
(2015) 05 RAJ CK 0197
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5589 of 2007

Banwari Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 142

Citation : (2015) LabIC 3383

Hon'ble Judges : Anupinder Singh Grewal, J

Bench : Single Bench

Advocate : L.L. Gupta, for the Appellant; M. Shiromani, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anupinder Singh Grewal, J—The petitioner has challenged the orders vide which his pay has been revised from anterior date and the order wherein recovery of Rs. 2,05,945/- is sought to be made from his pension. The petitioner was appointed as Lab Assistant in the Irrigation Department on 27.11.1970. He was conferred permanent status on the post of Density Assistant on 31.3.1982. The petitioner was declared surplus in the Irrigation Department and was ordered to be absorbed as Patwari in the office of Collector, Alwar vide order dated 20.7.1991. The petitioner was relieved from the office of Irrigation Department on 13.3.1992. After having successfully completed the period of probation and having passed the Patwari examination, the petitioner was conferred permanent status on 25.11.1995. Vide order dated 28.10.1997, the petitioner was granted the benefit of first and second selection scale after having completed 9 & 18 years of service respectively with effect from 25.1.1992. The petitioner was granted the third selection scale on completion of 27 years of service with effect from 27.11.1997 vide order dated 29.1.2003. The petitioner sought voluntary retirement from service which was accepted with effect from 1.2.2003. It is stated that the petitioner was not paid full amount of gratuity and commutation

of pension which compelled him to file CWP No. 1857/2005 which was admitted for regular hearing on 5.12.2006 and the petition is currently pending adjudication. The respondent No. 3 has passed order dated 14.5.2007 vide which the earlier orders dated 28.10.1997 and 29.1.2003 wherein the petitioner was held to be entitled to first and second selection grade with effect from 25.1.1992 and third selection grade with effect from 27.11.1997 were cancelled. Consequently, the orders dated 31.5.2007 (Annexure-11), 2.6.2007 (Annexure-12) and 11.6.2007 (Annexure-13) were passed vide which the dates for grant of selection grade were revised and recovery of Rs. 2,05,945/- was sought to be made from the petitioner. These orders have been impugned in this writ petition.

2. The learned counsel for the petitioner submitted that the petitioner had rightly been granted the benefit of selection grade by the earlier orders and the impugned orders could not have been passed without granting him any opportunity of hearing. There was no misrepresentation on the part of the petitioner at any stage and it would be unjust to effect recovery from the petitioner as he had retired over a decade ago.

3. Per contra, the learned State counsel stated that the impugned orders had been passed in accordance with law as the petitioner was not entitled to the selection grades from the earlier dates in terms of the orders which have now been revised.

4. I have heard the learned counsel for the parties and perused the record.

5. It is evident that there had been no misrepresentation or fraud on the part of the petitioner when the earlier orders granting him selection grade were passed. The respondents have also not made any averment against the petitioner in this regard. As far as the recovery of pay which has been erroneously paid to the employee is concerned, earlier there appeared to be divergence of views expressed by Hon"ble Supreme Court of India. The matter was referred for consideration to larger bench in the case of Rakesh Kumar v. State of Haryana & Ors., reported as 2014 (8) SCC 892 wherein following reference was made:

"2. In view of an apparent difference of views expressed on the one hand in Sahib Ram Vs. State of Haryana and Others, (1995) 1 JT 24 : (1995) 1 SCC 18 Supp : (1994) 3 SCR 674 Supp : (1995) 1 SLJ 151 ; and on the other hand in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, AIR 2012 SC 2951 : (2012) 135 FLR 161 : (2012) 7 JT 460 : (2013) 169 PLR 148 : (2012) 7 SCALE 376 : (2012) 8 SCC 417 : (2012) AIRSCW 4742 : (2012) 5 Supreme 418 , we are of the view that the remaining special leave petitions should be placed before a Bench of three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before the Hon"ble the Chief Justice of India for taking instructions for the constitution of a Bench of three Judges, to adjudicate upon the present controversy."

6. The larger Bench in the case of State of Punjab Vs. Rafiq Masih (White

Washer), (2014) 8 JT 448 : (2014) 8 SCALE 613 : (2014) 8 SCC 883 observed and answered the reference as under:---

"6. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant therein were in exercise of its extraordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice."

"13. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.

14. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for their appropriate disposal."

7. Thereafter the Division Bench of the Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih, (2014) 10 SCJ 700 laid down the parameters indicating the circumstances wherein recovery from employees, who had wrongly obtained monetary gains, could not be made. It was held:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. In the case at hand, the petitioner has retired from the post of Patwari which is a class III post. He retired in the year 2003 i.e. over 12 years ago. A perusal of

order dated 11.6.2007 (Annexure-13) reveals that the recovery is being effected for the pay paid to him from 25.1.1992 to 31.1.2003. In other words, this excess payment has been made for a period of 11 years which is way beyond the 5 years stipulated in the condition (iii) of the aforementioned judgment. The case of the petitioner, thus, squarely falls in the first three categories laid down by the Hon"ble Supreme Court. Therefore, in the light of the principles laid down by the Hon"ble Supreme Court, the impugned orders effecting recovery from the petitioner are illegal. Consequently, the writ petition is allowed and the impugned orders are hereby set aside.