

(2004) 08 PAT CK 0032
In the Patna High Court
Case No : CWJC No. 6337 of 2004

Dr. Sachchidanand Singh alias Sachidanand Prasad Singh	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Citation : (2004) 08 PAT CK 0032

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—In this writ petition, the petitioner has assailed the validity of the order of the Accountant General, Bihar, Patna (respondent No. 3), contained in memo No. 419 dated 8.1.2002 (Annexure-3), issued by the Accounts Officer, whereby and whereunder a sum of Rs. 22,047.60 paise paid to him as non-practising allowance has been deducted from the leave encashment payable to him after his retirement, as, according to respondent No. 3, the same was inadmissible.

2. It appears that the petitioner earlier also came to this Court in CWJC No. 13604 of 2001 for payment of his retiral dues, which was disposed of vide order dated 15.12.2001 (Annexure-1). Later, he filed MJC No. 876 of 2002 for initiating contempt proceeding for non-compliance of the said order.

3. In view of the order dated 15.6.2002 annexed as Annexure-C to the show cause filed on behalf of the opposite parties in the said MJC, which is Annexure-C to the counter affidavit filed on behalf of respondent Nos. 1 and 2 in the present case, whereby representation of the petitioner was disposed of in compliance of the order of the Court, the validity of which was sought to be assailed by the learned counsel for the petitioner in the MJC application, the Court found that the said proceeding is not an appropriate proceeding for the said purposes. The Court observed that, if so advised, the petitioner may take recourse to any other remedy available to him for assailing the said order. Hence, the petitioner has filed the present writ petition assailing the order of the Accountant General, with which he is now aggrieved on account of deduction of Rs. 22,047.60 paise from

his leave encashment.

3. A counter affidavit has been filed on behalf of the State and its officials (respondents No. 1 and 2 and a separate counter affidavit has been filed on behalf of the Accountant General and its official (respondents No. 3 and 4). The stand of the said respondents is that as per the provisions laid down in paragraph 3(ii) and 5(ii) of the Government of Bihar, Finance Department's letter No. 2725 dated 15.4.2000, non-practising allowance was admissible to only those Veterinary Doctors who fulfilled two conditions;

(i) Persons got themselves registered with "Bhartiya Pashu Chikitsa Parishad" and (ii) Have submitted a declaration in the prescribed proforma to the Accountant General/Personal Entitlement Fixation Cell of the Finance Department by 31.5.2000. The petitioner was registered with Bihar Pashu Chikitsa Parishad on 17.7.20.00 as is admitted in paragraph 3 of the supplementary affidavit filed on his behalf. As such, he did not fulfil the criteria for grant of non-practising allowance, which he drew while in service and has now been sought to be deducted after his retirement.

4. Learned counsel for the petitioner contended that in view of the law settled that such recovery/deduction after retirement can be made only in case of misrepresentation or fraud committed by the employee and in the present case, there is no such allegation even much less finding against the petitioner, the recovery/deduction made vide impugned order (Annexure-3) is not tenable, Learned counsel submitted that on submission of the declaration on 27.7.2000, the Accountant General issued pay slip on 8.9.2000, vide Annexure-10, which included the non-practising allowance and pursuant thereto the petitioner received the same. As such, according to the learned counsel, recovery/deduction vide impugned order (Annexure-3) is wholly untenable.

5. On the other hand, learned counsel for the respondents submitted that the Supreme Court in the case of Sahib Ram v. State of Haryana, in 1995 Supp (1) SCC 18, has laid down that in case of representation/misrepresentation or fraud, excess payment made/drawn to/by an employee is recoverable. The same view has been reiterated by the Supreme Court in the case of V. Gangaram Vs. Regional Joint Director and others, .

6. In the present case, the petitioner, vide declaration/representation, contained in Annexure-B to the counter affidavit filed on behalf of respondents No. 3 and 4, demanded for issuance of pay slip along with non-practising allowance and the Accountant General acting upon it erroneously authorised the non-practising allowance, vide pay slip dated 8.9.2000, contained in Annexure-10, even though the petitioner did not fulfil the conditions as laid down by the Government. Accordingly, the amount paid on account of non-practising allowance was worked out and adjusted from the leave encashment amount. Learned counsel for the respondents, thus, contended that there is nothing wrong in the impugned order and the claim of the petitioner is not at all tenable.

7. This Court finds substance in the submission of the learned counsel for the respondents. In the case of *Sahib Ram v. State of Haryana* (supra) the Apex Court, while finding that it was not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him and that he cannot be held to be at fault, directed that the amount paid till date may not be recovered from the appellant. In the case of *Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.*, the Apex Court, while recording concurrence with the observation of the Court in *Sahib Ram*'s case, came to the conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board cannot possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The Apex Court further directed that the act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice and that the concept of fairness has been given a go-by. As such, the Apex Court directed that the actions initiated for recovery cannot be sustained under any circumstances.

8. In the present case, it is not disputed that the petitioner did not comply with the requirement as laid down in the Government decision dated 15.4.2000 (Annexure-5) and thus was not entitled for the benefit of non-practising allowance. Further, it is an admitted position that it was on the representation filed by the petitioner, vide Annexure-B, for grant of non-practising allowance even though he knew that he was not entitled as per the Government decision, contained in Annexure-5, the Accountant General erroneously issued pay slip, which included the non-practising allowance and on that basis he withdrew the same. Thus, in the facts and circumstances aforementioned, this Court does not find any error in the impugned order and the writ application is, accordingly dismissed.