
(2011) 12 SHI CK 0165
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 7398 of 2008

Neena Pathania

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Citation : (2011) 12 SHI CK 0165

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, Judge

1. Petitioner's husband was an ex-serviceman. He was enrolled in the Indian Army on 27th September, 1963. He joined as Junior Basic Trained Teacher on 1st October, 1969. He died in harness on 4th December, 1995. His pay was fixed by giving him the benefit of approved military service as per instructions issued by the Himachal Pradesh Government vide letter dated 16th November, 1993 (Annexure A-2). However, the same was withdrawn on 26th April, 1995 vide Annexure A-3. The pay of petitioner's husband was again re-fixed by giving him the benefit of approved military service vide Annexure A-6, dated 26th April, 1999. However, the fact of the matter is that the same has been withdrawn vide Annexure A-7, dated 19th June, 1999.

2. Mr. Sanjay Jaswal, learned counsel for the petitioner has strenuously argued that the respondents have not issued any show cause notice to the petitioner before the issuance of letter dated 19th June, 1999.

3. Mr. Vikas Rathore, learned Deputy Advocate General has vehemently argued that since the pay of the petitioner's husband had been wrongly fixed, no notice was required to be issued to the petitioner.

4. I have heard the learned counsel for the parties and gone through the

pleadings carefully.

5. The pay of the petitioner's husband was fixed by giving him the benefits of approved military service vide letters dated 16th November, 1993 and 26th April, 1999. He has neither misled nor misrepresented the facts or played any fraud at the time of issuance of letters dated 16th November, 1993 and 26th April, 1999. The Court is of the considered view that before the letter dated 26th April, 1999 was withdrawn on 19th June, 1999; notice was at least required to be issued to the affected party. The petitioner has lost her husband on 4th December, 1995. The withdrawal of order dated 26th April, 1999 will also reduce the family pension of the petitioner. Admittedly, the petitioner has not been heard before the issuance of letter dated 19th June, 1999.

6. Their Lordships of the Hon'ble Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, have culled out the following principles governing the circumstances in which the excess amount cannot be recovered by the employer:

55. That apart, it also appears from the record produced before us that while the Finance Department of the Government of Bihar was in favor of making the amended provisions of FR. 22-C applicable to the appellants-teachers after having come to know that the said rule did not exist and had been substituted, the Department of Human Resource Development, Government of Bihar, wanted to apply the unamended provision to the appellants-teachers so as to make available the benefit of additional increment provided for under FR.22-C to its teachers, unaware of the fact that even under FR.22-C they were not entitled to the additional increment as they were not discharging duties and responsibilities of greater importance on the promoted post.

56. This further goes on to show that the authorities in the State of Bihar were not even aware of the basic requirement for grant of additional increment and the decision appears to have been taken without proper application of mind. Otherwise, there was no reason for the Finance Department to state in the counter affidavit filed before the High Court that any affidavit filed on behalf of the Education Department may be ignored as Finance Department was the competent authority. In this very affidavit, the Finance Department while admitting that the pay fixation by the Education Department was wrong, stated as under:-

...the fixation of pay under Fundamental Rule 22- C has wrongly been made as it was not in existence. Pay fixation on the basis of a nonexistent rule is a bona fide mistake.

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.* .

59. Undoubtedly, the excess amount that has been paid to the appellants - 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 not 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. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.

60. Learned counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some installments/amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant-teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.

7. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexure A-7, letter dated 19th June, 1999 is quashed and set aside. The petitioner is held entitled to all the consequential benefits including pensionary/retiral benefits. The same shall be worked out by the

respondents as per pay fixation of her husband done vide letters dated 16th November, 1993 and dated 26th April, 1999 and paid to the petitioner within a period of ten weeks from the date of production of a copy of this judgment by the petitioner before the competent authority. The pending application(s), if any, also stands disposed of. No costs.