
(1996) 01 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 14547 of 1987

E. Visweswaraiah

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : (1997) 5 KarLJ 467

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. The short point canvassed by the petitioner's learned Advocate is that the petitioner who is working as a Second Division Clerk in a Private Aided Institution has been deprived of the equivalent of two advance increments by order dated 4-9-1987. Petitioner's learned Advocate points out that by an earlier order dated 4-8-1978 the petitioner was sanctioned the two advance increments which aggregate to a small amount of Rs. 40/- per month since he had passed the B.A. Degree Examination. The petitioner was receiving these amounts which formed part and parcel of his pay packet until the impugned order was abruptly passed and the learned Advocate points out with considerable justification that it virtually amounts to a reduction of salary without any ground being set out for this. The petitioner has therefore challenged the impugned order dated 4-9-1987 and he submits that his salary ought to be restored to the earlier position.

2. The learned Government Advocate submits that no formal reply has been filed and that he once again contacted the concerned officers today for necessary instructions and that they have assured him that the same will be given. He however points out that from the order dated 4-9-1987 it is clear that the petitioner was not entitled to the increments in question and that they had wrongly been granted which was why corrective action was required to be taken including the recovery of the excess payments. It is his submission that if due to an error the two advance increments which the petitioner was not entitled to have been sanctioned to him, that it is within the jurisdiction of the authorities to

recover the excess amount paid and that therefore the order is fully justified.

3. A perusal of the order dated 4-9-1987 indicates that the petitioner has only been informed that the action is being taken as per the directions of the Commissioner. There is nothing in the order which indicates that he was not entitled to the increments and that the same have been given erroneously. There is another crucial aspect of the matter which requires to be stated because this Court has come across numerous instances of this type particularly where members of teaching profession are concerned while such orders are passed and it is necessary to uphold the submission canvassed by the petitioner's learned Advocate that once the petitioner was granted the advance increments for which he is entitled to in keeping with the Government resolutions because he acquired the higher qualification, that under no circumstances could this be taken away from him as it would amount to nothing short of a punishment order. One needs to take cognizance of the fact that a reduction in salary or rank can only be the result of a verdict of a disciplinary proceeding which is not the case here and therefore, the action is clearly bad in law apart from the fact that the type of order passed in the present case will have to be straightaway quashed on the ground of arbitrariness in so far as it does not set out any reasons. I do concede that it is equally necessary to uphold the second limb of the argument canvassed on behalf of the petitioner which is to the effect that once advance increments were sanctioned to the petitioner and were paid to him, that rights have accrued in his favour and that assuming without admitting, that it was the department's case that the amount was erroneously sanctioned, the correct procedure would be that the petitioner should be informed that the department proposes to correct that error and it would have been open to the petitioner to point out to them that the amount was correctly sanctioned to him and that there is no error. In other words, in the absence of giving the petitioner an opportunity of representing against the contemplated action which was a step to his prejudice the authorities could not have straightaway passed an order of this type.

4. The last aspect of the matter is with regard to the question as to whether, assuming the amount was erroneously paid according to the department, the amount can be recovered from the petitioner. It is customary for the departments to either call upon the employee to reimburse the money or to seek to recover it from future salary or from terminal benefits and since such a direction has been issued in this case it would be equally necessary for this Court to clarify what the correct legal position is. It is presumed and assumed that official acts are correctly carried out and in those of the cases where the increment or such other monetary benefits accrues to an employee, one needs to take into account the fact that this constitute part and parcel of his pay packet which in other words constitutes the money required for his day-to-day needs and existence. Having regard to the status of the employees, the Court has to take into account the fact that the amount so received is expended and that the employee is in no position to reimburse a lump sum demand, that too when it comes after several years. Quite apart from the aspect of limitation which would

provide an absolute bar against the State recovering old dues, the other important aspect of the matter is that the principle of estoppel would completely bar such a recovery. The maximum, even in a case where an erroneous payment has been made what can be done is that the excess amount can be stopped prospectively but there will be a total bar against making back dated recoveries. This needs to be stated because such an order has been passed in the present case and also because it has become the unfortunate order of the day to not only seek to make such unjustified recoveries but to hold up the terminal benefits of poor employees for abnormally long periods of time on the ground that somebody had directed that some petty amounts should be retrieved. There will therefore have to be a full and complete stop to this wrong practice.

5. The petition succeeds. The order dated 4-9-1987 is quashed and set aside. The petitioner would be entitled to receive his salary as though the order dated 4-9-1987 had not been passed. Since the petitioner is still in service, the respondents shall compute the difference of the amount wrongfully withheld from the petitioner and pay the same to him latest by 30-3-1996. The learned Government Advocate shall convey the direction of this Court to the department and it shall be no excuse that for want of copies of records that the order passed was not implemented. If there is any default in the payment of the arrears, the petitioner shall be entitled to interest computed at the rate of 18% per annum compounded.

6. It is also clarified, that the arrears shall be computed up to 31-12-1995. With effect from the month of January 1996, the petitioner shall be paid his salary taking into account that the order dated 4-9-1987 has been quashed. Having regard to the fact that the order dated 4-9-1987 was unjustified and unsustainable in law, the petitioner shall be entitled to costs of this petition.

7. The petition accordingly succeeds. Rule is made absolute with costs.