

(2004) 11 AHC CK 0112

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13407 of 2000

Awadh Nath Tripathi

APPELLANT

Vs

Chief Development Officer and Others

RESPONDENT

Date of Decision : 23-11-2004

Acts Referred:

Citation : (2005) 5 AWC 4055 : (2005) 1 ESC 502 : (2005) 104 FLR 653 :
(2005) 1 UPLBEC 493

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Sanjay Srivastava and Kshetresh Chandra Shukla, for the Appellant;

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Sanjay Srivastava and Sri Kshetresh Chandra Shukla on behalf of the petitioner and Standing Counsel on behalf of the respondents.

2. Awadh Nath Tripathi, the petitioner, who was a Gram Panchyat Adhikari, retired from Government service on 31.1.1999. The petitioner applied for payment of pension in accordance with the Rules applicable. The respondents, however, passed an order dated 17.2.2000 whereby it was directed that the petitioner was wrongly granted promotional scale with effect from 1.7.1991 and, therefore, the fixation of salary of the petitioner in the pay scale of Rs. 1350-2200 under order dated 23.3.1993 was being cancelled and re-fixation of salary of the petitioner was being directed. On the basis of the aforesaid order dated 17.2.2000 the respondents issued an order for recovery of a sum of Rs. 71,312.00 from the petitioner and withheld the payment of pension to the petitioner. Petitioner has filed the present writ petition challenging the order dated 17.2.2000. In Para 10 of the writ petition it has been stated that the order dated 17.2.2000 has been passed without notice and opportunity of hearing in manifest violation of the principles of natural justice.

3. This Court while entertaining the said writ petition on 15.3.2000 passed an

interim order whereby the order dated 17.2.2000 was stayed and the respondents were directed to release the entire retiral benefits to the petitioner within the time specified.

4. Along with the counter-affidavit the order dated 13.6.2000 has been enclosed on the basis whereof the pension of the petitioner has been released. However, it has been specified in the said order that the excess amount paid to the petitioner as pension and gratuity shall be recovered in accordance with the judgment of the present writ petition.

5. On behalf of the petitioner it is contended that there are no allegations of fraud or misrepresentation made by the petitioner in respect of fixation of salary under order dated 23.3.1993 and therefore, in accordance with the law laid down by the Hon"ble Supreme Court in the judgment reported in (2002) 10 SCC 99, Bihar State Electricity Board and Anr. v. Vijay Bahadur and Anr., as also the judgment reported in 1995(1) SCC 18, Sahib Ram v. State of Haryana and Ors., and also in view of the Division Bench judgment of this Court reported in 1996 AWC 947 Bindeshwari Sahai Srivastava v. Chief Engineer, Irrigation Department, Lucknow and Ors., the impugned order dated 17.2.2000 which has been passed without notice and opportunity of hearing, is vitiated as it results in evil civil consequences and as such is a nullity being in violation of the principles of natural justice.

6. On behalf of respondents it is stated that it is always open to the respondent-authorities to correct the mistake in fixation of salary of an employee and in such circumstances this Court may not interfere with the order passed on 17.2.2000.

7. From the facts as are born out from the record it is an undisputed position that the salary of the petitioner was re-fixed in selection grade with effect from 1.7.1991 under order dated 23.3.1993 in the pay scale of Rs. 1350-2000. Neither it is mentioned in the impugned order nor it is otherwise alleged by the respondents that the said fixation of salary of the petitioner was the outcome of any fraud or misrepresentation by the petitioner. In view of the aforesaid it cannot be disputed that fixation of salary of the petitioner as aforesaid was an act of the respondents themselves and the petitioner had not misrepresented before the authorities concerned. The Hon"ble Supreme Court in the judgment reported in (2002) 10 SCC 99, Bihar State Electricity Board and Anr. v. Vijay Bahadur and Anr., (supra) re-affirmed the judgment of the Hon"ble Supreme Court reported in 1995 (1) SCC 18 Sahib Ram v. State of Haryana and Ors. (supra) wherein in para 5 it has been held as follows :

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made

by the Principal for which the appellant cannot be held to be a fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

8. Similarly a Division Bench of this Court in the judgment reported in 1996 AWC 947, Bindeshwari Sahai Srivastava v. Chief Engineer, Irrigation Department, Lucknow and Ors., has approved the judgment of earlier Division Bench of this Court in the case of B.N. Singh v. State of U.P., reported in 1979 ALJ 184, wherein it has been held as follows :

"It is well settled principle that wages paid to an employee by an employer voluntarily in a bona fide manner without there being any element of fraud or mis-representation, cannot be recovered from the employer subsequently merely on the ground that some mistake of interpretation of Rules might have been committed by the employer for which the employee could not be held responsible."

9. In view of the aforesaid legal position it is not open to the respondents to recover any amount from the petitioner on the facts mentioned in the impugned order that the salary of the petitioner was wrongly fixed in the selection grade.

10. In view of the aforesaid the direction issued by the respondents to recover the sum of Rs. 71,312.00 from the petitioner is legally not sustainable and is hereby quashed.

11. This leads us to a question as to whether the State authorities can re-fix the salary of the petitioner if there had been a mistake in fixation thereof, for the purpose of revising his pension etc. In the opinion of the Court if there has been a mistake in the matter of calculation/fixation of salary of an employee it is always open to the State authorities to correct the mistake. However, the correction can only be made after affording opportunity of hearing to such employee and no ex-parte order can be passed. The re-fixation of salary, after such correction, would take effect only from the date of the correction.

12. In such circumstances as already noticed above the impugned order revising the salary of the petitioner dated 17.2.2000 which has been passed without affording opportunity of hearing to the petitioner, cannot be sustained and is hereby set aside with liberty to the respondents to redetermine the salary to which the petitioner is entitled in accordance with law after affording opportunity of hearing and after such re-determination to re-fix the pension and other retrial benefits of the petitioner. However, the re-fixation of pension will be effective from the date of the order so passed and the respondents shall not be entitled to recovery any amount already paid from the petitioner from his pension, gratuity etc. Since the respondents have withheld the pension and other post retiral benefits of the petitioner for no fault of the petitioner it is further provided that the respondents shall pay interest at the rate of 9% per annum on the amounts

payable to the petitioner towards pension and other post retiral benefits from the date it became due till the date of the actual payment to the petitioner. The payments due to the petitioner along with interest as aforesaid shall be made by Respondent No. 1. within one month from the date a certificate copy of this order is filed before such respondent.

13. The writ petition is allowed subject to the observations made above.