
(2011) 01 AHC CK 0311

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37527 of 2008

Janardan Prasad Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 4 AWC 3832 : (2011) 129 FLR 745 : (2011) LLR 745 : (2011) 2 UPLBEC 1191

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri Sujeet Kumar Rai for the Petitioner and perused the record.

2. The Petitioner was promoted w.e.f. 1999 though actually in 2006 on the post of Secretary/General Manager, District Co-operative Bank Ltd. in Centralized Services Cadre-B Post, as a result whereof when his pay was fixed in the promoted scale, it got reduced from the actual basic pay which he was receiving in the year 2006. The Respondents consequently passed an order on 10th October, 2007 for recovery of excess amount which the Petitioner has already received before promotion treating it to be an excessive payment.

3. It is submitted that firstly the aforesaid payment was not on account of any fraud or misrepresentation and secondly, it was paid to the Petitioner what was actually due to him at that time and merely because he was given promotion from backdate, as a result whereof his basic pay while fixation got reduced, that would not entitle the Respondents to recover the amount treating the payment already made as undue salary received by the Petitioner.

4. This case has been called in the revised list but none has appeared on behalf of Respondent Bank though a counter affidavit has been filed through Sri K.N. Mishra, Advocate whose name is also shown in the cause list. The only defence

taken in the counter affidavit is that since promotion has been given to the Petitioner w.e.f. 1999 and his basic pay has been fixed at Rs. 9,350 though in 2006 he was actually getting salary of Rs. 10,050/- on account of grant of stagnation increment etc. hence extra amount, which he had received in the meantime, is to be recovered.

5. In my view, Respondents are not entitled to make any recovery from the Petitioner. It is admitted that till 2006, salary was paid to the Petitioner in consideration of the work which he had discharged and in view of the various increments, which were due to him and paid accordingly. After Petitioner's promotion on higher post made subsequently though from the retrospective date, as a result whereof, in the promoted scale, basic pay gets reduced, that would not mean that higher pay received by the Petitioner on the earlier post can be treated as illegally received money liable to be recovered from him. The presumption on the part of Respondent is wholly unjust and cannot be permitted.

6. It is not the case of the Respondents that before the order of promotion or till the order of promotion was actually issued, the amount, which was paid to the Petitioner, was wrongly paid or paid in excess. If the promotion would not have been given, the Petitioner would have continued to be paid the same amount since that was the amount due to him working on the said post on account of stagnation increment etc.. Therefore, what was due, actually under the Rules and to which the Petitioner was entitled was actually paid upto 2006 when the order of promotion was issued. The stagnation increments are allowed when a person is not given promotion, meaning thereby he is not able to enjoy higher status, therefore to mitigate loss to such an employee towards status etc. a small compensation in the form of stagnation increments has been allowed by the Government under various Government Orders. That does not mean that such a grant would have the result of giving higher status to the incumbent concern though in the matter of salary sometime he get total amount which is sometimes much higher than the person getting actually working on the higher post. Therefore, the salary, which has actually been paid to the Petitioner for which he was entitled having enjoyed the status of an earlier post cannot be treated to be an excess amount by issuing a subsequent order of promotion though giving retrospective effect i.e. from the date when it was due, inasmuch as, even this retrospective effect cannot countenance the losses of the Petitioner, his loss of actual status for all this period. Fixation of salary, as a result of promotion on a higher post at the lower basic pay has not been shown to result in recovery of the amount already paid on the lower post which actually has been paid in accordance with law. The Respondents have not shown any provision whereunder such a presumption or assumption on their part can be justified.

7. Moreover, the amount paid in excess to the Petitioner is not on account of any fraud or misrepresentation on the part of the Petitioner. If there is any error or mistake committed by the Respondents, they may rectify the same but, in any case, cannot recover the alleged excess amount, already paid to the Petitioner,

since the same has already been consumed in catering to the need of himself and his family members. Moreover, in view of the law laid down in B.N. Singh v. State of U.P. and Anr. 1979 ALJ 1184 Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, Gabriel Saver Fernandes and Others Vs. State of Karnataka and Others, Mahmood Hasan and others, etc. etc. Vs. State of U.P. and others, The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others, Surya Deo Mishra v. State of U.P. 2006 (62) ALR 769; Purushottam Lal Das and Ors. v. State of Bihar and Ors. 2006 (111) FLR 844 (SC) such amount cannot be recovered.

8. In Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, the Apex Court has observed:

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 hardships 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.

9. In view thereof the impugned order dated 10th October, 2007 (Annexure 3 to the writ petition) to the extent it directs for recovery of alleged excess amount from the Petitioner cannot sustain and is accordingly quashed. The writ petition is allowed to this extent.

10. If the amount, pursuant to the impugned order, has already been recovered, the same shall be refunded to the Petitioner within two months from the date of production of a certified copy of this order.

11. There shall be no order as to costs.