

(2014) 05 PAT CK 0069
In the Patna High Court
Case No : C.W.J.C. No. 10280 of 2013

Harendra Prasad Gupta

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2015) LabIC 728 : (2015) 1 PLJR 101

Hon'ble Judges : S.P. Singh, J; I.A. Ansari, J

Bench : Division Bench

Advocate : Shekhar Singh, Advocates for the Appellant; Bijay Kumar Sinha, Advocates for the Respondent

Judgement

I.A. Ansari, J.—The order, under challenge, in the present writ petition, made under Article 226 of the Constitution of India, puts to challenge the order, dated 14.3.2014, passed by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the learned Tribunal") in O.A. No. 881 of 2012, whereby the learned Tribunal has dismissed O.A. No. 881 of 2013, which was filed by the petitioner. The facts, giving rise to the present writ petition, may, in brief, be set out as under:--

(i) The petitioner was posted, on 4.8.2003, as Assistant Law Officer, East Central Railway, Hajipur, and his pay was fixed, on 12.11.2003, at Rs. 9,250/-, in the scale of Rs. 7,500-12,000/-, by Office Order, dated 12.11.2003.

(ii) The petitioner was promoted as Senior Law Officer, East Central Railway, Hajipur, in the scale of Rs. 10,000-15,200/-, by Office Order, dated 31.10.2006, and, following his promotion, as Senior Law Officer, petitioner's pay was fixed by order, dated 1.12.2006, at Rs. 10,325/-. Soon thereafter, i.e., on 2.7.2007, the petitioner was transferred from East Central Railway, Hajipur, to Metro Railway, Kolkata, and was released by the East Central Railway, Hajipur, by Office Order, dated 2.7.2007. The petitioner was issued, on 31.7.2007, Last Pay Certificate by

the East Central Railway, Hajipur, to Metro Railway, Kolkata, and his pay was fixed at Rs. 10,325/-.

(iii) However, by letter, dated 24.8.2011, issued by respondent No. 3, namely, Deputy Chief Personal Office (Gaz), East Central Railway, Hajipur, the petitioner was informed that in the light of the Railway Board's letter No. E(GP)2007/1/93, dated 29.2.2008, there is provision to pay allowances of Rs. 1,500/- per month up to a period of 8 years on promotion to Senior scale; whereas the petitioner had been paid regular scale instead of the said allowance. By the said letter, respondent No. 3, namely, Deputy Chief Personal Office (Gaz), East Central Railway, Hajipur, also informed the petitioner that allowance of Rs. 1,500/- per month was payable to the petitioner between the period 31.10.2006 and 3.8.2011 and that regular pay scale ought to have been made available with effect from 4.8.2011. By the letter, dated 24.8.2011, aforementioned, the petitioner was also asked to clarify his position.

(iv) By his representation, dated 1.9.2011, the petitioner clarified his position that he had no hand in obtaining regular pay scale and that whatever had been done by the concerned authorities were done at the instance of the concerned authority and that the receipt of the pay scale by the petitioner, instead of allowance of Rs. 1,500/- per month, was bona fide and not actuated by misrepresentation or in consequence of fraud.

(v) Petitioner's clarification was followed by Memorandum, dated 2.12.2011, whereunder the pay of the petitioner was amended and re-fixed. This re-fixation showed that there was no change in the pay scale of the petitioner except the fact that between the period 1.1.2006 and 1.7.2011, the petitioner had been given admissible allowance of Rs. 1,500/- per month. Thereafter, no further communication was made to the petitioner by the authorities concerned nor was any show cause notice ever issued to the petitioner for making any recovery from the salary of the petitioner of the excess payment, which had been made to the petitioner.

(vi) However, all of a sudden, from the pay slip of the month of September, 2011, of the petitioner, a deduction of Rs. 10,988/- was made.

(vii) Terming the said deduction from the pay of the petitioner as illegal and arbitrary, the petitioner filed an application, under Section 19 of the Administrative Tribunal Act, 1985, in the learned Tribunal, which came to be registered as O.A. No. 881 of 2012. By the O.A., petitioner sought for an order restraining the respondents from making any recovery from his pay and also for a direction to refund the amount already deducted/recovered from the petitioner's salary. The petitioner also prayed therein to quash the order, dated 2.12.2011, pursuant to which recovery was being made from the salary of the petitioner.

(viii) While issuing notice to the respondent authorities concerned, the learned Tribunal stayed further recovery from the salary of the petitioner by its order,

dated 17.10.2012, passed in O.A. No. 881 of 2012. However, upon hearing, learned Tribunal, by the order, dated 14.3.2013, has dismissed O.A. No. 881 of 2012, as being devoid of any merit.

2. Aggrieved by the dismissal of O.A. No. 881 of 2012, the petitioner has filed this writ petition.

3. We have heard Mr. Shekhar Singh, learned Counsel for the petitioner, and Mr. Bijay Kumar Sinha, learned Counsel, appearing on behalf of the respondents.

4. Appearing on behalf of the petitioner, Mr. Shekhar Singh, learned Counsel, submits that the excess payment, if any, was received by the petitioner without any misrepresentation from the end of the petitioner or without any fraud having been played by the petitioner. Mr. Singh contends that the excess payment was made to, and received by, the petitioner bona fide and, hence, there ought not to have been, in such circumstances, any order of recovery of the excess amount.

5. In support of his above submissions, Mr. Singh, learned Counsel for the petitioner; has placed reliance on (i) Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, , (ii) Syed Abdul Qadir and Others Vs. State of Bihar and Others, , and (iii) Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, .

6. Repelling the submissions made on behalf of the petitioner, Mr. Bijay Kumar Sinha, learned Counsel, appearing for the respondents, submits that it is not the law that unless excess payment has been received by a person, because of misrepresentation or fraud on his part, no recovery of the excess amount is permissible in law. In the case at hand, the petitioner, being a Law Officer, ought to be presumed to himself know that the payment, made to him, was in excess of his entitlement and yet he received the money and, hence, there is no impediment in the course of action, which has been adopted by the respondents for recovery of the excess payment already made to the petitioner.

7. Mr. Sinha, learned Counsel, appearing for the respondents, also submits that it is not impermissible to recover excess payment made by an employer to an employee without any misrepresentation from the end of the employee or without fraud having been played by the employee. The consideration of the element of mis-representation or fraud may be relevant, points out Mr. Singh, in a case, where the recovery would of huge amount of money or the recipient is found to be either on the verge of retirement or very near his retirement, for, recovery, in such cases, may be iniquitous, especially, when a person has no hand in receiving excess payment of money than what his entitlement was. In these circumstances, the authorities, relied upon by the petitioner, are not applicable to the facts of the present case, so contends Mr. Sinha, learned Counsel for the respondents.

8. In support of his above submission, that the law permits recovery of excess amount of payment made to the recipient employee even if the employee had

not committed any fraud or misrepresentation, Mr. Sinha, learned Counsel, appearing for the respondents, places reliance on (i) Bihar State Electricity Board and Others Vs. Ram Kumar Bharti @ R.K. Bharti and Others and (ii) Biresh Prasad Vs. The State of Bihar and Others, .

9. In order to correctly appreciate the position of law applicable to the case at hand and determine if the petitioner is entitled to any relief in the present writ petition, a survey of some of the judicial precedents is imperative.

10. In the case of Col. B.J. Akkara (Retd.) (supra), which relates to the case of recovery of the amount of pension, the Supreme Court pointed out that in the light of its decision, in 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, , and V. Gangaram Vs. Regional Joint Director and others, , it is clear that the Court has consistently granted relief against recovery of wrong payment of emoluments/allowances from an employee if the following conditions are fulfilled, namely, (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee; and (b) 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.

11. It has also been pointed out by the Supreme Court, in Col. B.J. Akkara (Retd.) (supra), that the relief, restraining an employer from recovering excess payment made to an employee, is granted by courts not because of any right of the employee, but in equity and in exercise of judicial discretion in order to relieve the employee of the hardship that will be caused if recovery is permitted. In Col. B.J. Akkara (Retd.) (supra), the Supreme Court has further pointed out that a Government servant, particularly, one in the lower rung of service, would spend whatever emoluments he receives for the upkeep of his family. If he receives 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 of restrain against recovery of excess amount is granted. But where the employee had knowledge that the payment received was in excess of what was due or that the payment was wrongly made to him, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The Supreme Court has also pointed out in Col. B.J. Akkara (Retd.), that the matter of recovery of excess payment being in the realm of judicial discretion, Courts may, in the facts and circumstances of any particular case, refuse to grant a relief against recovery.

12. The case of Syed Abdul Qadir (supra), wherein there was a dispute whether pay fixation on promotion was to be regulated by FR 22-C (since deleted) or FR 22(I)(a)(1) or FR 22(I)(a)(2), the Supreme Court, having held that pay fixation was to be done according to FR 22(I)(a)(2), further considered the question whether excess payment, already made to the appellants, and, for that matter, to other similarly situated employees, should be permitted to be recovered or

respondent Government should be prohibited from making recovery and pointed out, in this regard, that the Supreme Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was paid not 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.

13. In tune with its earlier decision, in Col. B.J. Akkara (Retd.) (supra), the Supreme Court also observed, in Syed Abdul Qadir (supra), that 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 employee of 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 was 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 Singh Vs. State of Haryana, ; 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. B.J. Akkara (Retd.) (supra); 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. vs. Bijay Bahadur and Anr. (2000) 10 SCC 99)}.

14. Taking into account the facts and attending circumstances of the case of Syed Abdul Qadir (supra), the Supreme Court observed that the excess amount that had 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 and even the Finance Department concerned had, in its counter affidavit, admitted that it was a bona fide mistake on their part and, thus, the excess payment made was the result of wrong interpretation of the rule that was applicable to the appellants, 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.

15. On behalf of the appellants-teachers, in Syed Abdul Qadir (supra), it was submitted that majority of the beneficiaries had either retired or were on the verge of retirement and, hence, keeping in view the peculiar facts and circumstances of the case and to avoid any hardship to the appellants-teachers, the Supreme Court, in Syed Abdul Qadir (supra), disallowed recovery of the amount that had been paid in excess to the entitlement of the appellants-teachers.

16. Having taken note of the decisions in Col. B.J. Akkara (Retd.) (supra) and Syed Abdul Qadir (supra), the Supreme Court, in Chandi Prasad Uniyal (supra), has pointed out that it (Supreme Court) had never laid down, as a principle of law, that only if there is misrepresentation or fraud on the part of the recipient of excess payment that the excess amount paid, due to irregularity or wrong fixation of pay, should be recoverable.

17. In Chandi Prasad Uniyal (supra), the Supreme Court considered its several previous decisions.

18. Referring to the case of Shyam Babu Verma vs. Union of India, ((1992) 2 SCC 521), which was a three-Judge Bench judgment, the Supreme Court, in Chandi Prasad Uniyal (supra), pointed out that in the case of Shyam Babu Verma (supra), the higher pay scale was erroneously paid in the year 1973 and when the same was sought to be recovered, in the year 1984, after a period of eleven years, the Court felt that sudden reduction of the pay scale from Rs. 330-560 to Rs. 330-480 after several years of implementation of said pay scale had not only affected financially but even the seniority of the petitioners and, hence, in these circumstances, the Supreme Court had taken the view that it would not be just and proper to recover any excess amount already paid.

19. Referring to the case of Sahib Ram Vs. State of Haryana and Others, , the Supreme Court has observed, in Chandi Prasad Uniyal (supra), that in Sahib Ram (supra), a two-Judge Bench of the Supreme Court noticed that the appellants therein did not possess the required educational qualification and, consequently, would not be entitled to the relaxation, but on noticing that having granted relaxation, payment of salary had been made on the basis of revised scales, the Supreme Court ordered that the excess payment should not be recovered applying the principle of equal pay for equal work.

20. Similarly, referring to the case of Yogeshwar Prasad and Others Vs. National Inst., Edu. Planning and Admn. and Others, , the Supreme Court, in Chandi Prasad Uniyal (supra), pointed out that in the case of Yogeshwar Prasad (supra), a two-Judge Bench of the Supreme Court took the view that the grant of higher pay could be recovered unless it was a case of misrepresentation or fraud and, on facts, since neither misrepresentation nor fraud could be attributed to appellants therein, the Supreme Court restrained recovery of excess amount paid.

21. The Supreme Court, with regard to the above aspect of law, also referred to the decisions in Col. B.J. Akkara (Retd.) (supra) and Syed Abdul Qadir (supra), and has pointed out that in Syed Abdul Qadir (supra), a direction was issued restraining recovery of excess payment made to the teachers, because of the peculiar facts and circumstances of the case inasmuch as the beneficiaries had either retired or were on the verge of retirement and recovery would have caused undue harsh to them.

22. Commenting on the decision of Syed Abdul Qadir (supra), which, Mr. Singh, learned Counsel for the petitioner has heavily referred to, as the authority for the

proposition that when an employee is found to have received excess payment without any misrepresentation or fraud, the Supreme Court, in Chandi Prasad Uniyal (supra) observed that in Syed Abdul Qadir's case (supra), such a direction was given keeping in view of the peculiar facts and circumstances of that case so as to avoid any hardship to the beneficiaries, because the beneficiaries had either retired or were on the verge of retirement. The relevant observations, appearing in Chandi Prasad Uniyal (supra), read as follows:--

"We may point out that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them."

23. Having, thus, referred to a large number of decisions including the decision in Col. B.J. Akkara (retd.) (supra) and Syed Abdul Qadir (supra), which have been relied upon by learned Counsel for the petitioner, the Supreme Court, has, in no uncertain words, in Chandi Prasad Uniyal (supra), held that it (Supreme Court) is not convinced that it (Supreme Court), in its various judgments, has laid down a proposition of law that only if the State or its officials establish that there was mis-representation or fraud on the part of the recipient of excess pay that the amount could be recovered. The Supreme Court also observed, in this regard, in Chandi Prasad Uniyal (supra), that the excess payment of public money, which is often described as "tax payers money", belongs neither to the officers, who have effected over-payment, nor to the recipients, and, hence, there is no reason to determine if excess money was paid due to bona fide mistake or not

24. Having so observed, the Supreme Court, in Chandi Prasad Uniyal (supra), held that any amount paid/received by an employee, without authority of law, can always be recovered barring few exceptions of extreme hardships, but not as a matter of routine or right or else, allowing a person to retain the excess payment, made to him, would amount to unjust enrichment.

25. The relevant observations, made in Chandi Prasad Uniyal (supra), on the above aspect of law, read as follows:--

"We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept

of fraud or misrepresentation is being, brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered."

26. In the light of what has been succinctly laid down in Chandi Prasad Uniyal (supra), it can be safely concluded, and we do hold, that as a principle of law, excess payment, made to a Government employee by any branch/department/under-taking of the Government, is recoverable inasmuch as it is the tax-payers' money, which is paid, in such a case, to an employee inasmuch as money, in such cases, does not belong to any officer, who makes the payment or to the branch/department/undertaking, which makes the payment. When fraud or misrepresentation is the basis of payment, there would be no impediment in making recovery. However, even when the receipt of excess amount is bona fide, or due to mistake, or error on the part of the authority making the payment, the fact of the matter remains that unless it would cause undue hardship to an employee, who has received excess payment bona fide, there would be no impediment in the recovery of excess payment made to an employee, because the excess amount of money paid belongs to the public and not to an individual.

27. The decisions, which have been relied upon by Mr. Sinha, learned Counsel, rest on the same principle as have been indicated in Chandi Prasad Uniyal (supra).

28. Situated thus, we find that even if, for a moment, it is assumed that the petitioner received the excess payment bona fide, the fact remains that the petitioner still has enough service to re-pay the excess amount, which has been paid to him, and, hence, in such circumstances, the impugned process of recovery, which has been initiated against the petitioner, is neither illegal nor unjust.

29. Thus, in the facts situation of the present case, even on equitable consideration, the decision to make recovery of excess amount payment made to the petitioner is not bad or impermissible in law.

30. Because of what have been discussed and pointed out above, we do not find any error, factual or legal, in the decision of the learned Tribunal, which stands impugned in the present writ petition, and/or in the impugned process of recovery.

31. We, therefore, see no reason to interfere with the dismissal of O.A. No. 881 of 2012.

32. In the result and for the reasons discussed above, this writ petition fails and the same shall accordingly stand dismissed. No order as to costs.

S.P. Singh, J.

I agree.