
(2014) 11 MP CK 0112
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 787 of 2014

Lakhan Lal Pathak

APPELLANT

Vs

State of MP

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2014) 11 MP CK 0112

Hon'ble Judges : Rajendra Menon, J; N.K. Gupta, J

Bench : Division Bench

Advocate : S.K. Chaturvedi, Counsel, Advocate for the Appellant; D.K. Bohrey, PL, Advocate for the Respondent

Judgement

1. This appeal under section 2(1) of the MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, has been filed calling in question tenability of an order dated 14.8.2014, passed in Writ Petition No. 9198/2013.

2. Facts in brief go to show that appellant was appointed in the year 1976 as a Forester. While so working, he was granted first Kramonnati on 19.4.1999, and second Kramonnati on 18.2.2002. Thereafter, he was promoted as a Deputy Ranger in the year 2002 and as a Ranger in the year 2008; and, finally retired on attaining the age of superannuation on 30.4.2012. It seems that after his retirement on the ground that his pay has not been properly fixed and there is some error in the fixation of his pay, an order was passed on 1.4.2013, proposing to recover from him a sum of Rs. 74,187/-. The aforesaid recovery was in view of wrong pay fixation. Recovery in question is not only of the excess payment but also of certain interest on the amount in accordance to a Circular of the Finance Department dated 31.5.2011, whereby it is provided that in cases of recovery of the nature indicated hereinabove, certain provisions were made for charging interest on compounding basis.

3. Challenging the recovery made, the writ petition was filed. The writ petition

has been allowed in part. Even though recovery of the interest has been quashed and to that effect writ petition has been allowed, but recovery of the original amount due to correction of the error in pay fixation has been rejected by the writ Court.

4. Shri S.K. Chaturvedi, learned counsel for the appellant, invited our attention to the judgment of the Supreme Court in the case of P.H. Reddy and Others Vs. N.T.R.D. and Others, , to argue that as the appellant is not responsible for the erroneous pay fixation, the recovery in pursuance to the mistake committed now after retirement of the appellant is not permissible. Learned counsel tried to emphasize that in somewhat similar circumstances, the Supreme Court having interfered in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, , similar benefit be granted to the appellant.

5. Ms. D.K. Bohrey, learned Panel Lawyer, refuted the aforesaid and placing reliance on a judgment of the Supreme Court in the case of Chandi Prasad Uniyal (supra) itself and the principle laid down from paragraph 13 onwards, submits that no interference be made as substantial relief in the matter of recovery of interest has already been granted by the writ Court.

6. We have gone through the facts of the case and we find that in the order passed in the writ petition in question, being W.P. No. 9198/2013, the learned writ Court has found that the recovery is proper, but interfered with the imposition of interest on the ground that it is arbitrary. For passing such an order, the learned writ Court has relied upon an earlier order passed under somewhat similar circumstances, in the case of Veer Bhan Singh Chaturvedi Vs. State of MP and others, Writ Petition No. 6230/2013(S), also decided on 14.8.2014.

7. In the case of Veer Bhan Singh Chaturvedi (supra), it is found that while fixing the pay of the employee on promotion as Deputy Ranger and Ranger, an error in grant of increment had occurred and, therefore, the error has been corrected and the recovery ordered.

8. Initially, this Court consistently following the law laid down by the Supreme Court in the cases of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ; and, Sahib Ram Vs. State of Haryana, 1995 Supp (1) SCC 18, and it was being held that in the absence of any misrepresentation or fraud on the part of the employee, recovery should not be made. However, the entire law in this regard has been reconsidered by the Supreme Court in the case of Chandi Prasad Uniyal (supra), and in paragraphs 13, 14 and 15, the principle has been crystallized in the following manner:

"13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its Officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinabove turned on the peculiar

facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be, due to a bonafide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in *Speech and Software Technologies (India) Pvt. Ltd. Vs. Neos Interactive Ltd.*, and in *Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others*, the excess payment made due to wrong/irregular pay fixation can always be recovered."

(Emphasis supplied)

9. If the case in hand is evaluated in the backdrop of the aforesaid principle, we have no hesitation in holding that we cannot interfere with the recovery in question. As expressed by the Supreme Court in paragraph 14 - reproduced hereinabove, the recovery has to be upheld.

10. Even though during the course of hearing by placing reliance on the observations made by the Supreme Court in paragraph 12, learned counsel for the appellant tried to emphasize that the case of the appellant is at par with that of *Syed Abdul Qadir* referred to hereinabove, in paragraph 12 of the judgment in *Chandi Prasad Uniyal (supra)*, we are of the considered view that in the case of *Syed Abdul Qadir (supra)* the facts were entirely different and the peculiar facts as were existing in the case of *Syed Abdul Qadir* was not in existence in the present case. Infact, the present case is covered by the law laid down by the Supreme Court in the case of *Col B.J. Akkara (supra)* and the observations given in paragraph 3 of the order, in *Chandi Prasad Uniyal (supra)*.

11. Accordingly, in the matter of refusing to interfere with the recovery, we are of the considered view that the learned Writ Court has not committed any error warranting interference. As the imposition of penal interest on compounding

basis was found to be unjustified by the learned writ Court, the learned Court has given substantial relief in the matter of quashing of the aforesaid order of interest.

12. That being so, the approach of the learned writ Court and the order passed being in accordance with law, we see no reason to interfere into the matter.

13. The appeal is, therefore, dismissed.