(2016) 07 P&H CK 0228

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 15779 of 2014

Ganpat Rai APPELLANT

Vs

Chief Secretary RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:
Constitution of India, 1950 — Article 14, 226

Citation : (2016) 4 SCT 443

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Naveen Daryal, Advocate, for the Petitioner; Ravi Pratap Singh, Asstt. Advocate General, Haryana, for the Respondent; H.N. Mehtani, Advocate, for the Respondent No. 2; D.K. Singal, Advocate, for the Respondent No. 5

Final Decision : Allowed

Judgement

Ritu Bahri, J.—Petitioner is seeking quashing of orders dated 23.06.2014 (Annexures P-4 to P-9) whereby the recovery has been effected from his account without following any procedure.

2. Petitioner has retired as an Ex-HPSC Member and his pension of Rs. 1500 per month w.e.f. 18.08.1990 was released by the Accountant General on 29.10.1990. The petitioner was regularly received the pension up to the year 2000 as Rs. 1500/-. Thereafter, the Chief Secretary, Govt. of Haryana, has revised the pension of Rs. 1710/- on 19.12.2001. The petitioner has came to know that the Accountant General has revised his pension as per revised pension w.e.f. 01.01.2006 and the revised pension has been credited by the Government in his account i.e. Rs. 17,094/- w.e.f. 01.05.2009 and the arrears of pension w.e.f. 01.04.2009 to 01.06.2009 of Rs. 28,640/-. Thereafter, vide letter dated 12.05.2014 (Annexure P-1), the Accountant General, Haryana, stated that the petitioner was entitled for pension amount of Rs. 5130/- w.e.f. 24.01.2014, as per Gazette notification. The petitioner issued a cheque of amount of Rs. 20,00,000/- on 03.06.2014 (Annexure P-2) but the cheque was returned with

the remarks "Account Blocked". The petitioner given a legal notice to the State Bank of Patiala on 17.06.2014 (Annexure P-3) and the Bank passed the impugned orders dated 23.06.2014 (Annexures P-4 to P-9) for recovering an amount of Rs. 15,03,978/- from the account of the petitioner without informing him. The Bank has recovered the amount of Rs. 15,03,978/- from the excess payment of pension received by the petitioner from the period 01.05.2009 to 01.05.2014 and further the amount of Rs. 3,26,482/- was due as interest @ 9% minimum simple interest. The grievance of the petitioner is that the appropriate authority to take a decision on revision and the recovery of pension was the Government and not the Bank. Petitioner is seeking quashing of the above-said orders (Annexures P-4 to P-9) in view of judgment (Annexure P-10) of Hon''ble the Supreme Court in case Sunil Kumar Singhal v. Pramukh Sachiv Irrigation Department and others, 2014(3) SCT 98 whereby excess payment of pay and pension was made on account of wrong fixation of salary before the retirement of the employee. While allowing the SLP, the Supreme Court held that no recovery could be effected from the petitioner on account of wrong fixation of salary way back in the year 1986 and even the amount of pension shall not be released as the said pension has been fixed on the salary which was drawing at the time of his retirement.

3. Short reply has been filed on behalf of respondent No.1 to the effect that respondent No.1 has only forwarded the pension papers of the petitioner to respondent No.3 on 03.05.1990 and respondent Nos.3, 4 and 5 was the main contesting parties.

4. In a short written statement filed by respondent No.2 i.e. Secretary, Haryana Public Service Commission it is admitted that the petitioner was appointed as a Member of Haryana Public Service Commission on 28.08.1984 and retired on 27.08.1990. The contesting parties are respondent Nos.3 and 4.

5. In the written statement filed on behalf of respondent No.3 it is not being disputed that the petitioner had remained MLA during the period from 21.02.1967 to 30.04.1977 and he was receiving pension from the office of the Haryana Vidhan Sabha, Chandigarh, vide Memo No.CA Pension 11727 dated 27.04.1979, the original Pension @ Rs. 500/- p.m. w.e.f. 01.05.1977 and the subsequent revised pension which were authorised to the petitioner are as under: -

(i) Rs. 750/- p.m. w.e.f. 18.12.1986,

(ii) Rs. 1750/- p.m. w.e.f. 23.04.1991,

(iii) Rs. 2400/- p.m. w.e.f. 01.08.1997,

(iv) Rs. 5000/- p.m. w.e.f. 31.07.1998,

(v) Rs. 6000/- p.m. w.e.f. 13.01.2006,

(vi) Rs. 7400/- p.m. w.e.f. 08.11.2006,

(vii) Rs. 14,000/- p.m. w.e.f. 13.01.2006

(viii) Rs. 16,500/- p.m. w.e.f. 07.09.2010

6. The dearness allowance on the above pension was not admissible w.e.f. 01.05.1977 to 07.03.1999, which is admissible only w.e.f. 08.03.1999. Now the revised pension @ Rs. 23,500/- + 11750/- + DR w.e.f 01.10.2013 (as per Haryana State Government orders issued from time to time) has been authorised by the office of the answering respondent, vide letter dated 22.01.2014.

7. Petitioner also remained member of HPSC and retired on 27.08.1990. On receipt of pension case from the Chief Secretary to Govt. of Haryana, vide letter dated 03.05.1990, the pension @ Rs. 1500/- p.m. w.e.f. 28.08.1990, Rs. 1710/- p.m. w.e.f. 12.09.2000 and Rs. 5130/- p.m. The Dearness allowance was not admissible on above mentioned pension. Thus, the office of respondent No.3 has authorised both the pension correctly as per the instructions issued by the State Government of Haryana from time to time. The State Bank of Patiala, vide letter dated 07.04.2014, has intimated to the office of respondent No.3 that the petitioner is drawing two pensions, vide PPO No.18726-S/HR as Ex-MLA w.e.f. 01.05.1977 and PPO No.43088-S/HR as Ex-HPSC member w.e.f. from 28.08.1990 as detailed below: -

"Member of HPSC Basic Pay :

16724/-

D.A.

15052/-

Ex.MLA Basic Pay :

23,500/-

D.A.

39010/-"

8. The Bank has requested the office of respondent No.3 to intimate the correct entitlement of the pension if the pension was being paid wrongly. The correct pension as admissible to the petitioner was intimated to the Pension Disbursing Authority i.e. Bank by the office of the respondent No.3, vide letters dated 27.05.2014 and 04.07.2014. In view of above-said letters, the Pension Disbursing Authority i.e. respondent No.5 has inadvertently disbursed the wrong pension to the petitioner, which resulted in excess payment of Rs. 15,03,978/- as intimated by the State Bank of Patiala, vide letter dated 07.08.2014, which needs to be recovered from the petitioner.

9. In a separate written statement filed by Bank-respondent No.5 the facts are not in dispute that the petitioner remained MLA during the period w.e.f. 21.02.1967 to 30.04.1977 and he has retired from the Haryana Public Service

Commission on 27.08.1990. The petitioner was allowed two pensions, vide PPO No.18726-S/HR as Ex-MLA and PPO No.43088-S/HR as Ex-HPSC. Thereafter, the petitioner had written an application dated 13.12.2000 (Annexure RW-5/1) to the Treasury Officer, Charkhi Dadri, Bhiwani for withdrawal of pension of PPO No.18726/HR. The answering respondent called the petitioner vide its letter dated 04.01.2001 (Annexure RW-5/2) and the application of the petitioner was forwarded to the Manager of the answering respondent by the Treasury Officer, Bhiwani. The respondent has placed on record letter and undertaking dated 10.01.2001 (Annexures RW-5/3 & RW-5/4), vide which the petitioner was given the right to the respondent-Bank to deduct the amount from his saving account in case the excess payment was paid to him in future. Respondent No.5 had written a letter dated 07.04.2014 (Annexure RW-5/5) to respondent No.3 requesting therein to intimate the correct entitlement of the pension of the petitioner. In response to the said letter, respondent No.3 has replied vide letter dated 27.05.2014 (Annexure RW-5/6) that after going through the said letter, it comes to the knowledge of respondent No.5 that w.e.f. May, 2009 to May, 2014, the excess payment of Rs. 15,03,978/- has been credited in the saving account No.55075868993 of the petitioner. This amount has been deducted from the account of the petitioner and the same has been credited to the account of the Government through its Nodal Branch in respect of HPSC No.PPO 43088-S-Haryana along with Income Certificate from 9th April, 2009 to 31st March, 2014 and form - 16 and information in this regard was given to the petitioner of necessary action. Therefore, respondent No.5 had rightly debited the amount from the pension account of the petitioner, which has been deposited/credited in excess in the account of the petitioner.

10. The question for consideration in the present case would be that whether after the letter dated 27.05.2014 (Annexure RW-5/6) written by the Accountant General, Haryana clarifying that the petitioner is not entitled to dearness allowance on the pension and the Bank could recover the said amount from the pension account of the petitioner and deposited in the amount of the Accountant General.

11. Reference, at this state, can now be made to a judgment of the Supreme Court in a case of U.T. Chandigarh and others v. Gurcharan Singh and another, Civil Appeal No.9873 of 2013, decided on 01.11.2013 whereby the respondent appointed as a Clerk in the year 1992 and retired in 1997. There was a mistake committed in pay fixation which had been rectified by an order dated 13.10.1998. This re-fixation was challenged by the respondent before the Administrative Tribunal. The O.A. was dismissed by the Tribunal on 04.01.2002 and thereafter he filed a writ petition which was allowed on 20.03.2008. The U.T. Administration went before the Supreme Court in SLP. The facts before the Supreme Court were that the respondent had been appointed in the year 1992 on the post of Clerk, which was reserved for ex-serviceman. While fixing his pay he had given his option for connecting the pay if he had been wrongly fixed. The pay of the petitioner was wrongly fixed taking into account his service in the

Indian Army. However, after his retirement, his pay was re-fixed as per the option given under Order 4(a) of the Rules. The re-fixation was done only after the option exercised by the petitioner. The re-fixation was being challenged on the ground that it was done after six years. The Supreme Court taking into consideration that the respondent has been getting regular pension from the Indian Army for his past services rendered in the Indian Army and hence receiving the pension from Army and getting the benefit of the same further while rejoining the department as Clerk was rightly corrected by the authority. Only the salary of the respondent was being refixed, there was no deduction in the pension and the SLP was allowed.

12. The afore-said judgment of the Supreme Court is directly applicable to the facts of the present case. The petitioner in the present case had given his application and undertaking dated 10.01.2001 (Annexure RW-5/3 and RW-5/4) authorising the Bank to refund or make good any amount of which he is not entitled or any amount which has been credited in the account of the petitioner in excess. Once the clarification had been given by the respondent Accountant General vide letter dated 27.05.2014 (Annexure RW-5/6), the impugned recovery has been affected and does not require any interference as the petitioner was bound by the undertaking given by him and also he could not get the benefit of Dearness allowance, which was not admissible as per the rules. The petitioner cannot get any benefit from the judgment passed by the Supreme Court in case ? State of Punjab and others etc. v. Rafiq Masih (White Washer) etc., 2015 (4) SCC 334 whereby the recovery of excess amount cannot be made in the following cases: -

"(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 of excess of five years, before the date 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."

13. The petitioner had been a member of Ex-HPSC, remained MLA during the period from 21.02.1967 to 30.04.1977 and does not fall any of above five categories as laid down by the Supreme Court in Rafiq Masih (White Washer) etc., case (supra). The petitioner in the present case is bound by the application

and undertaking dated 10.01.2001 (Annexures RW-5/3 and RW-5/4) and the respondent-Bank has rightly deducted the amount as per clarification given by the Accountant General, vide letter dated 27.05.2014 (Annexure R-5/6).

14. In view of above, the present writ petition is dismissed. However, the respondent''s Bank is restrained from making the recovery of interest amount from the petitioner keeping in view the fact that there was no mala-fide attributed to the petitioner for deposit of the excess amount.