
(2017) 02 JH CK 0172
In the Jharkhand High Court
Case No : 1684 of 2014

Kamil Khan & Anr

APPELLANT

Vs

The State of Jharkhand & Anr

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

Citation : (2017) 02 JH CK 0172

Hon'ble Judges : Pramath Patnaik

Bench : SINGLE BENCH

Advocate : Kundan Kumar Ambastha, Anshuman, Sudarshan Srivastava

Judgement

1. In the accompanied writ application, the petitioner has inter alia prayed for quashing letter dated 30.09.2013, by which, respondent no. 3 directed respondent no. 4 to recover Rs. 2,99,760/- from the petitioner on account of wrong fixation of salary of the deceased-employee and for quashing memo dated 17.10.2013 whereby respondent no. 4 directed the petitioner to deposit the said amount of Rs. 2,99,760/- in treasury and further to pay balance amount of gratuity, leave encashment, G.P.F, G.I.C and to fix the family pension of the petitioner etc.

2. The facts giving rise to the present writ application is that the husband of the petitioner, namely, Niral Lugun died on 14.11.2007 while he was posted as teacher in R.C. Primary School, Jaldega, Simdega. After death of her husband, the petitioner filed representation before respondent no. 3 for payment of retiral dues of her husband and to fix the family pension. Accordingly, the petitioner has been paid Rs. 4,82,060 towards provisional gratuity. Thereafter, impugned letter was issued directing the petitioner to deposit an amount of Rs. 2,99,760/0 in treasury, as it is alleged to paid on the basis of wrong fixation of salary.

3. Learned counsel for the petitioner submitted that no fraud or misrepresentation has been committed by the petitioner or her deceased-husband and furthermore, the impugned order of recovery has been passed

without issuing any show cause notice or without affording any opportunity of hearing to the petitioner, which is against the principles of natural justice. It has further been submitted that the petitioner submitted series of representations to the authority concerned requesting to pay the balance amount of gratuity, G.P.F, Group Insurance, Leave Encashment etc and to fix the family pension of the petitioner but no heed has been paid to her representation, due to which, the petitioner is facing acute financial hardship. It has further been submitted that the husband of the petitioner died on 14.11.2007 thereafter the petitioner was facing acute financial hardship, as such, she took friendly loan from her relatives and on receiving the gratuity amount, she refunded the loan to her relatives and at

present she has no source of income to refund the said amount to the government. Learned counsel for the petitioner further submits that in view of the judgment rendered in the case of W.P. (s) No. 1796 of 2003 dated 18.10.2008, the petitioner is entitled to leave encashment.

4. In support of his submission, learned counsel for the petitioner, referred to the judgment rendered in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) and others as reported in (2015) 4 SCC 334 wherein the Hon"ble Apex Court held the recovery of amount paid in excess without fault of the recipient is impermissible. Learned counsel for the petitioner further referred to the judgment rendered in the case of Syed Abdul Qadir & Ors Vs. State of Bihar & Ors as reported in (2009) 3 SCC 475 and further in the case of Col. B.J. Akkara (Retd) vs. Government of India & Ors. as reported in (2006) 11 SCC 709.

5. Counter affidavit has been filed on behalf of Accountant General, wherein it is averred that the District Superintendent of Education, Simdega vide letter dated 06.06.2013 forwarded the service book and pension paper for authorization of DCRG in favour of petitioner-wife of the deceased employee, on scrutiny of which, it was found that sanction of gratuity was made on the basis of 6th pay commission, which is applicable w.e.f 01.04.2008 for the teachers of minority educational institutions whereas the husband of the petitioner died on 14.11.2007. Hence, the service book and other pension papers in original was returned to D.S.E., Simdega vide letter dated 29.08.2013 for clarification.

6. Referring to the counter affidavit filed by respondents-State, learned counsel for the respondent no. 3 submitted that the Accountant General, Jharkhand is the final authority for sanction of retiral benefits as well as maintenance of accounts of State, as such decision of final authority is to be implemented, hence, the impugned order of recovery has been passed and the petitioner cannot deny excess amount is paid under the head of gratuity because of wrong calculation and the same ought to have been deposited in government account. So far as payment of deathcum-retiral benefits are concerned, since the husband of the petitioner was working in minority managed school, she is only entitled to pension/gratuity and temporary provident fund amount and no amount against leave encashment and group insurance is admissible to such employees.

7. After bestowing my thoughtful consideration to the rivalized submissions and on perusal of the relevant records, I am of the considered view that excess amount that has been paid to the petitioner was not because of any fraud or misrepresentation on the part of deceased husband of the petitioner or by the petitioner or he has any knowledge that the amount was being paid to him was more than that he was entitled to. Rather the respondent State woke up from slumber when the office of the Accountant General raised an objection vide letter dated 29.08.2013 that gratuity was made on the basis of 6th pay commission which is applicable w.e.f 01.04.2008 for the teachers of minority educational institutions whereas the husband of the petitioner

died on 14.11.2007, hence returned the service book and pension paper to the respondent-D.S.E., Simdega for clarification.

8. Under the circumstances, I am of the considered view that impugned order of recovery dated 17.10.2013 is liable to be quashed and set aside. View of this Court gets fortified by the decision of Hon'ble Apex Court rendered in the case of Rafiq Masih (White Washer) and others (Supra), relevant paragraph 16 and 18 are quoted herein below: 16. This Court in Syed Abdul Qadir V. State of Bihar held as follows:

"59. undoubtedly, the excess amount that has been paid to the appellant 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. It would be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, 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....."

18. 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 employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(ii) Recovery from the 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 conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

9. So far as payment of leave encashment is concerned, in view of the judgment passed in W.P. (S) No. 1796 of 2003, the petitioner is directed to file representation for the same before respondent no. 3-D.S.E., Simdega within a month, who on receipt thereof shall decide the matter within a period of four weeks in accordance with law.

10. In the net result, the writ petition stands allowed and impugned order of recovery dated 30.09.2013 is quashed and set aside and so far payment of leave encashment is concerned the same shall be considered in aforesaid terms and further the respondents are directed to pay other admissible retiral benefits forthwith, if not already paid.