
(2014) 10 P&H CK 0089
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 22208 of 2011

Gurdip Kaur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2015) 180 PLR 676 : (2015) 2 SCT 111

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : S.S. Arya, Advocates for the Appellant; Karminder Singh, Advocates for the Respondent

Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the order of recovery, whereby respondents sought to recover the disputed amount from the family pension of the petitioner. Notice of motion was issued and pursuant thereto, two separate written statements were filed. One on behalf of respondents No. 1 to 3, whereas a separate written statement was filed on behalf of respondents No. 4 and 6.

2. Learned counsel for the petitioner submits that neither there was any scope of misrepresentation at the hands of the petitioner nor it was even the allegation against her, levelled by any of the respondent authorities. In such a situation, respondent authorities were not entitled to recover the disputed amount from the family pension of the petitioner. In support of his contentions, learned counsel for the petitioner places reliance on the judgments of the Hon'ble Supreme Court in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, , State of Punjab and others v. Krishan Kumar Bansal & others (Special Leave to Appeal (C) No. 24607 of 2010), decided on 2.8.2013 and Full Bench judgment of this Court in Budh Ram and Others Vs. State of Haryana and Others, . Finally, he prays for setting aside the impugned order, by allowing the instant writ petition.

3. On the other hand, learned counsel for respondents No. 1 to 3 as well as

learned counsel for respondent No. 4 and 6 submit that since the excess payment was made to the petitioner because of mistake, respondents authorities were entitled to rectify that mistake, by recovering the excess amount paid to the petitioner. Thus, they pray for dismissal of the writ petition.

4. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the case in hand, present writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

5. It is a matter of record and not in dispute that neither the petitioner ever put and pressed her claim before the respondent authorities nor this is even the allegation against the petitioner. It is also a matter of record that petitioner was widow and was getting family pension. The amount that was sought to be recovered, has been recovered by the respondents authorities from the amount of family pension of the petitioner. In view of these undisputed facts on record, respondents were not justified either on facts or in law to recover the disputed amount from the family pension of the petitioner. Having said that, this Court feels no hesitation to conclude that the impugned action of the respondents, recovering the disputed amount from the family pension of the petitioner, cannot be sustained, being arbitrary on the face of it.

6. Another equally important question that falls for consideration of this Court is whether the respondents can be allowed to draw benefit out of their own wrong, particularly when petitioner was not at fault at any point of time. The alleged mistake, if any, was the result of the negligence of one or the other official of the respondents.

7. It is neither pleaded nor argued case on behalf of the respondents that after the alleged mistake came to their notice, appropriate action was initiated against the erring and negligent official. Not even a warning has been issued against any of the official of the respondents, so as to direct him to be more careful in future. In such a situation, it can be safely concluded that the respondents acted in an arbitrary and illegal manner, while recovering the amount in question from the family pension of the petitioner, thus, the impugned action cannot be sustained, for this reason also.

8. The above-said view taken by this Court also finds support from the judgments of the Hon''ble Supreme Court in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , Chandi Prasad Unniyal's case (supra), Krishan Kumar Bansal's case (supra) and the Full Bench judgment of this Court in Budh Ram's case (supra). The relevant observations made by the Hon''ble Supreme Court in Krishan Kumar Bansal's case (supra), which can be gainfully followed in the instant case, read as under:--

"Shri Nayyar fairly conceded that in none of these cases, the respondents were

responsible for mistake committed in the fixation of their pay. He, however, relied upon the judgment of a two-Judge Bench in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, and argued that the amount erroneously paid to the employees can be recovered from them even though they may not be responsible for wrong fixation of their pay, etc.

In our opinion, there is no merit in the argument of the learned Additional Advocate General. By an order dated On 29.07.2013, a three Judge Bench dismissed Special Leave Petition (Civil).../2010 (CC 14563 of 2010) which was directed against order dated 22.07.2009 passed by the learned Single Judge in RSA No. 2703 of 2009. The relevant portions of order dated 29.07.2013 are extracted below:

"This petition is directed against order dated 22.07.2009 passed by the learned Single Judge of the Punjab and Haryana High Court whereby he dismissed the second appeal filed by the petitioners and upheld the judgments and decrees passed by the trial Court and the lower appellate Court nullifying the recovery of the amount allegedly paid to the respondent in excess of what was due to him.

We have heard Shri Kuldip Singh, learned counsel for the petitioners and carefully perused the record.

In our considered opinion, the order under challenge does not suffer from any legal infirmity requiring interference under Article 136 of the Constitution.

It was neither the pleaded case of the petitioners before the trial Court nor it was argued that the respondent was, in any way, responsible for any mistake committed by the concerned authority in the fixation of his pay. Therefore, the recovery sought to be effected from him was wholly arbitrary, unjustified and violative of the rule of natural justice.

With the above observation, the special leave petition is dismissed."

In view of the above order, these petitions are liable to be dismissed.

The following are the additional reasons for not entertaining the petitioners' challenge to the orders of the learned Single Judges:

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iii) The show cause notice, if any, issued to the respondents proposing recovery of the amount paid to them and the orders passed by the competent authorities for recovery of the alleged excess amount paid to the respondents have also not been produced with the special leave petitions.

iv) The petitioners have neither averred nor any document has been placed on record to show that the State Government had initiated action against any of the officers responsible for committing mistake or negligence in fixing the pay of the respondents. This being the position, there is no justification for making recovery

from the pay of pension of the respondents.

The judgment relied upon by Shri Nayyar is clearly distinguishable on facts and the ratio of the judgments in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, and Sahib Ram Vs. State of Haryana and Others, is clearly attracted in these cases.

The special leave petitions are accordingly dismissed.

As a sequel to the above, we direct that within three months from today, the petitioners shall repay the amount, if any, recovered from any of the respondents. If the needful is not done, then the petitioners shall have to pay interest to the concerned employees/officers at the rate of twelve percent per annum from the date of recovery till the date of actual repayment."

9. Reverting back to the facts of the present case and respectfully following the law laid down by the Hon"ble Supreme Court as well as the Full Bench of this Court, it is unhesitatingly held that the respondents acted in arbitrary and illegal manner, while effecting the recovery from the family pension of the petitioner. Even the judgment of the Hon"ble Supreme Court in Chandi Prasad Unniyal's case (supra), applies in favour of the petitioner, because the present case would clearly fall within the exception of extreme hardship, as laid down by the Hon"ble Supreme Court in Chandi Prasad Unniyal's case (supra). It is so said, because the petitioner was the widow of a retiree government employee and was getting her family pension.

10. No other argument was raised.

11. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned action of the respondents, effecting recovery of disputed amount from the family pension of the petitioner, has been found to be patently illegal as well as arbitrary and the same is hereby set aside. Consequently, the respondent authorities are directed to repay the amount recovered from the petitioner within a period of three months from today, failing which petitioner shall be entitled for interest @ 12% per annum from the date the amount was recovered from her till date of repayment thereof.

Resultantly, instant writ petition stands allowed, however, with no order as to costs.