

(2012) 03 SHI CK 0316
In the High Court Of Himachal Pradesh
Case No : CWP No. 10441 of 2011-E

Prakash Chand

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 03-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0316

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Justice Rajiv Sharma, Judge

1. Petitioner was granted proficiency step-up under the Assured Career Progression Scheme, vide letter dated 7.7.2004. Thereafter, his pay was re-fixed. However, the same was withdrawn vide Annexure P-2 dated 20.9.2004 and the pay of the petitioner was re-fixed, vide Annexure P-3 dated 31.7.2004. Case of the petitioner is that he has neither misled nor misrepresented the authorities at the time when he was allowed proficiency step up under the Assured Career Progression Scheme. Petitioner has not been heard before the issuance of impugned orders Annexures A-2 and A-3. This has not been denied in the reply. The Court is of the considered view that since the petitioner has suffered civil and evil consequences, he ought to have been given opportunity of being heard before the decision was taken to withdraw the benefit granted to him. There is no material on record even remotely to suggest that the petitioner in any manner has misled or misrepresented the authorities at the time when he was allowed the proficiency step-up under the Assured Career Progression Scheme.

2. 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 favour 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.

Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexures P-2 and 9-3 dated 20.9.2004 and 31.7.2004, respectively are quashed and set aside. However, it shall be open to the respondents to proceed with the matter in accordance with law. There shall, however, be no order as to costs.