
(2011) 06 GAU CK 0059

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1176 of 2003

Bobby Waikhom

APPELLANT

Vs

Accountant General (A&E), Manipur & Ors.

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Citation : (2012) 4 GLR 431 : (2011) 5 GLT 381

Hon'ble Judges : T.Nandakumar Singh, J

Bench : Single Bench

Advocate : Advocate appeared for the Petitioner: Mr. Roshni Piba., Advocates appeared for the Respondents: Ms. Sobhna, GA & Mr. C. Kamal, CGSC., Advocates appearing for Parties

Judgement

T. Nandakumar Singh, J.—Heard Mr. Roshni Piba, learned counsel for the petitioner, Mr. C. Kamal, learned CGSC appearing for respondent Nos. 1 and 2 as well as Ms. Sobhna, learned GA appearing for respondent No.3

2. The petitioner, being aggrieved by the portion of the note which read as "Overdrawal of HRA w.e.f. 08.08.2000 to 30.04.2003 amounting to Rs.95,211/ to be recovered in 20 instalments @Rs.5000/ p.m. last being Rs.211A commencing from the pay of 51 2003" mentioned in his payslip dated 04.08.2003, filed the present writ petition.

3. Factual Background:

Petitioner is a member of the Manipur Civil Service. While serving as MCS GradeI, petitioner was transferred and posted as Deputy Resident Commissioner (Senior) Manipur Bhawan at Kolkata vide order of the Government of Manipur being No. 18/255/2000MCS/D.R, dated 03.08.2000 (AnnexureA/1).

4. Pursuant to the said order dated 03.08.2000 petitioner rendered his service as Deputy Resident Commissioner (senior) Manipur Bhawan at Kolkata till his transfer and posting as Joint Director, MAHUD and District Coordinator (USBP)

vide order of the Government of Manipur being No.3/18/96IAS/DP (Pt) dated 07.05.2003 (AnnexureA/2). After joining MAHUD as District Coordinator, pursuant to the said order of the Government of Manipur dated 07.05,2003, the Senior Account Officer (GOE) of the office of the Senior Deputy Accountant General (A&E), Manipur issued the payslip dated 04.08.2003 with the note quoted above which is now under challenge in the present writ petition.

5. The State respondents also filed their affidavit in opposition wherein it is stated that the petitioner would not be entitled to HRA while he was serving as Deputy Resident Commissioner (Senior) Manipur Bhawan at Kolkata as he was allowed to enjoy Government accommodation; as such, the impugned note in the payslip was correctly issued for recovering HRA paid to the petitioner while serving as Deputy Resident Commissioner (senior) Manipur Bhawan at Kolkata.

6. In reply to the affidavit in opposition filed by the State respondents, petitioner also filed supplementary affidavit dated 29.11.2010 by annexing documents, i.e. (1) payslip of Shri D. Mishra, IPS, Dy. R.C. (Sr) Calcutta for the month of April, 1999, for enjoying HRA; (2) Payslip of one M. Harekrishna, D.R.C. (Sr.) Kolkata for the month of July, 2006 which shows clearly that Mr. Harekrishna was allowed to enjoy HRA and (3) Payslip of one V. Raj Rai, Dy. R.C. (Sr.) Kolkata for the month of August, 2007 which also shows that Mr. Raj Rai was allowed to enjoy HRA.

7. In the supplementary affidavit of the petitioner, it is also categorically stated that the DRCs before petitioner joined as Deputy Resident Commissioner (senior) Manipur Bhawan at Kolkata and also the DRCs who joined after the petitioner were allowed to enjoy HRA. Therefore, it is the case of the petitioner that discriminatory treatment had been meted out to the petitioner in the matter of granting HRA while he was serving as Deputy Resident Commissioner (senior) Manipur Bhawan at Kolkata. This point is not required to be decided in the present writ petition inasmuch as the petitioner will be granted the relief sought for in the present writ petitioner on another ground,

8. In nowhere of the affidavit in opposition filed by the respondents it is stated that granting of HRA to the petitioner while he was serving as Deputy Resident Commissioner (senior) Manipur Bhawan at Kolkata was because of his fault. It was because of the mistake in "deciding the entitlement of HRA to the petitioner while he was serving as Deputy Resident Commissioner (senior) Manipur Bhawan at Kolkata. What is further stated in the affidavit in opposition is that HRA drawn by the other Deputy Resident Commissioners (senior) Manipur Bhawan at Kolkata are recoverable.

9. In the above factual context, for deciding the issue as to whether HRA granted to the petitioner, while serving as Deputy Resident Commissioner (senior) Manipur Bhawan at Kolkata, is recoverable or not, we may refer to some decisions of the Apex Court in this regard, (i) The Apex Court in Shyam Babu Verma & Ors. Vs. Union of India & Ors. : (1994) 2 SCC 521 held that higher

payscale already given to the petitioners for no fault of theirs should not be recovered. The fact of that case is short and simple. The petitioners, because of wrong interpretation of the terms of recommendation of the 3rd Pay Commission, were allowed to enjoy higher payscale due to no fault of theirs. After realising the mistake in allowing higher payscale to the petitioners, the authority concerned passed order for recovery of excess payment to the petitioners by allowing them to enjoy higher scale through mistake. The Apex Court in clear terms held that the petitioners had received the scale of Rs.330 to 560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 w.e.f. January 1,1973, it shall not be just and proper to recover any excess amount which has already been paid to them. Para 11 of the SCC in Shyam Babu Verma & Ors."s case (supra) read as follows:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1,1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330560 but as they have received the scale of Rs.330560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1,1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

10. The Apex Court is of similar view in Sahib Ram Vs. State of Haryana & Ors, : 1995 Supp (1) SCC 18. Para 5 of the SCC in Sahib Ram"s case (supra) read as follows:

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However it is not on account of any misrepresentation made by the appellant that the benefit of the, higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

11. The Apex Court in Col. B.J. Akkara (Retd.) Vs. Government of India & Ors. : (2006) 11 SCC 709 by following the ratio laid down by the Apex Court in Shyam Babu Verma & Ors. "s case (supra), Sahib Ram Vs. State of Haryana & Ors."s case (supra), Union of India Vs. M. Bhaskar : (1996) 4 SCC 416 and V. Gangaram Vs. Regional Jt. Director: (1997) 6 SCC 139 clearly held that excess payment made by the employer by applying 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, should not be recovered. Para 27 and 28 of the SCC in Col B.J. Akkara (Retd) Col B.J. Akkara (Retd)"s case (supra) read as follows:

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 07.06.1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram Vs. State of Haryana, 1995 Supp (1) SCC 18, Shyam Babu Verma Vs. Union of India: (1994) 2 SCC 521, Union of India Vs. M. Bhaskar: (1996) 4 SCC 416 and V. Gangaram Vs. Regional Jt. Director: (1997) 6 SCC 139):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

28. Such relief, restraining back recovery of excess payment is granted by Courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower ranks of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee and knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, Courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery." The Apex Court is of similar view in Purushottam Lal Das & Ors. Vs. State of Bihar & Ors. : (2006) 11 SCC 492.

12. The Apex Court (3 Judges) in Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors. : 2009) 3 SCC 475 (para 59 of the SCC) held that:

"undoubtedly, the excess amount that has been paid to the appellant 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 counteraffidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rules that was applicable to them for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, not negligence and carelessness of the officials concerned of the

Government of Bihar, Learned Counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view that peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

13. For the foregoing discussions and also clear ratio laid down by the Apex Court in the cases discussed above, this Court is of considered view that the impugned note quoted above in the pay slip of the petitioner dated 04.08.2003 is required to be set aside; and accordingly set aside. In other words, it is made clear that there should not be recovery of the amount of Rs.95,211/ mentioned in the impugned note of the petitioner's pay slip dated 04.08.2003, in the given case, from the petitioner.

The writ petition is allowed accordingly.