
(2013) 11 MAD CK 0207
In the Madras High Court

Case No : Writ Petition No. 36507 of 2006 and M.P. No. 1 of 2006

K. Kumaran

APPELLANT

Vs

Central Pension Accounting Office, Trikoot-2 and Others

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) WritLR 171

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : A. Thirumurthy, for the Appellant; A.S. Vijayaraghavan for R1 to R3 and Mr. P.D. Audikesavalu, ACGSC for R4 and R5, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—This writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of Writ of mandamus, directing the respondents to stop the recovery made by the respondents, on the ground that the same is arbitrary and against law and to refund the amount, that was already deducted from the pension amount payable to the petitioner. The petitioner herein has stated that he was appointed as Constable (Fitter) in C.R.P.F. on 21.07.1973 and promoted as Head Constable in the year 1992. Subsequently, while serving as Head Constable, he got voluntary retirement on 31.07.1997. His pension was initially fixed at Rs. 573/- and as per order, dated 15.09.1997 in PPO. No. 239039716592, his basic pension was subsequently revised, by order, dated 01.12.1998 at Rs. 1,784/- p.m. with revised pension commuted at Rs. 713/- and accordingly, his revised reduced pension was fixed after deduction at Rs. 1,071/- p.m., apart from other allowances. The petitioner has further stated that he was drawing monthly pension along with other allowances to the tune of Rs. 3,338/- however, on 30.05.2006, only Rs. 2,312/- was credited in his Bank Account. Out of the reduced pension, an amount of Rs. 1,500/- was deducted by the Bank. It is further stated by the petitioner that there was no show cause notice served on the petitioner and no enquiry was

conducted and no order was passed for deducting any amount, however, the fifth respondent deducted the amount from the pension payable to the petitioner against law.

2. The petitioner addressed a letter to the fifth respondent, raising his objection, however, there was no proper reply. Since 29.06.2006, a sum of Rs. 1,205/- alone was credited as monthly pension for the petitioner in his bank account and for reducing the amount, there was no opportunity given by the respondents, by way of issuing show cause notice and no enquiry was conducted and no order was passed towards the deduction in the pension amount. According to the learned counsel for the petitioner, when the petitioner approached the Bank Manager, it was orally informed that there was recovery for excess amount paid wrongly by them. According to him, there was no misrepresentation made by the petitioner for the alleged excess payment made, hence, aggrieved by the recovery, the petitioner has come forward with this writ petition, under Article 226 of the Constitution of India.

3. Mr. A. Thirumurthy, learned counsel appearing for the petitioner submitted that the recovery made by the respondents in the pension amount payable to the petitioner is arbitrary and against law. Had there been any excess payment made to the petitioner, show cause notice could have been issued and enquiry could have been conducted, only after providing reasonable opportunity to the petitioner, the respondents could deduct any amount, which was paid as excess. Hence, the deduction made by the respondents, without following principles of natural justice is not legally sustainable. Learned counsel appearing for the petitioner pleaded for allowing the writ petition, on the grounds raised by him.

4. Per contra, Mr. P.D. Audikesavalu, learned counsel appearing for R4 and R5 submitted that during the inspection and audit of the pension payments at State Bank of India, it was found that the additional/commuted portion of pension was Rs. 713/- per month, and the omitted amount has to be deducted from the monthly pension of the petitioner from 01.08.1997 to 28.02.2006, however, which resulted in the excess payment of Rs. 73,489/-, which required recovery from the petitioner. It was also informed to the petitioner about the excess payment and the recovery in the pension amount. The petitioners has preferred the writ petition, challenging the recovery of the amount made in the pension. According to the learned counsel, the recovery being made by respondents 4 and 5 are legally sustainable.

5. Mr. A.S. Vijayaragavan, Additional Central Government Standing Counsel appearing for the respondents 1 to 3 submitted that the petitioner herein was inducted into the service of CRPF on 27.07.1993 as a constable and he voluntarily retired, after 24 years of service. He was permitted to retire from service with effect from 01.08.1997. The basic pension of the petitioner was fixed at Rs. 573/- and the reduced pension payable after commutation was Rs. 382/- p.m., after deducting Rs. 191/-. Thereafter, as a result of the implementation of the Vth Pay Commission recommendations, the pay and

pension of the petitioner was revised by order, dated 09.01.1998 and accordingly, the basic pension was fixed for the petitioner at Rs. 1,784/- p.m., as on 01.08.1997. However, after commutation of Rs. 713/-, the reduced pension payable was Rs. 1,071/- only and therefore, recovery is being made on the account of the excess payment made to the petitioner. In the averments, respondents 1 to 3 have pleaded for the dismissal of the writ petition, on the ground that deduction was made on account of excess payment.

6. In this revision, in order to enlighten the legal aspects, the following decisions were cited by both the learned counsel:

1. Registrar, Co-operative Societies Haryana Vs. Israil Khan and Others,
2. Senior Manager (Services), Indian Bank Vs. Hemavathy Rajan and Union of India (UOI),

7. In Registrar, Co-operative Societies Haryana Vs. Israil Khan and Others, , the Hon"ble Supreme Court has held as follows:

7. There is no "principle" that any excess payment to employees should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/ allowances from employees on the ground of hardship, where the following conditions were fulfilled:

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(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.

8. In Sahib Ram Vs. State of Haryana and Others, , the Hon"ble Supreme Court has held as follows:

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal, for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant...

As per the decisions of the Hon"ble Supreme Court, referred to above, it has been made clear that excess amount paid by way of salary to a person, cannot be recovered, when there was no misrepresentation or fraud on the part of the employee, who had received the alleged excess amount towards his pension.

9. In Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. , the Hon''ble Apex Court has held thus:

10. The High Court also relied on the unreported decision of the learned Single Judge in the case of Saheed Kumar Banerjee vs. Bihar SEB. We do record our concurrence with the observations of this Court in Sahid Ram case and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice...

In the aforesaid decision also, it was ruled by the Hon''ble Apex Court that if there is any excess amount paid by way of increment in salary at an earlier point of time to an employee, without any misrepresentation or fraud by him, the same cannot be recovered from the retired employee.

10. In Purshottam Lal Das and Others Vs. The State of Bihar and Others, , the Hon''ble Supreme Court has held thus:

7. So far as the recovery is concerned, in the normal course if the promotion/appointment is void ab initio, a mere fact that the employee had worked in the post concerned for long cannot be a ground for not directing recovery. The cases relied upon by the learned counsel for the State were rendered in a different backdrop. In those cases, the appellants were guilty of producing forged certificates or the appointments had been secured on non-permissible grounds. In that background, this Court held that recovery is permissible. On the contrary, the fact situation of the present case bears some similarity to Sahib Ram Vs. State of Haryana and Others, , Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. and The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others, .

In the subsequent decision, the earlier decisions rendered in Sahib Ram Vs. State of Haryana and Others, was also referred to by the Hon''ble Apex Court.

11. This Court in M.S. Rajendran Vs. The Chairman, The Chief Engineer (personnel), The Superintending Engineer and The Executive Engineer, Tamil Nadu Electricity Board, , it was held that recovery of mistaken excess payment from the salary of an employee cannot be made without providing him an opportunity of being heard. The said decisions are applicable to the facts and circumstance of this case, as the petitioner is a retired employee.

12. The Hon''ble Supreme Court in Babulal Jain Vs. State of M.P. and Others, has categorically ruled that the excess payment having been made by allowing higher pay to the appellant, based on misconception of law and not due to any mistake, misrepresentation or fraud on the part of the appellant, recovery or excess payment, without issuing any show-cause notice to the appellant was not justified and the Hon''ble Apex Court directed the State of Madhya Pradesh, respondent to refund the said sum of Rs. 22,000/-, that had been deduced from the pension amount payable to the appellant therein without any justification.

The said decision is squarely applicable to the identical facts and circumstances of this case.

13. It has been made clear that after the retirement of the petitioner, pension was ordered, whereby commutation amount was also adjusted, however, without any notice being issued on the petitioner and providing reasonable opportunity, the petitioner's pension amount has been reduced towards crediting the same in the Bank Account of the petitioner.

14. In the light of various decisions rendered by the Hon''ble Apex Court and this Court, it has been made crystal clear that when there is no misrepresentation or fraud committed by the employee, excess payment paid cannot be recovered from the retired employee, while disbursing his pension amount subsequently. It is an undisputed fact that a retired employee would normally spend his pension amount then and there. The employer would be careful in correctly disbursing the pension amount. If there is any excess payment made, that would also be spent by the retired employee, for which, he could not be made responsible. When there is no misrepresentation or fraud on the part of the retired employee, the excess amount cannot be recovered from him. Further, without providing reasonable opportunity, deducting any amount in the pension, on the ground of excess payment made is against law, as held by the Hon''ble Apex Court.

15. In the instant case, pension amount has been deducted, even without providing reasonable opportunity to the petitioner, hence, it is ex facie against law and not legally sustainable. On the similar circumstances, the Hon''ble Supreme Court has categorically ruled that such excess amount recovered should also be refunded to the retired employee, since such recovery has been made against law. Therefore, this Court is of the view, to meet the ends of justice, to allow the writ petition as prayed for. In the result, this writ petition is allowed and the respondents are restrained from making any unreasonable recovery in the pension amount payable to the petitioner. Had there been any recovery or deduction in the pension amount payable and crediting towards the Bank Account of the petitioner by the respondents 4 and 5, the same shall be refunded to the petitioner, by making corresponding credit entry in favour of the petitioner, within four weeks from the date of receipt of the copy of this order. Consequently, connected miscellaneous petition is closed. No costs.