
(2014) 02 BOM CK 0263
In the Bombay High Court
Case No : Writ Petition No. 6919 of 2012

Gorakh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Citation : (2014) 5 MhLj 670

Hon'ble Judges : R.M. Borde, J;N.W. Sambre, J

Bench : Division Bench

Advocate : Ajay G. Talhar, Advocate for the Appellant; A.V. Gondhalekar, A.G.P., S.R. Deshpande and Avishkar S. Shelke, Advocate for the Respondent

Judgement

R.M. Borde, J.—Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties. The petitioner is seeking to quash the order dated 31-3-2012, issued by respondent No. 2, directing revision of pay-scale and recovery of amount from the pensionary benefits accruable to the petitioner as a consequence of revision of pay-scale from 30-5-1984 onwards.

2. The petitioner was initially employed in 1978 as a Junior Assistant Scientist and has retired on 31-5-2010 on attaining age of superannuation. After his retirement, taking recourse to the circular issued by the University on 17-8-2010, a decision is taken to refix the pay-scale admissible to the petitioner since 1984 and a further direction has been issued to recover the excess amount paid to him while in employment out of the pensionary benefits accruable to the petitioner.

3. The petitioner has been considered eligible for promotion to the post of Senior Assistant Scientist in the pay-scale of Rs. 680-1250, as per the order dated 15-9-1984. The petitioner has been considered for promotion since he possesses qualification as M.Sc. in First Class and having five years experience. The order impugned in the petition has been issued in pursuance to the circular issued by the respondent-University on 17-8-2010.

4. A reference is made, in the circular, to a decision rendered in Writ Petition No. 2750 of 1990, decided on 21-6-2006, by the Division Bench of this Court at Nagpur. In paragraph No. 2 of the Circular, it is recorded that:

The High Court has directed to review the decision taken in respect of grant of higher pay-scale to the employees which would diminish the possibility of extending such benefits to junior employees in preference to the senior one.

It is also recorded that:

While prescribing the eligibility to claim higher pay-scale, five years experience on the post of Senior Research Assistant shall be taken into consideration and thereafter refixation of the pay shall be done. On completion of such revision, excess amount paid to the junior employees shall also be recovered.

Thus, it is tried to be demonstrated in the circular that the directions for revision of pay-scales are issued in adherence to the decision of the Division Bench of this Court at Nagpur in the judgment referred to above.

5. In the instant case, it is not a matter of dispute that the petitioner has been extended benefit of higher pay-scale in the pay band of Rs. 600-1250 from 30-5-1984. The University authorities have recorded a finding, while issuing orders for recovery of amount, that the petitioner is not eligible to claim higher pay-scale from 30-5-1984 and the amount paid in excess needs to be recovered. The consequent revision and extension of benefit of the pay-scale is also refused on the basis of revision of pay-scale as on 30-5-1984 and recovery of Rs. 4,21,889/- has been saddled.

6. An affidavit-in-reply has been presented on behalf of respondent-University and it is contended that the decision has been taken in pursuance to the directions issued by this Court in Writ Petition No. 2750 of 1990. It is also recorded in the affidavit-in-reply that the petitioner has consented for recovery of amount and as such, he cannot make any grievance in that regard.

7. A rejoinder affidavit has been presented by the petitioner wherein he contends that since the respondent-University has withheld pensionary benefits and petitioner was required to perform marriage of his daughter in the year 2010 and was in dire need of money, he had no other alternative except to agree with the demand of the respondent-University for deduction of amount from pensionary benefits receivable by him.

8. Merely because petitioner has consented for recovery of amount, in a given situation, so as to secure monetary benefit which was earnestly needed, such consent cannot be interpreted to the disadvantage of petitioner and action of recovery of dues, if not sustainable in law, cannot be upheld and needs to be quashed.

9. Turning to the facts of Writ Petition No. 2750 of 1990, decided by the Division Bench of this Court at Nagpur, it transpires that the petitioners in the aforesaid

writ petition, working as Senior Research Assistants with respondent No. 2-University, have sought deletion of condition of five years experience imposed for holding them entitled to receive higher pay-scale of Rs. 680-1250. According to the petitioners, in the aforesaid writ petition, pay-scale of Rs. 680-1250 has been prescribed from 1-8-1981 and at relevant time, Junior Research Assistants were drawing their salary in the pay-scale of Rs. 395-800. The eligibility qualification for the post of Assistant Professor was M.Sc, whereas, eligibility qualification for getting higher pay-scale was also M.Sc. with at least second class in relevant subject and five years experience in research with identifiable research contribution. The petitioners, in the aforesaid writ petition, contended that they shall also be held eligible to receive higher pay-scale from the date of appointment itself since pay-scale of Assistant Professor, holding same qualification, was Rs. 680-1250 or Rs. 700-1600. It was pointed out by the petitioners that junior employees were also extended benefits of higher pay-scale and as such, their pay needs to be stepped up. The Division Bench of this Court, while accepting the arguments of the petitioners, in the aforesaid writ petition, has observed in paragraph Nos. 14 and 15 of the judgment, as quoted below:

"14. It cannot be lost sight of that the petitioners have challenged their fixation which has been done in terms of Government Resolution dated 7-8-1981. The learned Counsel for the respondents have argued that several Junior Research Assistants have already been given benefit of fixation in pay-scale of Rs. 680-1250 and those persons are not parties before this Court. We find that the grievance of the petitioners can be ventilated by directing the respondents to step up their pay to the existing pay of the Senior Research Assistant who got the fixation in scale of 680-1250 accordingly prior to them because of completion of total five years of service in University but is junior to them in cadre of Senior Research Assistant. Thus, if pay of petitioners is stepped up, no injustice will be caused to such junior in cadre Senior Research Assistants who were already placed in time scale of Rs. 680-1250 at the relevant time and whose salary has been revised accordingly from time to time.

15. We accordingly hold that the condition of having five years total experience of University service for claiming pay-scale of Rs. 680-1250 in the cadre of Senior Research Assistant is unsustainable. The 5 years service has to be after the candidate is appointed or promoted as the Senior Research Assistant. In view of this interpretation given by us, it is not necessary to quash or set aside the said condition. The respondents are directed to step up the pay of the petitioners as mentioned above and to release to them all consequential arrears and to complete said exercise as early as possible and in any case within a period of four months from today. Writ Petition is allowed accordingly. Rule is made absolute in above terms. There shall be no order as to costs."

10. On reading the judgment delivered by the Division Bench, it appears that the Court issued directions to step up pay of the petitioners in the pay-scale of Rs. 680-1250 since the juniors were already getting the same scale. It was also

observed that junior employees are not parties before the Court. The pay-scale of the petitioners need to be stepped up. The Division Bench has observed that the condition in respect of having 5 years total experience in University service for claiming pay-scale of Rs. 680-1250 is unsustainable and five years service has to be after the candidate is appointed or promoted as Senior Research Assistant. The Division Bench has never issued a direction for withdrawal of benefits extended to the junior employees. By virtue of the judgment delivered in Writ Petition No. 2750 of 1990, the respondents are required to pay higher pay-scale to the petitioners therein without insisting for completion of five years service. By issuing direction of withdrawal of the benefits to the junior employees who have already received benefits, the respondent-University is creating discrimination amongst same set of employees. The decision has been rendered by the Division Bench of this Court in Writ Petition No. 2750 of 1990 on 21-6-2006 and circular has been issued in observance thereof on 17-8-2010, much after retirement of the petitioner herein. The reference to the directions issued by the High Court in paragraph No. 2 of the circular is quite misleading and no such direction, as has been recorded in the said circular, has been issued by the Division Bench of this Court. The proposed action of taking the case of the petitioner for revision itself is discriminatory and would separate such employees from the class of the petitioners in Writ Petition No. 2750 of 1990. Even otherwise, decision taken by the respondent-University on 17-8-2010, much after retirement of the petitioner from employment, is unsustainable and deserves to be quashed.

11. In the matter of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , higher pay-scale was erroneously granted in the year 1973 and recovery, on account of excess payment, was sought to be made in the year 1984, after lapse of eleven years. The Supreme Court, while dealing with the matter, observed that the recovery of amount, on account of reduction in pay-scale after lapse of several years, affects the employee financially and such recovery would not be just and proper.

12. Similarly, in the matter of Sahib Ram Vs. State of Haryana and Others, , it was found that the appellant therein did not possess the required educational qualification and consequently was not entitled to claim relaxation, but having been granted relaxation erroneously by the Principal and having been paid the salary in the revised pay-scale, it was directed that the excess payment shall not be recovered.

13. In the matter of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, , it is observed by the Supreme Court, in paragraph 9 of the judgment, thus:

"9. We are of the considered view, after going through various judgments cited at the bar, that this Court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be

recovered."

14. In the matter of Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, , referring to the judgments in the matter of Shyam Babu Verma and Sahib Ram (supra), it is observed by the Supreme Court, thus:

"Such relief, restraining recovery back of excess payment, is granted by Courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, Courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

15. In the matter of Syed Abdul Qadir and Others Vs. State of Bihar and Others, , referring to the earlier judgments, the Supreme Court has observed thus:

"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."

(emphasis added)

16. Although, it is observed in the matter of Chandiprasad Uniyal (supra), that any amount paid or received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situation, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. It is further observed that barring few

instances pointed out in the matter of Syed Abdul Qadir and B.J. Akkara (supra), excess payment made due to wrong/irregular pay fixation can always be recovered.

17. In the instant matter, the petitioner has already retired on attaining age of superannuation. The respondent-authorities have sought to revise the pay-scale granted to the petitioner in the year 1984 by issuing orders in that behalf in the year 2010, much after the retirement of the petitioner. The basis for effecting recovery is stated to be the decision rendered by Division Bench of this Court in Writ Petition No. 2750 of 1990, decided on 21-6-2006. As has been observed in the foregoing paragraphs, the Division Bench of this Court has not directed or in any way suggested the respondents to take steps for recovering the amount or to revise the pay of the employees extended in the year 1984. The case of the petitioner squarely falls within the exceptions carved out in the matters of Syed Abdul Qadir and B.J. Akkara, cited supra.

18. For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The order issued by the respondent-University on 31-3-2012 is quashed and set aside. Respondents are directed to repay the amount to the petitioner, which has already been deducted in pursuance to the aforesaid order, as expeditiously as possible, preferably within a period of six months from today. Rule is accordingly made absolute. There shall be no order as to costs.