
(2015) 08 AHC CK 0149

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2340 of 2013

Dalvir Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 8 ADJ 684

Hon'ble Judges : M.C. Tripathi, J.

Bench : Single Bench

Advocate : Vijay Gautam, for the Appellant; Vivek Singh, S.K. Tiwari, S.C. and S.K. Anwar, for the Respondent

Final Decision : Allowed

Judgement

M.C. Tripathi, J.—Heard Shri Vijay Gautam, learned counsel for the petitioners and learned Standing Counsel for the respondents. By means of present writ petition, the petitioners have prayed for quashing the impugned orders dated 29.5.2012, 26.7.2012 and 1.8.2012 passed by the respondent Nos. 4, 5 and 6 respectively and have further prayed for direction to the respondent authorities not to deduct transport allowance from their salary in pursuance of the impugned orders and to pay the transport allowance as per circulars and orders.

2. It appears from the record that the petitioners are serving as Constable (Barber, Washerman and Water Carrier) in Railway Protection Special Force. The Battalions of Railway Protection Special Force deployed all over India on the direction of the Railway Board and after receiving the instruction, the Battalions, which receive the instructions, move for the place of duty from their headquarters. The Ministry of Railways time to time issued Government Orders for payment of transport allowance and compensatory allowance. After the recommendation of the 6th Pay Central Pay Commission, the Ministry of Railways issued a Notification dated 12.9.2008, which provides that transport allowances shall not be admissible, if the facility of Government transport is provided. The transport allowance is to be paid @ Rs. 263/- per day and before the transport

allowance the petitioners were paid with CCA. The Divisional Railway Manager, Northern Railway issued an order on 26.6.2008 for payment of travelling allowance by staff deputed to visit Kashmir valley on duty. The Railway Board issued a circular on 16.9.2008 with regard to payment of special compensatory (hill area) allowance. The petitioners were assigned duty of Assam and they were deployed in Assam & West Bengal. By the impugned orders dated 29.5.2012, 26.7.2012 and 1.8.2012, the respondents directed for recovery of the transport allowance given to the petitioners from 1.9.2008.

3. Learned counsel for the petitioners submits that the petitioners are not given any free Government transport while they are deployed outside their headquarters i.e. Gorakhpur and the company are stationed in the barracks, which are far from their duty place. The petitioners have to travel many miles from their barracks or post to the places to give their duty and as no Government or Departmental transport vehicle are provided, therefore, the petitioners bear their own costs in reaching the duty place. The petitioners are entitled for the transport allowance but the respondents are not paying the transport allowance to them and till date no recovery has been made from the petitioners from their salary in pursuance of the impugned order. He has relied upon a judgment of this Court in Writ A No. 45925 of 2012 (Satish Kumar Yadav and others v. Union of India and others) decided on 5.8.2013 in support of his submission.

4. In State of Punjab Vs. Rafiq Masih (White Washer), , Hon Tale Supreme Court has held that so far Class III and Class-IV employees are concerned if any excess salary has been paid to them and no case of fraud or misrepresentation is alleged then there should be no recovery after the retirement of the employee concerned. Relevant paragraph-12 of the judgment is reproduced as under:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

Following the judgment of Honable Supreme Court in State of Punjab v. Rafiq Masih's case (supra) the writ petition is allowed and the impugned orders dated 29.5.2012, 26.7.2012 and 1.8.2012 insofar as it relate to the petitioners, are hereby quashed.