arun Ambadasji Chawade

APPELLANT

Vs

The Chief General Manager, Bharat Sanchar Nigam Ltd.,
Mumbai, The Controller of Communication Accounts Officer
(Pension), Mumbai, Telecom District Engineer (Admn.),
Bharat Sanchar Nigam Ltd., Wardha and Accounts Officer
(Cash), Wardha

RESPONDENT

Date of Decision : 14-10-2013

Acts Referred:

Citation : (2014) 3 ALLMR 277 : (2014) 140 FLR 884 : (2013) 6 MhLj 533

Hon'ble Judges : Vasanti A. Naik, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : J.R. Kidilay, for the Appellant; R.G. Agrawal, Advocate for
Respondent Nos. 1 to 4, for the Respondent

Judgement

A.S. Chandurkar, J.—Rule. Rule made returnable forthwith and heard finally with the consent of the parties. The challenge in the present writ petition is to the communication dated 8-1-2013 issued by the respondent No. 4 thereby directing the petitioner to deposit an over paid amount of salary to the tune of Rs. 1,49,504/-.

2. The petitioner was appointed as Phone Mechanic with the respondent No. 1. On attaining the age of superannuation, the petitioner retired from service on 31-3-2009. On 8-1-2013, the aforesaid communication came to be issued to the petitioner calling upon him to deposit an over paid salary of Rs. 1,49,504/-. The same has, therefore, given rise to the present writ petition.

3. Shri Kidilay, the learned Counsel appearing for the petitioner has firstly submitted that the aforesaid communication was issued to the petitioner without issuing any show cause notice. It is further submitted that there are no reasons mentioned in the aforesaid communication as to why the petitioner is being directed to deposit the overpaid salary. It is then submitted that as the petitioner

had retired from service on reaching the age of superannuation on 31-3-2009, it was not permissible in law to seek recovery of aforesaid amount after the petitioner's retirement. Learned Counsel for the petitioner has in this regard place reliance upon the judgment of the Hon''ble Supreme Court in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, , especially, para 28 thereof.

4. Shri R.G. Agrawal, the learned Counsel appearing for the respondent Nos. 1 to 4 has supported the impugned communication. It is submitted that as the aforesaid communication relates to the service benefits of the petitioner, the remedy before the Central Administrative Tribunal could be invoked in case the petitioner is aggrieved by the said communication. It is further submitted that excess payment was disbursed to the petitioner on account of the wrong pay fixation and hence, the petitioner was liable to refund the same to the department. In support of the aforesaid submission, the learned Counsel has relied upon the decision of the Hon''ble Supreme Court in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, . The learned Counsel, therefore, seeks dismissal of the writ petition.

5. Having heard the respective Counsel, it is clear that certain facts are not in dispute. The overpayment is on account of wrong pay fixation by the respondents and not on account of any misrepresentation or fraud by the petitioner. Similarly, the petitioner has retired from service on 31-3-2009 and the recovery is sought to be made after almost four years.

6. The Hon''ble Supreme Court in case of Syed Abdul Qadir (supra) has observed that where the excess payment is made to an employee not on account of any misrepresentation or fraud on his part, and that the employee was not aware that the amount paid to him was in excess to his entitlement, then in such cases, the recovery should not be made. It has been further observed that if the employee has either retired or is on the verge of retirement, such recovery should not be made in such situation. This judgment has been rendered by three learned Judges of the Hon''ble Supreme Court.

7. In so far as the judgment relied upon by the learned Counsel for the respondents in the case of Chandi Prasad (Supra) is concerned, it has been observed in para 14 therein after referring to the judgment in Syed Abdul Qadir's case that the facts of said case wherein the beneficiaries had retired or were on the verge of retirement had weighed by the Court. In the case of Chandi Prasad, the employee was in service and the excess payment was directed to be recovered from the employee's salary in 12 equal instalments. In fact, in para 17 of the aforesaid judgment, it has been held that except few instances as referred to in Syed Abdul Qadir's case, the excess payment can be recovered if it has been made on account of wrong or irregular pay fixation. It is, however, clear that the facts of the present case are similar to the facts that were considered by the Hon''ble Apex Court in case of Syed Abdul Qadir namely that the present petitioner had retired in the year 2009 and the wrong overpayment was not on

account of any misrepresentation or fraud, on the part of the petitioner.

8. In so far as the submission made on behalf of the respondents pertaining to availability of alternate remedy is concerned, considering the facts of the present case wherein the petitioner has already retired in the year 2009 and his case stands covered by the law laid down by the Hon"ble Apex Court in the case of Syed Abdul Qadir (supra), relegating the petitioner to avail the alternate remedy would not be in the interest of justice. The basic facts not being in dispute, we feel that this is a fit case for exercising the writ jurisdiction. We find that the petitioner is entitled for the reliefs as prayed for in the present writ petition. In view of this, as the impugned communication seeks to recover the overpayment of salary made to the petitioner four years after his retirement and when it is not alleged that the said overpayment was on account of misrepresentation or fraud on the part of the petitioner, the same will be required to be quashed. Accordingly, the impugned communication dated 8-1-2013 is quashed. Rule is made absolute in the aforesaid terms. No order as to costs.