
(2008) 10 AHC CK 0097

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7748 of 2007

Bhrigu Raj Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Citation : (2008) 10 AHC CK 0097

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.—The petitioner is aggrieved by the action of the respondents in calculating the pension on the basis of refixation of the payscale of the petitioner with retrospective effect and deduction of the excess salary paid to the petitioner from the retiral benefits. He has, accordingly, sought the quashing of the orders dated 2nd March, 2006 and 20th January, 2007.

2. The records indicate that the petitioner was appointed on the post of Junior Clerk on 8th May, 1964 and he retired from service on 31st January, 2006 after attaining the age of superannuation. After his retirement, the Department forwarded the details of retiral dues. However, the Additional Director, Treasury and Pension, Allahabad Division has determined the retiral dues of the petitioner after refixing the payscale and has also deducted the excess salary paid to the petitioner on account of wrong fixation of payscale.

3. Learned Counsel appearing for the petitioner submits that the petitioner was not responsible for the wrong fixation of the payscale and so the respondents cannot deduct the excess salary that was paid to the petitioner from his retiral benefits. He has also submitted that fresh fixation can be done only after giving opportunity to the petitioner. In support of these contentions, he has placed reliance upon the decisions of this Court in Writ Petition No. 15405 of 2007 (Rajwant Singh v. State of U.P. and others), decided on 17th July, 2008 and Writ Petition No. 76102 of 2005 (Prem Tiwari v. State of U.P. and others), decided on 17th October, 2006.

4. Learned Standing Counsel submitted, in view of the averments made in paragraph 7 of the counter affidavit, that the petitioner cannot make any grievance since he submitted an application to the Authorities that the excess amount paid to the petitioner may be deducted and then the retiral benefits may be released. The petitioner has denied having made such an application in the Rejoinder Affidavit. The respondents have not annexed the said application in the counter affidavit and, therefore, it is not possible to accept their version that the petitioner had moved such an application.

5. In the aforesaid decision in *Prem Tiwari (supra)*, this Court in identical circumstances after placing reliance upon the decision of the Supreme Court in *Shyam Babu Sharma and others v. Union of India and others*, (1994) 2 SCC 521 and Division Bench judgment of this Court in *Bindeshwari Sahai Srivastava v. "Chief Engineer, Irrigation Department, Lucknow and others*, 1996 AWC 947, observed that it shall not be just and proper to recover any excess amount already paid to the employee if the, higher payscale was erroneously fixed without any fault of the employee but the said authorities can refix the salary of the petitioner if there has been a mistake in fixation for the purposes of revising his pension after affording opportunity of hearing to such employee and the refixation of salary after such correction will take effect only from the date of correction. The same view was taken by this Court in *Rajwant Singh [supra]*.

6. In the present case, the respondents have calculated the pension payable to the petitioner on the basis of the revised payscale without providing any opportunity to the petitioner. They have also deducted the excess salary paid to the petitioner from the retiral benefits. In such circumstances, the impugned orders dated 2nd March, 2006 and 20th January, 2007 are quashed and a direction is given to the respondents to release the amount of salary deducted from the post retiral benefits of the petitioner within a period of two months from the date of production of a certified copy of this order with interest at the rate of 6% from the date the amount was due to the date the amount is actually paid. It shall, however, be open to the respondents to refix the salary of the petitioner after giving opportunity of hearing to the petitioner and such refixation of salary would be effective from the date of correction.

7. The writ petition succeeds and is allowed to the extent indicated above. Petition allowed.