

(2012) 06 UK CK 0037

In the Uttarakhand High Court

Case No : Writ Petition No. 868 of 2010 (S/S)

Krishan Chandra Bali

APPELLANT

Vs

G.B. Pant University of Agriculture and Technology and
Another

RESPONDENT

Date of Decision : 08-06-2012

Acts Referred:

Citation : (2013) 2 SCT 463

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Sanjay Bhatt, for the Appellant; Rajendra Dobhal, Learned Sr. Counsel and G.D. Joshi, for the Respondent

Judgement

Tarun Agarwala, J.—Heard Mr. Sanjay Bhatt, the learned counsel for the petitioner and Mr. Rajendra Dobhal, the learned senior counsel assisted by Mr. G.D. Joshi, learned counsel for the respondents. The petitioner was initially appointed as a Pump Operator in the year 1993 in the respondent University. The Board of Management issued an order dated 21st December, 2006 revising the pay scale of the Pump Mechanic from Rs. 3050-4590 to Rs. 4000-6000 working in the Water Works Department of the University. The feeding cadre of Pump Mechanic is Pump Attendant, Pump Operator, Pump Driver, Watermen Attendant & Plumber. The petitioner, being a Pump Operator, was promoted as a Pump Mechanic in the Farm Establishment of the University upon completion of 14 years of continuous service.

2. It transpires that the University submitted a proposal to give the pay-scale of Pump Mechanic from Rs. 3050-4590 to Rs. 4000-6000 as given to the Pump Mechanic of the Water Works Department of the University. This proposal is annexed at Annexure-4 to the writ petition. Without the proposal being approved by the Board of Management of the University, it transpires that the respondents issued an order dated 03rd May, 2007 giving the petitioner promotional pay scale of Rs. 4000-6000. Subsequently, when the defect was realized, the University

issued an order dated 06.09.2010 reducing the pay-scale of the petitioner from Rs. 4000-6000 to Rs. 3200-4900 and directed the department to recover the excess amount.

3. The petitioner, being aggrieved by the said order dated 06.09.2010, has filed the present writ petition. The impugned order contends that the pay-scale has wrongly been given to the petitioner against the Government Orders. The learned counsel for the petitioner contends that no Government Order to that effect have been enclosed in the counter affidavit and, therefore, the reduction in the pay-scale is patently erroneous. Further, no opportunity of hearing was provided to the petitioner.

4. Having heard the learned counsel for the parties at some length, the court finds that no doubt, the petitioner was not provided any opportunity of hearing. However, non-providing an opportunity of hearing is not fatal in such matters and, in any case, the stand of the University has now been indicated in the counter affidavit. Consequently, ample opportunity is being provided at this stage. The court is of the opinion that on the ground of violation of the principles of natural justice, the impugned order cannot be set aside.

5. The court finds that even though, the impugned order reducing the pay scale was based on certain government orders, which apparently is not in existence, since no such government order has been annexed to the counter affidavit. The court finds that the pay-scale of a Pump Mechanic in the Farm Establishment has not been approved by the Board of Management of the University and, consequently, parity of pay-scale given to the Pump Mechanics of the Water Works Department cannot be allowed. The counter affidavit further reveals that the other Pump Mechanics in the Farm Establishment are also being given the pay scale of Rs. 3200-4900, which has not been disputed by the petitioner. Consequently, the parity of the petitioner is required to be given with other Pump Mechanics working in the Farm Establishment. When this mistake was realized by the University, the pay-scale was rightly reduced. Consequently, on the aforesaid grounds, the court is not inclined to interfere in the impugned order dated 06.09.2010 by which the pay-scale of the petitioner has been reduced.

6. In so far as the recovery of the excess amount paid to the petitioner, the court is of the opinion that the same cannot be recovered and, to that extent the order for the recovery of the excess amount paid to the petitioner is not correct and is also arbitrary. In *Sahib Ram Vs. State of Haryana and Others*, and *Syed Abdul Qadir and Others Vs. State of Bihar and Others*, , the Supreme Court held that the excess payment can only be recovered from an employee if the excess amount was paid on account of any misrepresentation or fraud on the part of the employee. In the present case, there is no allegation that the higher pay-scale was given to the petitioner on account of misrepresentation being made by the petitioner. Consequently, the recovery of the excess amount paid to the petitioner cannot be recovered from the petitioner. The writ petition is partly allowed. The impugned order is quashed in so far as it relates to the recovery of

the excess amount paid to the petitioner.