

(2016) 03 DEL CK 0173
In the Delhi High Court
Case No : W.P.(C) No. 21285 of 2005.

Head Constable Dalel Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 229 DLT 23

Hon'ble Judges : Hima Kohli;Sunil Gaur, JJ.

Bench : Division Bench

Advocate : O.P. Aggarwal with Deepak Agarwal, Advocates, for the Appellant;
Dr. Ashwani Bhardwaj, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

1. The present petition has been filed by the petitioner praying inter alia for a writ of certiorari, thereby quashing the order dated 14.1.2005 issued by the Respondents No. 2-5/CISF granting him annual increment on completion of satisfactory service, for one year and enhancing his pay from Rs.3880/- + Rs. 75/- (FPA), as was being drawn till 01.1.2004, to Rs. 3,965/- + Rs. 75 (FPA) payable with effect from 01.1.2005/10.1.2005. Further, the petitioner seeks restoration of his salary to Rs.4,135/-, with effect from 01.1.2004, on the ground that same was wrongly brought down to Rs.3,880/- from November 2004.

2. The brief facts of the case are that the petitioner had joined as a Constable in CISF in April, 1981 and after completion of training, he was posted as a Constable in June, 1986. W.e.f. 1.1.1986, the petitioner's pay was fixed in the revised scale at Rs.870/- w.e.f 01.1.1986. In the year 1987, the petitioner was granted leave for 28 days between 09.3.1987 to 05.4.1987. But, he overstayed for 52 days and was awarded punishment of 7 days fine. On 31.10.1988, the petitioner was awarded censure on the ground that he was found sleeping while on duty. It is the respondent's version that on account of the punishment inflicted on the petitioner, he did not cross the efficiency bar during the year

1988, 1989 and 1990 and was able to clear the efficiency bar only in the year 1991, when he was awarded an annual increment which fact has not been disputed by the petitioner.

3. The rub lies in the implementation of the 5th Pay Commission Recommendations dated 01.1.1996, when the petitioner's pay was erroneously fixed at Rs. 3,275/-. As per the respondents, the aforesaid error came to the notice of the department in the year 2004 and steps were taken to rectify the same by issuing an order dated 16.4.2005, directing recovery of the excess amount paid to the petitioner which was to the tune of Rs. 31,015/-. Vide order dated 16.4.2005, the petitioner and the other officers were informed by the respondents that on checking the records, it had transpired that over payments have been made to them that were required to be recovered from their salaries, effective from the year 2005 as per the figures mentioned in the respective columns against their names. The petitioner's name features at Sr.No.11 of the captioned order and the instalment proposed to be recovered from his salary was fixed at Rs.1,945/- p.m.

4. Learned counsel for the petitioner submits that the issue with regard to the validity of an order of recovery of excess amount paid by an employer to an employee stands settled in the light of a recent decision of the Supreme Court in the case of State of Punjab and Others etc. v. Rafiq Masih (White Washer) etc. reported as AIR 2015 SC 696, wherein the Court had the occasion to examine as to whether the order passed by an employer seeking recovery of the monetary benefit wrongly extended to employees can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh the equitable balance of the employer's right to recover, or whether other parameters must be considered before permitting recovery of payments. After examining several decisions on situations where High Courts all over the country had repeatedly set aside orders of recovery made on different parameters, the entire issue was crystallised in para 12 of the judgment in the following manner:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employers, in excess of their entitlement. Be that as it may, based on the decisions herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(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 in excess of five years, before the order 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 conclusions, the recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance or the employer's right to recover."

5. Learned counsel for the petitioner submits that the petitioner's case would squarely fall in the situations envisaged in clause (i) and (iii) above, as the petitioner admittedly belongs to class III service and excess payment had been made to him for a period spreading over eight years before the order of recovery came to be issued and that too, for no fault that could be attributable to him.

6. We are inclined to agree with the submissions made by learned counsel for the petitioner. Undoubtedly, the error in calculating the benefit payable under the 5th Pay Commission was made by the respondents, for which the petitioner cannot be blamed in any manner. Payments were made to the petitioner in terms of the salary fixed by the respondents effective from 01.1.1996 and the said error came to the respondents' notice only in the year 2004, i.e. after the passage of almost eight years and the same was sought to be rectified by passing the order dated 16.4.2005. The action of the respondents in ordering recovery of monthly instalments from the salary of the petitioner who is a class III employee and that too after eight years, would be grossly unfair to him, apart from being extremely harsh and arbitrary as he could in no way be held responsible for the excess amount paid mistakenly by his employer.

7. We are therefore, of the opinion that any correction in the mistake sought to be made by the respondents would have to be prospective, i.e. from the date of issuance of the order dated 16.4.2005, but for the period anterior thereto, the respondents cannot be permitted to effect recovery of the excess amount to the tune of Rs.31,015/-, from the salary of the petitioner. Accordingly, the order dated 16.4.2005, issued by the respondents directing recovery of a sum of Rs.31,015/- from the salary of the petitioner on a monthly basis is quashed and set aside. However, corrections made by the respondents in the petitioner's pay and allowances in terms of the Recommendations of the 5th Pay Commission are maintained. Any part of the excess amount recovered from the salary of the petitioner prior to passing of the interim order dated 11.11.2005, shall be reversed into his account within a period of eight weeks from today, failing which it shall carry interest @ 8% per annum.

8. The petition is disposed of, while leaving the parties to bear their own costs.