

(2012) 04 AHC CK 0202

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11608 of 2012

Bhagirathi Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : (2012) 6 ADJ 270 : (2012) 5 AWC 5379

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Sanjay Kumar Mishra, for the Appellant; Tej Bhan Singh and C.S.C, for the Respondent

Judgement

Hon"ble Arun Tandon, J.—Petitioners before this Court, who are 8 in number, claim to have been appointed as Clerk in different recognised and aided junior high-schools. According to the petitioners, they were provided pay-scale of Rs. 5000-8000 in place of 4500-7000 w.e.f. 1.1.1996 with reference to the Government Order dated 24.10.2007, which provided for grant of time scale to the employees working in educational/vocational training institutions in terms of the recommendation of the Pay Samiti of 1997-99. It appears that the Finance Controller in the Basic Education Directorate of Uttar Pradesh raised an objection with regard to the grant of pay-scale of Rs. 5000-8000 to the petitioners. It was recorded that in terms of the Government Order dated 24.10.2007, the petitioners were only entitled to the salary in the pay-scale of Rs. 4000-6000. This order was challenged by the petitioners by means of writ petition No. 47175 of 2011. The High Court after noticing the relevant facts disposed of the said writ petition vide order dated 20.9.2011, which reads as follows:

Under the order impugned dated 19th October, 2009 the Finance Controller in the office of Director of Education (Secondary) U.P. Lucknow had cancelled his earlier order dated 08th October, 2009 i.e. within 11 days of the issuance of the same, after realizing that a mistake has crept in the earlier order dated 08th October, 2009 with regard to the second promotional pay scale admissible to the

Daftari and Junior Clerks working in a recognized aided institution.

This order dated 19th October, 2009 has been challenged by means of the present writ petition filed in the year 2011 on the ground that the earlier fixation was according to the Government Order applicable.

I am of the considered opinion that the grievance of the petitioner needs to be examined at the first instance by respondent No. 1.

In view of the aforesaid, writ petition is disposed of with liberty to the petitioners to make a representation ventilating all their grievances before respondent No. 1 within two weeks from today alongwith certified copy of this order. On such representation being made, respondent No. 1 shall consider and decide the same by means of a reasoned speaking order, preferably within four weeks from the date the representation is so filed.

At this stage counsel for the petitioner submits that recovery is being effected in terms of the order impugned, which according to him has been circulated only on 15.4.2011.

The situation is alarming. This Court fail to understand as to how an order, which was corrected within 11 days of its issuance, took two years to be circulated amongst the officers of the same department. The said aspect of the matter shall also be examined by the Secretary. If the Secretary comes to a conclusion that there has been collusion between subordinate officers/committee of management/employees in the matter of wrongful payment of salary despite the order of clarification being issued, he must proceed against all responsible without any leniency.

2. In compliance to the order of the High Court referred to above, the matter has been examined in detail by the Secretary of Basic Education. It has been recorded that persons like the petitioners, who were working in junior high-schools wherein there is no post of Head Clerk, they are not entitled to the next higher pay-scale of Rs. 5000-8000. It has been held that on completion of 14 years of service, employees like the petitioners are entitled to the pay-scale of Rs. 3200-4900 and on completion of 24 years of service, they were entitled to next higher pay-scale of Rs. 4000-6000. The objection of the Finance Controller dated 19.10.2009 has been held to be strictly in accordance with the Government Order dated 24.10.2007. It has been clarified that the petitioners have wrongly been provided the pay-scale of Rs. 5000-8000. It is against this order of the Secretary, Basic Education dated 27.12.2011 and the audit objection dated 19.10.2009, which also contains a direction for recovery of the excess amount paid have been challenged by means of the present writ petition.

3. Initially an attempt was made by learned counsel for the petitioners to challenge the order of the Secretary dated 27.12.2011, but nothing much could be said to dislodge the findings recorded therein qua the entitlement of the petitioners to the pay-scale of Rs. 3200-4900 on completing 14 years of service

and thereafter grant of pay-scale of Rs. 4000-6000 on completing 24 years of service.

4. This Court finds that the determination so made by the Secretary under the order impugned is strictly in accordance with the Government Order dated 24.10.2007. It is held that the petitioners were not entitled to the pay-scale of Rs. 5000-8000 as was provided earlier to them and to that extent the objection of the Finance Controller dated 19.10.2009 is also upheld.

5. Learned counsel for the petitioners then contended that fixation of higher salary in favour of the petitioners in the pay-scale of Rs. 4500-7000 was done by the authorities themselves and, therefore, if any excess amount has been paid, the same cannot be recovered from the petitioners. For the proposition reliance has been placed upon the judgment of the Hon''ble Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ; Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. ; Bihar State Electricity Board v. Bijay Bahadur and the Division Bench judgment of this Court in the case of Dr. Avinash Chand Goel Vs. State of U.P. and Others, .

6. This Court finds that the petitioners were not entitled to the pay-scale of Rs. 4500-7000 and their salary was liable to be fixed at Rs. 4000-6000 in terms of the Government Order dated 24.10.2007 after completing 24 years of service. An issue with reasons to be examined is as to whether the petitioners can be asked to return the excess salary paid to them because of wrongful fixation.

7. Learned counsel for the petitioners appears to be correct in contending that in view of the law laid down by the Hon''ble Supreme Court in the case of Shyam Babu Verma (Supra), Bihar Electricity Board (Supra) and Sahib Ram (Supra) as also in view of the Division Bench judgment of this Court in the case of Dr. Avinash Chand Goel (Supra), the respondents authorities cannot recover the excess amount paid because of wrongful fixation of salary as there are no allegations of fraud or misrepresentation against the petitioners. It is, therefore, held that any excess amount paid to the petitioners because of wrongful fixation earlier cannot be recovered.

8. Another aspect which needs consideration from this Court is as to whether the State must be permitted to suffer because of the mistake committed by its own officers or not.

9. I am of the opinion that the money, which has been misutilised in the matter of payment of excess salary to the petitioners is a public loss and, therefore, the persons holding the office and committing the mistakes of wrongful fixation of salary must be held responsible and must be saddled with the liability of recouping the loss caused because of their actions.

10. Accordingly, it is provided the Secretary of the department shall hold an enquiry for determining the responsibility of the persons for creating the situation in the matter of wrongful fixation of salary of the petitioners. He shall

thereafter proceed to recover the loss from the persons so found responsible. The enquiry shall be completed within three months from the date a certified copy of this order is produced before the Secretary concerned and necessary action shall be taken immediately thereafter. With the aforesaid directions, the writ petition is disposed of.