(2014) 02 AHC CK 0139

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 66820 and 68908 of 2010

Chief Account Officer (G.P.F.) and Another APPELLANT

Vs

Mohd. Idrish RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Citation : (2014) 3 ADJ 765 : (2014) 3 AWC 3212 : (2014) 2 ESC 970

Hon'ble Judges : Rajesh Kumar Agrawal, J;Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Subodh Kumar and Udit Chandra, Advocate for the Appellant; A.K. Srivastava and Sudhir Srivastava, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. The Writ Petition No. 66820 of 2010 has been filed by the Chief Account Officer (G.P.F.), Controller of Communication Accounts and Union of India, and the Writ Petition No. 68908 of 2010 has been filed by the Chief General Manager U.P. East Telecom Circle, Telecom District Manager, B.S.N.L. Jaunpur and Accounts Officer (Cash), O/o T.D.M. B.S.N.L. Jaunpur. In both the writ petitions the petitioners are challenging the order of the Central Administrative Tribunal, Allahabad Bench, Allahabad dated 11.8.2010 in Original Application No. 1392 of 2009.

2. The brief facts of the case are that the respondent was the employee in the Department of Telecommunication since 21.3.1969 and retired on 29.5.2003. After six years from the date of retirement a recovery notice dated 17.8.2009 has been issued by the petitioners asking the respondent to pay the sum of Rs. 1,12,525/-. According to the notice, the respondent has been paid the amount in excess in the financial year 1996-97. The respondent filed his reply vide letter dated 15.9.2009 contesting the notice on the ground that the recovery after the retirement of six years is illegal, arbitrarily and without jurisdiction. When no response has been received from the petitioners, the respondent filed a Writ Petition No. 53004 of 2009, which has been dismissed on the ground of

alternative remedy. In pursuance thereof the respondent filed Original Application No. 1392 of 2009 before the Tribunal. The Tribunal vide order dated 11.8.2010 allowed the Original Application. The Tribunal held as follows:

I have heard both the counsel and perused the record on file. It is clear that the mistake in the opening balance was made by the employer and was not due to any concealment of fact or fraud committed by the employer. It is also normal practice for financial statements to be accepted as correct. The applicant retired and mistake was not detected at that time hence all retiral benefits were given to him. It is only after a lapse of 6 years that mistake was detected and now he is being asked to make good the payment made to him. I am of the opinion that mistake in the opening balance was made by the office staff dealing with the matter and there was no concealment or fraud committed by the applicant in the matter. Therefore, placing reliance on two judgments of Hon''ble High Court (referred to above), no case seems to be made out for recovery from the applicant at this stage.

3. Learned counsel for the petitioners submitted that it is not disputed that sum of Rs. 1,12,525/- has been paid in excess to the respondent and the said payment was due to one Sri Mohd. Illyas, but instead of crediting the said amount in the account of Sri Mohd. Illyas it has been inadvertently credited to the account of the respondent in the financial year 1996-97. When the respondent was not entitled for the said amount he ought to have been objected at that time. However, when such mistake has been deducted in the year 2009 a notice has been issued. It is submitted that the excess amount, which has been paid to the respondent, was a public money, the respondent had no legal right to retain the said amount. Whether there was no concealment of fact or mis-representation on the part of respondent, is wholly irrelevant. The reliance is placed on the decision of the Apex Court in the case of ''Chandi Prasad Uniyal and others v. State of Uttarakhand and others'' 2012 (4) ESC 509 (SC).

4. Learned counsel for the respondent submitted that there was no concealment of fact or mis-representation on the part of the respondent. The excess payment was made by the employer, may be inadvertently, but the same cannot be recovered after 6 years from the date of retirement. He further submitted that in fact, the excess amount which has been credited is Rs. 52,083/-.

5. We have considered the rival submissions and perused the records. So far as the contention of the respondent that only a sum of Rs. 52,083/- has been paid in excess is concerned, we do not find any substance, for the reasons that such plea has not been raised before the Tribunal. Even such plea has not been taken in the reply dated 15.9.2009 which is Annexure-3 to the writ petition. In the letter dated 17.8.2009 it is specifically mentioned that the excess amount of Rs. 1,12,525/- has been made in the name of Mohd. Idrish in the financial year 1996-97, therefore, the plea of the respondent that only a sum of Rs. 52,083/- has been paid cannot be accepted at this stage. So far as the payment in excess is concerned, we are of the opinion that it is not in dispute. The amount which

has been paid in excess was not legally due to the respondent, it was a public money and cannot be retained illegally. The Apex Court in the case of ''Chandi Prasad Uniyal and others v. State of Uttarakhand and others'' 2012 (4) ESC 509 (SC) (Supra) on a consideration of several decisions of the Apex Court has held as follows:

We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. 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 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. Any amount paid/received without 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.

6. We are of the opinion that the issue involved is squarely covered by the decision of the Apex Court referred herein above. In view of the aforesaid, the impugned order dated 11.8.2010 passed in Original Application No. 1392 of 2009 ''Mohd. Idrish v. Union of India and others'' is set aside. The respondent is directed to make the payment of Rs. 1,12,525/- within a period of three months which may be accepted by the petitioners in three installments. It is made clear that apart from the aforesaid amount the respondent may not be liable to pay any other amount. 8. Both the writ petitions stand allowed.

