

(2010) 08 DEL CK 0026
In the Delhi High Court
Case No : Writ Petition (C) 7690 of 2004

Employees State Insurance Corporation	APPELLANT
Vs	
All India Employees" State Insurance Corporation Employees Federation and Others	RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144
Constitution of India, 1950 — Article 142

Citation : (2010) 08 DEL CK 0026

Hon'ble Judges : Pradeep Nandrajog, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : Geeta Luthra and Sanjeev Sahay, for the Appellant; A.K. Behera, for the Respondent

Judgement

Pradeep Nandrajog, J.—The All India Employees" State Insurance Corporation Employees" Federation i.e. respondent No. 1 took up an issue pertaining to wages to be paid to its members holding posts in Group "C" under the petitioner by and under OA No. 981/1994 which was allowed by the Central Administrative Tribunal vide judgment and order dated 17.3.1999; the consequence whereof was a higher wage to be paid to the employees of the petitioner in respect of whom directions were issued for higher wages to be paid.

2. The petitioner filed a writ petition being WP(C) No. 384/1999 in this Court challenging the judgment and order dated 17.3.1999 passed by the Central Administrative Tribunal. A Civil Miscellaneous Application was filed in the Writ Petition praying that pending hearing of the writ petition, the order passed by the Tribunal be stayed.

3. The stay was declined. The interim order declining stay was challenged before the Supreme Court. The Petition For Special Leave to Appeal No. 11642/1999 was dismissed by the Supreme Court on 23.8.1999. As a result, large number of employees whose cause was espoused by respondent No. 1 started receiving

higher wages.

4. The writ petition filed by the petitioner challenging the judgment and order dated 17.3.1999 passed by the Central Administrative Tribunal succeeded vide judgment and order dated 31.5.2002. The decision of the Tribunal was set aside. The respondent No. 1 preferred a Petition For Special Leave to Appeal No. 18355/2002 before the Supreme Court which was withdrawn. Review Application was filed praying that the order dated 31.5.2002 be reviewed. The Review Application was dismissed vide order dated 18.12.2003 and with that was the end of the litigation pertaining to the claim of the respondent No. 1 that its members be granted higher wages.

5. A second round of litigation ensued because while dismissing the application seeking review of the judgment and order dated 31.5.2002, pertaining to the plea that the dismissal of the claim of the respondent No. 1 for its members would result in the members being required to refund the extra salary received by them, it was observed that if the petitioner was to effect recoveries, the affected employees would be entitled to take recourse to such action as was permissible by law. The petitioner started effecting recoveries by deducting some money from the salary payable each month to the employees who had received excess payments.

6. This resulted in further litigation, when two Original Applications being OA No. 3118/2003 and OA No. 2067/2004 were filed by the respondents before the Central Administrative Tribunal praying that the petitioner be restrained from effecting recoveries of excess salary paid.

7. In response, the petitioner pleaded that it was entitled to restitution as it had paid higher wages on account of orders passed by the Tribunal which was set aside and further the employees had expressly undertaken to refund the extra salary if their claim ultimately failed.

8. The Tribunal has allowed OA No. 3118/2003 vide judgment and order dated 30.1.2004 and following the reasoning in the order dated 30.1.2004 has allowed OA No. 2067/2004 vide judgment and order dated 8.2.2005.

9. In a nutshell, the reasoning in the two orders of the Tribunal is the law (ostensibly) declared by the Supreme Court in the decisions reported as Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ., State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, , State of Bihar and Others Vs. Secretariat Press Ministerial Staff Union and Others, . Sahib Ram Vs. State of Haryana and Others, . Gabriel Saver Fernandes and Others Vs. State of Karnataka and Others, .

10. As regards the plea of the petitioner that the employees had expressly undertaken by furnishing it in writing that if their claim failed, they would refund the excess amount paid, the Tribunal has held that the said writing was under a compulsion because if the same was not submitted the petitioner would not have

paid the salary as directed by the Tribunal.

11. As regards the reasoning of the Tribunal noted in para 10 above, it would be enough for us to state that if a claim is allowed and the party vanquished has challenged the decision of the original adjudicator and is compelled to comply with the decision of the original adjudicator pending hearing of its claim before the higher authority, the question of compulsion or otherwise in obtaining written undertakings from the victorious party to recompense if the action before the higher authority succeeds is neither here nor there.

12. As regards the reliance by the Tribunal on the decisions of the Supreme Court noted in para 9 above, suffice would it be state that the law of restitution guides us that if a party receives a benefit under a direction issued by a Court, which direction is ultimately found to be faulty, recompense must flow to the opposite party. Section 144 of the CPC 1908 is premised on this principle. It need hardly be said that no act of a Court can be to the prejudice of either party.

13. Thus, as the law stands and as it is understood by us, since the employees of the petitioner, who were members of the first respondent association, got benefit of higher wages pursuant to a decision rendered by the Central Administrative Tribunal, which decision was ultimately reversed, recompense has to follow.

14. The decisions of the Supreme Court relied upon by the Tribunal do not lay down any principle of law contrary to the afore-noted principle of law. The direction in the said decisions, that recoveries would not be effected, are obviously the result of the Supreme Court exercising power under Article 142 of the Constitution of India.

15. Conscious of the fact that the jurisdiction we exercise is under the shadow of: "Satyamev Jayate" i.e. "Truth shall prevail" and the Supreme Court exercises jurisdiction under the shadow of: "Yato Dharmastato Jayah" i.e. "Truth alone I uphold", in other words, our jurisdiction relates to Niti and the jurisdiction of the Supreme Court relates to Nyaya and hence the Supreme Court alone is vested with the power of complete justice by virtue of Article 142 of the Constitution of India we cannot issue directions as were issued by the Supreme Court in the decisions noted in para 9 above.

16. It is urged by learned Counsel for the respondent No. 1 that only in cases where excess payments are made to employees as a result of misrepresentation, fraud or cheating by a beneficiary have the Courts directed refund to be made and whenever payments are made upon a mistake or otherwise on account of a fact which does not attract moral turpitude, Courts have refrained from directing recoveries to be made.

17. Though no such decision has been cited, but we are conscious of various decisions pronounced by the Supreme Court where it has been held that where employees in the lower rungs of service are bona fide paid a sum in excess of what is due and upon the mistake being detected, Courts would not permit

recovery. The said reasoning is premised on equity that lowly paid employees, if paid sums in excess of what is due would spend it on themselves and their family on a bona fide belief that what they got is due to them and it would be most unjust to direct them to refund money.

18. This principle cannot be attracted in a situation where the employee is made to pay higher wages, neither on account of mistake of either party, nor on account of any fraud, misrepresentation or the like, but under orders of the Court, which ultimately are found to be wrong and hence set aside by a Superior Court.

19. Noting that the members of the respondent held posts in Group "C" posts, reversing the two impugned decisions, we refrain from requiring the beneficiaries of the excess payments to pay any interest to the petitioner. But, the principal amount received in excess must be returned.

20. Learned Counsel for the petitioner states that excess payment made is approximately Rs. 19.9 crores, a figure which is disputed by learned Counsel for the respondent.

21. Learned Counsel for the respondent wants us to note that many beneficiaries have retired and some have left for their heavenly abode.

22. Needless to state, it is for the petitioner to decide how it can effect recovery which can obviously be from the asset of the employee who received the excess payment.

23. The writ petitions are allowed. Impugned orders dated 30.1.2004 and 8.2.2005 are set aside. OA No. 3118/2003 and OA No. 2067/2004 are dismissed.

24. No costs.