
(2009) 04 P&H CK 0031
In the Punjab And Haryana At Chandigarh

Brij Mohan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Citation : (2009) 04 P&H CK 0031

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.

1 The petitioner seeks quashing of the order dated 9.6.1998 (Annexure P-1) whereby the benefit of increment has been withdrawn and recovery of the excess amount has been ordered.

2. The defence of the respondents is that the benefit of additional increments was inadvertently given to the petitioner and when this fact came to the notice, the impugned order came to be passed.

3. The controversy regarding recovery has been settled by the Hon"ble Supreme Court in Syed Abdul Qadir and Ors. v. State of Bihar and Ors. 2009(1) SCT 611, relevant portion of which reads 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.

4. Coming to the facts and circumstances of this case, I find that the conditions which may validate recovery do not exist. Applying the dictum of the Hon"ble Supreme Court in Syed Abdul Qadir and Ors." case (supra), the respondents would not be entitled to make recovery of the amount/s released to the petitioner.

5. Consequently, this writ petition is allowed and the impugned order of recovery of the respondents is set aside. The respondents are directed not to make any recovery from the petitioner.

6. No costs.