

(2011) 03 SHI CK 0169
In the High Court Of Himachal Pradesh
Case No : C.W.P (T) No. 9496 of 2008

Garbu Ram

APPELLANT

Vs

Himachal Pradesh State Electricity Board and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0169

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that the Petitioner served the Indian Army with effect from 25.1.1963 till 23.1.1978. Thereafter his name was recommended by the Ex-servicemen Cell, Shimla and was appointed as T-Mate on 3.8.1982 in the Respondent-Board. He joined his duties on 9.8.1982. He was given the benefits of approved military service towards seniority and pay fixation vide Annexures RA-1 and RA-2 dated 1.8.1992 and 14.2.1994, respectively. However, vide order dated 28.2.2003, the benefits granted to the Petitioner of military approved service were withdrawn and his pay was re-fixed on 14.3.2003 vide Annexure R-6.

2. Mr. Dilip Sharma has strenuously argued that the action of the Respondents to withdraw the benefits granted to his client on 14.2.1994 could not be withdrawn on 28.2.2003 and his pay could not be re-fixed on 14.3.2003 without hearing him. He also contended that the Respondents have recovered a sum of Rs. 66,078/- from the gratuity and the pension has also been re-fixed on the basis of communications dated 28.2.2003 and 14.3.2003. He lastly contended that his client has neither misled nor misrepresented the authorities at the time when the approved military service rendered by the Petitioner was counted for the purpose of giving him the benefits of seniority and pay.

3. Ms. Anjula Khajuria has supported the orders dated 28.2.2003 and 14.3.2003.

According to her, since the ex-servicemen, belonging to technical trade, were given the benefit of 15% reservation only with effect from 3.5.1983, the Petitioner was wrongly granted the benefit and in these circumstances over payment was to be recovered and his salary was to be re-fixed as per orders dated 28.2.2003 and 14.3.2003.

4. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

5. Petitioner is an ex-serviceman. He has neither misled nor misrepresented the authorities when he joined on 8.8.1992. He was given the benefit of approved military service vide order 1.8.1992 and 14.2.1994. It was a conscious decision taken by the Respondent-Board. Petitioner has retired as Assistant Line Man on 31.1.2003.

His pensionary/retiral benefits were to be worked out on the basis of last pay drawn at the time of superannuation. However, the Respondent-Board without hearing the Petitioner has withdrawn the benefits given to the Petitioner on 28.2.2003 and his pay was re-fixed on 14.3.2003. Petitioner has suffered civil and evil consequences. The Respondents were bound to hear the Petitioner before the decision was taken to re-fix his pay.

6. It is also surprising to note that Respondent-Board has decided to withdraw the benefits given to the Petitioner on 1.8.1992 and 14.2.1994, after his retirement. It is true that the Petitioner could be given benefits of approved military service only with effect from 3.5.1983, the date on which the benefit was granted to ex-servicemen belonging to technical trade. Petitioner has been given the benefit by the Respondent-Board at its own volition on 1.8.1992 and 14.2.1994 without being misrepresented or misled by the Petitioner. The benefits given to the Petitioner cannot be permitted to be withdrawn at this belated stage, that too, after his retirement. Respondents have also made recoveries from the gratuity of the Petitioner, vide Annexure A-5.

7. Ms. Anjula Khajuria has strenuously argued that the Petitioner had given undertaking to refund the amount as per Annexure RA-7. It is a constitutional and legal right to get the pension and gratuity in accordance with law. In the instant case, the decision to re-fix the pay of the Petitioner without hearing him was void ab initio.

8. Their Lordships of the Hon"ble Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, have culled out the following principles governing the circumstances in which the excess amount cannot be recovered by the employer:

55. That apart, it also appears from the record produced before us that while the Finance Department of the Government of Bihar was in favour of making the amended provisions of FR. 22-C applicable to the Appellants-teachers after having come to know that the said rule did not exist and had been substituted,

the Department of Human Resource Development, Government of Bihar, wanted to apply the unamended provision to the Appellants-teachers so as to make available the benefit of additional increment provided for under FR.22-C to its teachers, unaware of the fact that even under FR.22-C they were not entitled to the additional increment as they were not discharging duties and responsibilities of greater importance on the promoted post.

56. This further goes on to show that the authorities in the State of Bihar were not even aware of the basic requirement for grant of additional increment and the decision appears to have been taken without proper application of mind. Otherwise, there was no reason for the Finance Department to state in the counter affidavit filed before the High Court that any affidavit filed on behalf of the Education Department may be ignored as Finance Department was the competent authority. In this very affidavit, the Finance Department while admitting that the pay fixation by the Education Department was wrong, stated as under:

"...the fixation of pay under Fundamental Rule 22-C has wrongly been made as it was not in existence. Pay fixation on the basis of a nonexistent rule is a bona fide mistake."

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram Vs. State of Haryana and Others*, , *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, ; *Union of India (UOI) and Another Vs. M. Bhaskar and Others*, ; *V. Gangaram Vs. Regional Joint Director and others*,

Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, ; *Purshottam Lal Das and Others Vs. The State of Bihar and Others*, ; *Punjab National Bank and Others Vs. Manjeet Singh and Another*, ; and *Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.*

59. Undoubtedly, the excess amount that has been paid to the Appellants - teachers was not because of any misrepresentation or fraud on their part and the

Appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part.

The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the Appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the Appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the Appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the Appellants-teachers should be made.

60. Learned Counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some installments/ amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the Appellant-teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.

9. Accordingly, in view of the observations and discussions made herein above, the action of the Respondent-Board to re-fix the Petitioner's pay after his retirement, that too without hearing him is arbitrary exercise of the powers. Petitioner ought to have been heard before the decision was taken to re-fix his salary.

10. Consequently, the petition is allowed. Annexures A-5 dated 22.5.2003, RA-5 and RA-6 dated 28.2.2003 and 14.3.2003, respectively are quashed and set aside. Respondents are directed to fix the Petitioner's pensionary/retiral benefits on the basis of Annexure RA-1 and RA-2. The amount, which has been recovered from the gratuity amount of the Petitioner, is directed to be refunded to him alongwith interest @ 7% per annum. Needful be done within a period of 8 weeks from the date of production of certified copy of this judgment by the Petitioner. No costs.