
(2009) 05 P&H CK 0128
In the Punjab And Haryana At Chandigarh

B.D. Goel

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Citation : (2009) 05 P&H CK 0128

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Judgement

Ajay Tewari, J.—The petitioner retired on 30.9.2006 as Junior Engineer after putting in 35 years service. By this petition the petitioner has challenged the delay in the payment of his retiral benefits as well as the order dated 12.7.2007 making recovery of Rs. 78, 019/- against the petitioner on the ground that an increment was wrongly granted to him w.e.f. 1.4.92 instead of 1.1.93.

2. As regards delay in disbursement of retiral benefits it may be noticed that the petitioner himself signed his Pen-9 form only on 25.8.2006 whereas as per Govt. instructions pension case had to be initiated 8 months in advance of the date of retirement viz. 31.10.2006. It is further not disputed that the retiral benefits were actually released to the petitioner on 9.10.2006 (GIS), 5.1.2007 (GPF) and 9.8.2007 (commutation of pension and gratuity).

3. In the circumstances it cannot be held that there is such delay so as to warrant the award of interest. However, as far as recovery is concerned, it is not disputed that there was no act of omission or commission on the part of the petitioner which led to the alleged over payment to him.

4. In Syed Abdul Qadir and Ors. v. State of Bihar and Ors. reported as 2009 (1) SCT 611, Hon'ble the Supreme Court after reviewing the entire law on the subject held as follows:

This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if

such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. 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.

5. Consequently the recovery is set aside. Petition stands disposed of.