
(2013) 02 AHC CK 0255

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39495 of 1998

Lakhan Lal Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Citation : (2013) 4 ALJ 705

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Hariom Khare, for the Appellant;

Final Decision : Allowed

Judgement

Pradeep Kumar Singh Baghel, J.—By way of this petition, a Class-IV employee who retired from his service way back in 1998, is seeking to impugn an order for recovery of excess amount paid to him. A few facts may be set out, which would be relevant for considering the issue which arise in present case are:

2. The petitioner was initially appointed as Class-IV employee on 31.12.1962 in Horticulture Department. It is stated that his service record was excellent. After completing 12 years of service, petitioner was granted selection grade on 01.05.1984 and after 16 years, he was sanctioned higher pay scale of Rs. 775-1025/- on 01.05.1990. A copy of the order dated 14.06.1990 is Annexure-1 to the writ petition.

3. The petitioner's case is that in terms of the another Government Order dated 19.06.1993, the petitioner was allowed higher pay scale i.e. Rs. 975-1660/-from 01.05.1990. The said Government Order is Annexure-2 to the writ petition. The petitioner continued to draw the higher scale in compliance of the order dated 16.08.1994 till he reached his age of superannuation on 31.01.1998.

4. It is stated that by the impugned order, the earlier order dated 16.08.1994 whereby, the petitioner was given higher pay scale of Rs. 975/-1660 has been

cancelled.

5. A counter-affidavit has been filed on behalf of the State. It is stated in the counter-affidavit that in view of Government Order dated 03.06.1989, a Class-IV employee was not entitled for promotion in higher grade i.e. Rs. 975-1660/-. For the said reason, the order has been cancelled.

6. I have heard Sri Hariom Khare, learned counsel for the petitioner and learned standing counsel.

7. Learned counsel for the petitioner submits that there was no allegation against the petitioner that he has made misrepresentation of fact or he was aware about wrong calculation. Petitioner belong to Class-IV service. The impugned order is arbitrary and illegal as it has been passed after the retirement of the petitioner without affording any opportunity to the petitioner. Since order has been passed without notice/opportunity, it is nullity.

8. Learned counsel for the petitioner has drawn the attention of the Court to paragraph 8 of the writ petition wherein, it is stated that no notice or opportunity was given to the petitioner prior the cancellation of the order dated 16.08.1994.

9. Learned standing counsel submits that the order granting higher pay scale has been rightly recalled as the petitioner was not entitled for higher pay scale. He has further submitted that the mistake was committed by respondent has been rectified, therefore, there is no illegality.

10. I have considered the rival submissions of learned counsel for the parties and perused the record.

11. Indisputably, the petitioner was granted the higher pay scale by the Competent Authority, the Deputy Director. The said order has been cancelled after four years of the retirement of the petitioner.

12. From the perusal of the impugned order, it is evident that no reason has been mentioned in the impugned order. It is also established from the pleadings that the petitioner was not given any opportunity of hearing. The statement of fact made by the petitioner in paragraph 8 of the writ petition has not been specifically denied in paragraphs 9 and 13 of the counter-affidavit. The stand taken in the counter affidavit is that there was no necessity to afford opportunity to the petitioner.

13. It is trite law that if any administrative or quasi judicial order which entails civil consequences, then the person is entitled for opportunity before any such order is passed. Having regard to evidence on record, it can be safely held that there is complete violation of principles of natural justice in the present case, and on this ground alone, the impugned order is unsustainable.

14. Prof. Wade in Administrative Law, 5th Edition, Page 470 has aptly mentioned about natural justice in following words. "The right to natural justice should be as firm as the right to personal liberty."

15. Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, , at page 596 has quoted "Prof. Wade has pointed out:

The concept of natural justice has existed for many centuries and it has crystallized into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing.... They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly.

16. Justice Krishna Iyer in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, has traced the root of natural justice in Kautiyla's Arthasastra. He opined as under: "the rule of law has had the stamp of natural justice which makes it social justice.?.

17. Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, held an unjust decision in an administrative enquiry may have more far reaching effect than a decision in quasi judicial enquiry. The purpose of the rules of natural justice is to prevent miscarriage of justice. The Court has referred the classic case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, ; Supreme Court in Binapani Case (supra) observed that if "there is power, duty to act judicially is implicit in the exercise of such power".

18. Swadeshi Cotton Mills Vs. Union of India (UOI), , Justice R.S. Sarkaria held as under:

Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice is. (i) audi alteram partem, and (ii) nemo iudex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principles as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full view or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned

save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

19. Recently Supreme Court in the case of Automotive Tyre Manufacturers Association Vs. The Designated Authority and Others, held about the natural justice in following terms:

It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which Obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application.

20. Apart from the aforesaid ground, a perusal of the impugned order would also indicate that no reason has been mentioned in the impugned orders. Without any reason, the orders become arbitrary. The Supreme Court in the case of Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, ; Maya Devi (dead) through Lrs. Vs. Smt. Raj Kumari Batra (dead) through Lrs. and Others, and in Raj Kishore Jha Vs. State of Bihar and Others, has laid the emphasis for giving reasons by administrative and quasi judicial authorities.

21. The Court has observed that the reasons are heart and soul of the orders and in absence of the reason, the order becomes arbitrary. Supreme Court in S.N. Mukherjee Vs. Union of India, has held that except in cases where the requirement has been dispensed with, an administrative authority is required to record the reason for its decision/order.

21A. That order is also vitiated for another reason; The petitioner is retired Class-IV employee, the impugned order has been passed after four years of his retirement. It may be that due to inadvertent mistake by authority concerned, he was granted higher pay scale.

22. Supreme Court in a recent judgment Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, has considered the law in this respect. The Court held that the concept of fraud or misrepresentation has no role to play because it is public money, if it is wrongly paid, the recipient should return the money. But in that case, employee/recipient was in service when it was found that excess amount was paid to him.

23. In the present case, petitioner stood retired and he is a Class IV employee.

24. In Chandni Prasad Uniyal (supra) Supreme Court has referred its decision in Syed Abdul Qadir and Others Vs. State of Bihar and Others, . In the said case, recovery was initiated against retired teacher, and the department sought the recovery of excess payment after the retirement.

25. Supreme Court in Syed Abdul Qadir (supra) has held as under:

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if 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.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram Vs. State of Haryana and Others, ; Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ; Union of India (UOI) and Another Vs. M. Bhaskar and Others, ; V. Gangaram Vs. Regional Joint Director and others, ; Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, ; Purshottam Lal Das and Others Vs. The State of Bihar and Others, ; Punjab National Bank and Others Vs. Manjeet Singh and Another, ; and Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. .

26. In the case in hand, petitioner stood retired in the year 1998. After his retirement, it was found that there was wrong fixation. Petitioner immediately moved to the Court and interim protection was granted to him. More than 15 years have passed. At this distance of time, I do not find it in the interest of justice to remit the matter back to the authority concerned.

27. In the counter-affidavit, there is no allegation that the petitioner was guilty of any misconduct or misrepresentation.

28. No plausible reasons have been given for not rectifying the alleged mistake within reasonable period. The reasonable period vary on facts of each case, there is no straitjacket formula in this regard. Having regard to facts of the present case, four years time cannot be said to be reasonable time.

29. After careful consideration of facts, I am of the view that for the reasons stated above, the impugned order dated 22.09.1998 and consequential orders dated 24.09.1998 and 08.10.1998 needs to be set aside. Accordingly, they are

set aside.

30. In peculiar facts and circumstances of the case, it is directed that no further deduction/recovery shall be made against the petitioner and matter shall be treated to be closed. No order as to costs.