(2015) 09 BOM CK 0188

In the Bombay High Court

Case No : Writ Petition No. 953 of 2001

Duryodhan APPELLANT

Vs

The Managing Director, Maharashtra State Electricity Board and Others RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0188

Hon'ble Judges : B.P. Dharmadhikari and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : S. Borkar, Advocate, for the Appellant; R.E. Moharir, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Heard Shri Borkar, learned counsel for the petitioner and Shri Moharir, learned counsel for the respondents.

2. The petitioner, a Meter Tester Grade I, who has superannuated on 30.09.2008 is before this Court questioning the order dated 01.03.2001 by which the second benefit released in his favour from 02.08.1993 under General Order No. 74 is found to be wrongly released and, therefore, the necessary correction has been directed. The said order shows that instead of extending to petitioner pay-scale of Rs. 1665-65-1990-75-2740-80-3860, he was given pay-scale of Rs. 1675-60-1975-65-2625-70-3325. The petitioner had also sought stay of this order and on 28.03.2001, while issuing notice before admission, this Court accordingly stayed that order by observing that no deduction from salaries of the petitioner in terms thereof shall be effected.

3. The petitioner states that during the pendency of this writ petition, he reached the age of superannuation on 30.09.2008 and has been relieved accordingly. However, while processing his claim for retirement benefits, out of total amount of Rs. 7,73,999/-found payable to him, recovery of Rs. 4,31,036/- has been

effected and only amount of Rs. 3,42,963/- has been released to him. It is in this background that we have heard respective counsel.

4. Shri Moharir, learned counsel stated that while preparing the matter, he faced certain difficulties and, therefore, sought adjournment. We have heard the matter on 28.08.2015 and thereafter it came to be adjourned to 31.08.2015 as part heard. It has been called out today. In this view of the matter, we have rejected the request of Shri Moharir, learned counsel.

5. Shri Borkar, learned counsel submits that the petitioner joined the services of the erstwhile Maharashtra State Electricity Board in the year 1976 as a Meter Tester Grade II. General Order No. 74 prescribes a higher pay-scale after completion of 10 years and accordingly on 26.05.1987, the petitioner was given next higher pay-scale with effect from 25.07.1984 with remark that 01.08.1987 will be his next date of increment. His existing pay-scale then was Rs. 440-20-540-25-640 and it was increased to pay-scale of Rs. 465-25-590-30-920. The said G.O. contemplates second benefit also and by Officer Order dated 26.10.1994 that benefit was released from 01.08.1993 and the petitioner was fixed in pay-scale of Rs. 1675-60-1975-65-2625-70-3325. The office order showing this exercise of pre-fixation was passed on 10.03.1995 and mentioned next date of increment as 02.08.1995. Shri Borkar, in this background submits that recovery has been sought because of a correction slip No. 23 dated 02.08.1997. Correction Slip refers to category of Meter Readers Grade II and also mentions their current pay-scale as Rs. 1335-3085. The first higher grade is mentioned therein at Rs. 1375-3310 while second higher grade benefit decided to be given after correction is stated to be Rs. 1665-3860. According to him, when this Correction slip was issued and impugned decision was taken, the petitioner was already placed in Grade I as per order dated 21.08.1993. In the alternative, he submits that this determination cannot be made effective retrospectively to the prejudice of the petitioner. To substantiate his contentions, he has invited our attention to the other relevant material placed on record. He has placed reliance upon the judgment of the Hon''ble Apex Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , Sahib Ram Vs. State of Haryana and Others, and Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, . He points out that because of divergence of opinion noticed by the Hon''ble Apex Court, reference was made to larger Bench and after larger Bench answered the question, the Hon''ble Apex Court has in the case of State of Punjab Vs. Rafiq Masih (White Washer), , in paragraph 12 laid down five principles in which the employer cannot recover such excess payment from the employee. He submits that said judgment considers practically all the cases decided by the Hon''ble Apex Court till date. According to him, the petitioner is a Group ''D'' / Class IV employee and hence no recovery from him is possible. He further points out that even recovery from retired employee is not permissible and here the amount has been recovered from the retirement dues payable to the petitioner. He also points out that in the absence of correction slip issued on 02.08.1997, it cannot be said that the petitioner was erroneously fixed

in a higher pay-scale. He, therefore, prays for directing the respondents to return the deducted amount with suitable interest.

6. Shri Moharir, learned counsel has reiterated his request for adjournment and after its rejection, with a view to assist the Court, has invited our attention to the facts. According to him, the petitioner should have been given second benefit and for that purpose pay-scale of Rs. 1665-3860 was relevant. However, he was fixed in a higher pay-scale of Rs. 1675-3325 and hence by the impugned order that error has been corrected. He has taken us through the return filed on record for the said purpose.

7. A perusal of the impugned order dated 01.03.2001 shows that it is issued in the name of the petitioner specifically and mentions the second benefit released from 02.08.1993. It states that while releasing second benefit, pay-scale of Rs. 1675-3325 was erroneously released. It is also stated that the petitioner deserved to be treated in pay-scale of Rs. 1665-3860 and accordingly it appears that correction has been carried out. The correction has been ordered from 02.08.1993 in the first part of the order and thereafter from 01.04.1998, pay-scale becoming payable is stated to be Rs. 4665-185-5590-110-7690-225-11515. Thus, this Court has to find out whether there was any error while undertaking exercise of fixation of the petitioner on second occasion i.e. while releasing second General Order''s benefit in his favour. First General Order''s benefit has been given to him with effect from 25.07.1984 and after completion of 10 years therefrom, his eligibility for release of second benefit is not in dispute.

8. Here, we may point out from the submissions of the respondents that in paragraph 2, it has been observed that the petitioner was eligible for first higher grade benefit in the pay-scale of Rs. 1375-3310 i.e. in the pay-scale of Meter Tester Grade I and that benefit was already given to him from 25.07.1984. Thereafter, it is mentioned that when second benefit was sought to be given, the relevant pay-scale was Rs. 1665-3860. For that purpose support is being drawn from a correction slip dated 02.08.1997 only. Same stand is adopted even in the return filed before this Court after the matter came to be admitted for final hearing. It is mentioned that the petitioner was wrongly granted benefit with effect from 21.08.1993 in the pay-scale of Rs. 1675-3325. In paragraph 10 of the said return, while dealing with the reference by the petitioner to 5th Pay Commission Report, the respondents state that it adopts the pay structure as per settlement and policy and 5th Pay Commission has, therefore, no relevance. The correction slip No. 23 dated 02.08.1997 was issued in which there is reference of pay-scale of employees working in the cadre of Meter Tester Grade II.

9. The perusal of correction slip No. 11 dated 14.10.1996 shows that post of Meter Tester Grade I has been included in Artisan ''A'' category while post of Meter Tester Grade II is stated to be equivalent to Artisan ''B'' category. Shri Moharir, learned counsel after inviting attention to this document has stated that as the petitioner as a Meter Tester Grade II was in Artisan ''B'' Grade, he should

have been given first benefit in the pay-scale of Rs. 600-35-1325 but he was given that benefit in the scale of 775-45-1450. Thus, he submitted that second benefit available under General Order No. 74 as per Artisan ''A'' grade has been erroneously given to the petitioner as first benefit. We find this submission difficult to accept. The Office Order dated 26.05.1987 expressly mentions the next pay-scale being payable after his fitment from 25.07.1994 as 465-25-590-30-920.

10. The parties have produced before this Court, one more correction slip No. 45 dated 17.03.1993. There in distribution cadre, various posts in Artisan Grade ''A'' category have been included. Post of Meter Tester Grade I is mentioned in those posts which are clubbed under the head Artisan Grade ''A''. There pay-scale of Rs. 1250-35-1425-40-1825-45-2725 finds mention. In this background when Office Order dated 16.10.1992 is looked into, it shows name of the petitioner at Sr. No. 2. His designation is mentioned as Meter Tester Grade II and revised pay-scale of Rs. 1250-2725 has been assigned to him. It is mentioned that he has been fixed at Rs. 2095/- as on 01.08.1988 and his next date of increment is shown as 01.08.1989. In remarks column it is stated that the arrears have been paid from 31.07.1988. It is stipulated that the same are recoverable. However, it is followed by remark that the next date of increment shall be 02.08.1993. The subsequent exercise by office order dated 26.10.1994 is in this background. This order mentions the very same date i.e. 02.08.1993 as the date on which second benefit of General Order is conferred upon the petitioner. The relevant pay-scale has been mentioned as 1675-3325. The order dated 10.03.1995 which refixes salaries, has name of the petitioner at Sr. No. 22. There again very same pay-scale and date of fitment with dates of increment have been mentioned.

11. The perusal of Correction slip No. 23 dated 02.08.1997 shows that it is a general correction and not qua the case of the petitioner only. For entire cadre of Meter Tester Grade II, the second higher grade benefit is disclosed to be 1665-3860. The heading above these pay-scales show that it was a second higher grade benefit "decided to be given". There is nothing on record before us to show that before 02.08.1997, the exercise of fitment qua Meter Tester Grade I in the pay-scale of Rs. 1665-3860 could have been undertaken. On the contrary, it appears from General Order No. 35 dated 28.12.1995 that for existing pay-scale of Rs. 1250-2725, pay-scale of Rs. 1375-3310 was prescribed as revised pay. The pay-scale of Rs. 1335-3085 was prescribed as revised pay for existing pay-scale of Rs. 1210-2550. Pay-scale of Rs. 1675-3325 was only the relevant pay-scale for the petitioner till 02.08.1997.

12. In this situation, we find that the respondents are not in a position to substantiate their theory of error while undertaking the exercise of release of second benefit in favour of the petitioner. The judgment of the Hon''ble Apex Court in the case of State of Punjab & Ors. Etc. v. Rafique Masih (White Washer) etc., (supra) also comes to the rescue of the petitioner who is not a group ''A'' or group ''B'' employee. We, therefore, quash and set aside the impugned order

dated 01.03.2001 at Annexure I with the petition. Consequently, the amounts deducted from terminal / retirement benefits of the petitioner shall be returned to him within a period of four months from today. The respondents shall pay simple interest @ 6% on the said amount from 01.10.2008 till the date of payments. However, if the payment is not released within the said period, the respondents shall pay to the petitioner interest calculated @ 9% per annum on the said amount for the period subsequent thereto till its receipt by him.

13. Writ Petition is thus allowed and disposed of. Rule is made absolute in above terms. However, in the facts and circumstances of the case, there shall be no order as to costs.