(2015) 02 RAJ CK 0098

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2300/1998

Brij Mohan APPELLANT

Vs

R.S.R.T.C. and Others RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 142

Citation : (2015) 02 RAJ CK 0098

Hon'ble Judges : Anupinder Singh Grewal, J.

Bench : Single Bench

Advocate : Varun Singhvi, for the Appellant; Falgun Buch, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anupinder Singh Grewal, J.—The petitioner has challenged the order dated 26.06.1998 (Annexure-7) wherein recovery is sought to be effected from the petitioner as he alleged to have been granted increments to which he was not entitled.

2. The petitioner, an apprentice LDC, was selected for being imparted practical training with the respondents on 02.08.1975. On completion of the training, he was posted as Conductor on 09.02.1976. Subsequently, the petitioner was appointed as LDC with the respondents vide order dated 30.08.1978. In the aforesaid order of his appointment, it was mentioned in condition No. 5 that he would be entitled for increments only after passing of typing test. The petitioner was called for the typing test held in January 1994 but he failed to qualify. The petitioner qualified the typing test on 17.07.1995 (Annexure-6). However, he had been given annual increments even though he had not qualified the type test in terms of the condition stipulated in the appointment letter.

3. The petitioner, apprehending that recovery of increments would be effected from him, preferred a suit for permanent injunction seeking restraint against

recovery. He also preferred an application for temporary injunction, which was rejected by the civil court on 27.08.1997 being pre-mature as no order for recovery had been passed by the respondents. Subsequently, the respondents passed the order dated 26.06.1998 (Annexure-7) whereby recovery of increments paid to the petitioner from 14.02.1979 to 28.06.1995 was initiated. The petitioner withdrew the civil suit with liberty to challenge the order dated 26.06.1998. Consequently, the order of recovery dated 26.06.1998 has been impugned by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner has contended that no opportunity of hearing was granted to the petitioner before passing the impugned order of recovery and hence, the principles of natural justice were violated. He also submitted that imposition of condition of recovery in the appointment order was in violation of Clauses 21 and 23 of the Standing Order of 1965 whereby the employees are entitled to increments from the date of appointment. It is also stated that regulation 37 of the 1965 Regulations provides for all services to be counted for the purpose of grant of increment.

5. The learned counsel also argued that even if the condition of passing the typing test is held to be valid, no recovery can be effected from the petitioner as he had already retired from service and it would cause immense hardship to him.

6. On the other hand, the learned counsel for the respondents contended that the petitioner had not qualified the type test in terms of the appointment order and therefore he was not entitled for any increments and the respondents were well within their rights to effect the recovery.

7. I have heard learned counsel for the parties and with their assistance perused the record.

8. It is apparent from perusal of the order of appointment of the petitioner that it was incumbent upon him to qualify the typing test, to make him eligible for the grant of increments. It also cannot be said that proficiency in typing is not essential or does not have any relation to the efficient discharge of duties by a clerk. However, there does not seem to be any such stipulation in the Standing Orders or the Regulations which govern the employees of the respondent-Corporation. The relevant provisions contained in Clause 21 and Clause 23 of RSRT (workers and workshop employees) Standing Order, 1965 are reproduced hereunder:-

"Clause 21 : Where an increment in a time scale of pay except next above efficiency bar shall ordinarily be drawn as a matter of course unless it is with-held as a penalty.

Note- Annual grade increment to an employee of the Corporation be allowed from the first of the month in which it would fall due under the operation of the existing rules regulating increment.

Service Counts for Increment

Clause:23: (i) All duty in a post shall count for increment."

9. Regulation 37 of the Rajasthan State Road Transport Corporation (RSRTC) Employees Regulations, 1965 is also reproduced hereunder:-

"Regulation 37 : condition on which service counts for increments in a time scale are prescribed as under:

A) all duty in a post on a time scale counts for increments in that time scale. 10. A conjoint reading of the aforementioned provisions reveals that the entire period of employment wherein the employee has discharged his duties is to be counted for increments. There is no dispute that the petitioner has worked on the post of LDC for a substantial period so as to entitle him for the grant of increments, applicable thereto. It is not the case of the respondents that the work and conduct of the petitioner was not satisfactory during the period for which he was granted increments.

11. Whether in the light of the aforementioned provisions the respondents were justified in law to impose the condition of passing the typing test as eligibility for grant of increments, is a question which would not require any authoritative determination in the instant case.

12. The question arising for adjudication, thus, is whether in the facts and circumstances the respondents were justified in effecting the recovery of the amount of the increments granted to the petitioner. The issue of effecting recovery from the employees has been dealt with by the Hon''ble Supreme Court of India in several cases. There was also a purported conflict in the views of the Hon''ble Supreme Court. However, the matter has now been settled in the case of State of Punjab Vs. Rafiq Masih (White Washer), wherein it has been held that the law laid down in the judgment of the Hon''ble Supreme Court of India in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, does not conflict with the view taken by the Court in Sahib Ram Vs. State of Haryana and Others, and Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, as in these cases the observations not to recover the excess amount were in exercise of the extraordinary power under Article 142 of the Constitution of India, which vests power in the Hon''ble Supreme Court to pass equitable orders for securing the ends of justice.

13. The Hon''ble the Supreme Court of India in State of Punjab Vs. Rafiq Masih''s case has observed as under:

"8. In our view, the law laid down in Chandi Prasad Uniyal case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Articles 136 and 142 of the Constitution of India.

Distinctively, although the words employed under the two aforesaid provisions speak of the powers of this Court, the former vest a plenary jurisdiction in the Supreme Court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a court or tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing "complete justice" in any cause or matter." 14. It has been held in Chandi Prasad Uniyal''s case that even if the amount is paid to the employee by mistake or negligence of the employer the excess payment could be recovered. Any amount paid without authority of law can be recovered otherwise it would amount to unjust enrichment. Nevertheless, it has also been held that there are few exceptions of extreme hardship where the recovery could not be effected. It has referred to the judgment in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, wherein a direction was issued not to effect the recovery, keeping in view the peculiar facts and circumstance as the beneficiaries therein had either retired or were on the verge of retirement, to avoid any hardship to them.

15. The Hon''ble the Supreme Court of India in Chandi Prasad Uniyal''s case has observed as under:-

"13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as "taxpayers'' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme

hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong/irregular pay fixation can always be recovered.

16. The appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order that the excess payment made be recovered from the appellant''s salary in twelve equal monthly instalments starting from October 2012."

16. Therefore, the case of the petitioner has to be examined in the light of the aforementioned principles laid down in the Chandi Prasad Uniyal''s case.

17. The petitioner belongs to the lower hierarchy of the administration, being a Class-III employee. He has also retired from Service. It is not easy for such retirees to make both ends meet. It would, thus, be too harsh and inequitable to recover the amount from his pension. Hence, his case would squarely fall under the exceptions for recovery of the excess amount paid to him, as laid down in Chandi Prasad Uniyal''s case.

18. In view of the above, the instant petition is allowed and the impugned order dated 26.06.1998 (Annexure-7) is set aside with no order as to costs.