(2014) 04 P&H CK 0219

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 25401 of 2012

Balbir Singh — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Citation : (2014) 04 P&H CK 0219

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Amarjit Singh, Advocate for the Appellant; Sunil Nehra, Sr. DAG, Haryana for the State and Mr. Harsh Aggarwal, Advocate for Respondent No. 3, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Augustine George Masih, J.—Petitioner has approached this Court praying for quashing of the letter dated 01.12.2012 (Annexure P-3), vide which he has been called upon by the Assistant General Manager, Punjab National Bank, Sector 26-D, Chandigarh-respondent No. 3 to refund the amount of Rs. 4,00,650/- being an excess payment of pension for the period 01.01.2006 to 30.09.2012. It is the submission of the counsel for the petitioner that the petitioner joined the Department of Police, Haryana, as Constable on 25.04.1970 and retired from service as an Upgraded Constable on 31.10.2004 from the office of the Superintendent of Police, Panchkula. The pension of the petitioner was fixed provisionally because of the departmental proceedings pending against him. After the finalization of the departmental proceedings, regular pension was granted to the petitioner. The pension was being credited to his account by the bank as was fixed by the Accountant General, Haryana and the petitioner had been utilizing the same as and when required. Now vide a communication dated 01.12.2012 (Annexure P-3), he has been called upon to refund an amount of Rs. 4,00,650/-, which, according to the bank, has been credited in excess in his pensionary account, which, the counsel contends, cannot be permitted in the light of the fact that the petitioner had nothing to do with the fixation of pension or disbursement thereof.

2. His further contention is that the petitioner is a retiree and, therefore, no recovery can be effected from him and in support of this contention, he has placed reliance upon the judgment of the Supreme Court in Special Leave to Appeal (Civil) No. 24607 of 2010 titled as State of Punjab and others vs. Krishan Kumar Bansal and others, decided on 02.08.2013. On the basis of the said judgment, he contends that the recovery cannot be effected from the petitioner and the petitioner cannot be penalized for some fault, which is not attributable to him nor was he, in any manner, instrumental in commission of the said mistake.

3. On the other hand, counsel for the State submits that the pension of the petitioner was rightly fixed by the Accountant General, Haryana and the details thereof have been mentioned in preliminary submissions of the reply. The same reads as follows:-

1. That the petitioner was enrolled in the Haryana Police Department on 25.04.1970 as a Constable. After completion of 58 years of age he was retired from the service on 31.10.04 from the Distt. Panchkula. At the time of retirement his Basic Pay was Rs. 6800-P.M. + DA Rs. 3400/- P.M. After retirement Pension Payment Order number 125020-S/H.R. was allotted to the petitioner on 16.03.2005 by the Accountant General Haryana, Chandigarh and a total pension amounting to Rs. 5067/-+DA was fixed. The petitioner is drawing his pension from respondent No. 3 in which he opened his account for the purpose of his pension. This amount of Rs. 5067/- per month was released as provisional pension because criminal proceeding was pending against him. After completion of departmental enquiry/civil suit, regular pension was granted to the petitioner. Death Cum Retirement Gratuity amounting to Rs. 1,91,862/- and commutation pension Rs. 2,54,303/- has already been released in favour of the petitioner.

2. That later on 01.01.2006 regular pension of the petitioner Rs. 5610/-+DA total amounting to Rs. 7636/-was fixed by the Accountant General, Haryana, but by mistake the respondent No. 3 paid Rs. 11453/- to the petitioner. The total amount of pension w.e.f. 01-01-2006 to September 2012 comes out to Rs. 6,93,595/- whereas Rs. 10,94,245/- has been paid to the petitioner by the respondent No. 3. Now the respondent No. 3 has issued a notice to the petitioner to deposit Rs. 4,00,650/- paid to him in excess. The petitioner is legally bound to refund the excess amount received by him wrongly as per law settled by Hon''ble Supreme Court of India reported as Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, .

4. On the basis of the above facts, counsel for the State submits that the petitioner has not challenged the order of fixation of pension and the Bank has proceeded to inadvertently credit in the pension account of the petitioner an excess payment of pension on revision of the pay scales, for which the Government cannot be held responsible. His further contention is that it is

between the Bank and the petitioner and the State has no role to play in this matter.

5. Counsel for the Bank-respondent No. 3 contends that it was merely a typographical or rather a clerical error, which has led to the excess payment in the account of the petitioner because of revision of the pay scales, which amount the petitioner was not entitled to and, therefore, the Bank is justified in making the recovery of the excess payment made to the petitioner. Accordingly, he supports the impugned letter dated 01.12.2012 (Annexure P-3).

6. I have considered the respective submissions made by the counsel for the parties and have gone through the records of the case.

7. The facts, as narrated above, indicate that the petitioner has not challenged the fixation of his pension by the Accountant General, Haryana and re-fixation by the Bank after having found that he has been paid an excess payment of pension after the revision of pension w.e.f. 01.01.2006. The said order, therefore, attains finality as far as the petitioner is concerned.

8. The question, which now requires to be considered and decided, is whether the excess payment made to the petitioner by the Bank can be recovered by it?

9. This aspect requires to be considered in the light of the fact that this is not a case where the fixation of pension is because of misinterpretation or misreading of some Statutory Rules or Instructions rather as a matter of fact, it is a clerical error on the part of the Bank, which has resulted in payment of excess amount to the petitioner in his pension account. In the banking procedure, these errors are likely to occur and, therefore, the Bank is fully justified in seeking recovery of the amount, which has been paid in excess to the petitioner.

10. The judgment, on which reliance has been placed by the counsel for the petitioner in the case of Krishan Kumar Bansal''s case (supra) would not be applicable to the facts of the present case because that case was primarily based upon a situation where there was misreading or misinterpretation of the Statutory Rules/Instructions by the competent authority while fixing the pay of an employee, in which the employee had no role to play or had not actually participated in such fixation of pay. Present case, therefore, is distinguishable on this aspect as it is merely a typographical/clerical error and nothing to do with the actual process or fixation of pension, which the petitioner was entitled to.

11. In view of the above, the recovery, as ordered against the petitioner vide letter dated 01.12.2012 (Annexure P-3), is upheld to the extent that an amount of Rs. 4,00,650/- paid in excess to the petitioner has to be refunded.

12. Keeping in view the fact that the petitioner is a pensioner and he had no role to play in the disbursement of the pension, the Court is of the considered view that the amount to be recovered from the petitioner should be realised by the Bank through easy monthly instalments, which should not exceed 10% of the pension amount disbursable to the petitioner. This process shall continue till the

amount of Rs. 4,00,650/- is recovered from the petitioner. It is made clear that if this amount of Rs. 4,00,650/- includes the interest charged by the Bank, the same shall be deducted and only the actual amount paid to the petitioner in excess should be recovered. No interest shall be charged from the petitioner while making recovery. The writ petition stands disposed of accordingly.

