

(2015) 01 AHC CK 0014

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20066 of 2010

Rajendra Singh Negi

APPELLANT

Vs

U.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 142

Citation : (2015) 2 ADJ 387 : (2015) 2 ESC 830

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : Akhilesh Chandra Shukla, for the Appellant; Ajal Krishna, Samir Sharma and V.K. Ojha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—This writ petition has been preferred assailing the validity of the order dated 3.1.2009, and also seeks consequential reliefs of computation of pension on the basis of the last pay drawn by the petitioner. The undisputed facts are as follows: the petitioner was initially appointed on 1.3.1970 on the post of Assistant Grade-II Clerk with the respondent Corporation. Subsequently, he was granted promotion and was lastly working on the post of Head Clerk wherefrom he retired on 30th June, 2004, upon attaining the age of superannuation. The process of computation of pension payable to him commenced and accordingly the monthly pension was fixed at Rs. 2990/-. However, when the aforesaid papers reached the Directorate of Pension and papers were scrutinised, it was found that the petitioner had been paid excess salary for the period beginning 4.1.1996 and therefore, the Directorate of Pension remitted the papers back to the respondent Corporation requiring it to reconcile the aforesaid issue. This is evident from the communication of the Directorate of Pension dated 4.8.2005.

2. A perusal of the aforesaid order establishes that while the petitioner with effect from 4.1.1996, was drawing Rs. 4875/- in the pay-scale of Rs. 4500-7000/-, according to the Directorate of Pension the petitioner was entitled

to draw only Rs. 4500/-. The payment of pension on that basis ultimately found by the Directorate of Pension commenced from March, 2008. However, aggrieved by the fixation of pension and the recoveries sought to be affected consequent to the re-fixation of pay constrained the petitioner to approach this Court by filing Writ Petition No. 42437/2008 (Rajendra Singh Negi v. U.P.S.R.T.C. and others). This petition came to be disposed of by this Court on 20.8.2008, with a direction requiring the respondents to decide the objections of the petitioner by means of a reasoned and speaking order.

3. Pursuant to the aforesaid order of this Court, the petitioner filed his fresh objections on 2.9.2008. This representation went unanswered, as a consequence of which the petitioner was constrained to institute contempt proceedings against the respondents. It was in the contempt proceedings that an affidavit of compliance was filed by the respondents bringing on record therein an order dated 3.1.2009 (the impugned order in this writ petition) said to be the order passed pursuant to the direction of this Court and disposing of his objections referred to above. In this order the respondents rejected the claim of the petitioner by stating that because of certain options exercised by him, his pay-scale was liable to be modified and the pension be disbursed accordingly. This order again reiterated what was recorded in the letter of the Directorate of Pension dated 4.8.2005, and the communication of the Corporation dated 23.5.2008 referred to above. It was at this stage that the instant writ petition came to be filed challenging the stand taken by the respondents.

4. Learned counsel for the petitioner assailing the validity of the action taken by the respondents drew the attention of the Court to the final computation order drawn up by the Corporation on 21.2.2005 to submit that the final computation itself recorded that the petitioner was drawing Rs. 4875/- with effect from 4.1.1996 in the Pay Band of Rs. 4500-7000/-. He submitted that it was evident from the said computation order that the petitioner continued to draw his pay till he superannuated on 30th June, 2004. He further submitted that on the date of his superannuation he was drawing Rs. 6000/- with effect from 1.1.2004 and accordingly his pension was liable to be computed on that basis alone.

5. In any view of the matter, it was submitted that, no recoveries were liable to be made from the petitioner now after a lapse of so many years and after his retirement, and that any steps which could have been taken by the respondent Corporation should have been so taken during the period when he was serving. It was further contended that the fixation of pay was not on account of any misrepresentation made by the petitioner, nor was it the case of the respondents that it was fixed on the basis of concealment of material facts by him. For the above reasons also it was submitted that the stand of the Respondents was not liable to be sustained.

6. Learned counsel for the petitioner lastly invited the attention of this Court to the Government Order dated 31.8.1998, issued by the Finance Department, Government of U.P. which carried with it a Chart showing the pay to be paid to

the employees falling in the pay-scale of Rs. 4500-7000/-. This Chart assumes significance inasmuch as per it the Petitioner was rightly drawing Rs. 4875/.

7. It must, however, be pointed out here that this document which was appended to the rejoinder-affidavit had been duly served upon the respondents and upon a pointed query of the Court, the learned counsel for the respondent Corporation did not dispute the applicability of the aforesaid Government Order and also did not pray for any further time to file a response thereto.

The respondent Corporation filed as many as four affidavits in this petition seeking to explain its stand. In the first affidavit filed in response to the notices issued by this Court, the Corporation asserted that the pay of the petitioner had been incorrectly fixed and this fact should have been brought to its attention by the petitioner so that the pay fixation order be rectified. It was further submitted that the excess payment made to the petitioner was rightly directed to be adjusted. In the second response, the Corporation also referred to the letter of the petitioner dated 28.12.2007, wherein the petitioner submitted that against the deductions sought to be made, he had already filed his objections and that since more than 3 years had elapsed from his retirement, his retiral dues, after deducting the amounts allegedly paid in excess, may be released to him.

8. Pursuant to the order of this Court, the Corporation filed a pay fixation order dated 23.5.2006, in which again they sought to modify the pay drawn by the petitioner during the period of his employment and to aver and establish that instead of Rs. 4875/-, the petitioner was liable to draw and consequently be paid only Rs. 4500/-. The respondent Corporation was again called to respond to the rejoinder-affidavit and the supplementary rejoinder-affidavit's filed on behalf of the petitioner and by this Court's order dated 15.10.2014, was again put on caution to respond to the primary dispute which was resulting in the pensionary benefits of the petitioner being reduced. It would be appropriate to extract here the order of this Court dated 15.10.2014, which read as under:

"By the impugned order it has been stated that the petitioner's pension has wrongly been fixed on account of option given by him on 1.1.1996. Which is the order, by which such an option was asked for and under which provision such an option is required is not clear from various documents filed alongwith the writ petition as well as counter and rejoinder-affidavits.

Sri A.P. Shukla, learned counsel appearing for the petitioner has filed supplementary rejoinder-affidavit. Relying upon Rule 22-B of the Financial Hand Book which provides for increment on promotion, he submits that according to the aforesaid Rule and according to the chart of 5th Pay Commission, the petitioner, who was getting salary of Rs. 1600/- upon the implementation of the recommendation, would be entitled to Rs. 4875/- which was paid to the petitioner rightly and now the petitioner has retired, his pension has been fixed treating his pay to be Rs. 4500/-.

Learned counsel for the respondents may give specific answer as to under which

provision such an option has been exercised by the petitioner. He is allowed ten days" time to file response to the aforesaid supplementary-affidavit. In the said response, it will also be indicated as to whether Rule 22-B of the Financial Hand Book is applicable in the case of the petitioner or not.

List this matter on 3rd November, 2014."

9. Although, in response to the aforesaid order, the respondent Corporation did file its third supplementary counter-affidavit, it chose to remain silent on the basic plea of the petitioner and also did not dispute the correctness of the scales of pay as appended to the Government Order dated 31.8.1998.

10. Having heard learned counsel for the parties, it is apparent from the record that the petitioner drew salary of Rs. 4875/- with effect from 4.1.1996 and with subsequent increments being added thereto retired on 30th June, 2004, at which time he was drawing Rs. 5875/-. The first time that the respondent Corporation sought to modify or assert that the pay of the petitioner had been wrongly fixed was by its order dated 23.5.2006. This even though on 21.2.2005, the final pay fixation order had been prepared and the papers of the petitioner for grant of pension were already under process.

11. Admittedly the pay drawn by the petitioner during the period of service was never sought to be modified, nor were any rectification proceedings taken in respect thereof during this period. More, fundamentally, the respondent Corporation, despite ample opportunity having been granted to it by this Court, did not dispute the veracity of the Government Order dated 31.8.1998 in terms of which and as would be evident from the Chart appended thereto, the petitioner was rightly drawing Rs. 4875/-.

12. In view of the above, this Court is clearly of the opinion that the stand taken by the respondent Corporation that the pay of the petitioner should have been Rs. 4500/- as on 4.1.1996 cannot be sustained.

13. There is another aspect of the matter and this relates to the power of the respondents to affect recoveries from the petitioner and modify his pensionary benefits as a consequence thereof after he has superannuated.

14. The issue of recoveries being affected from employees on account of incorrect fixation even though there being no misrepresentation or concealment of facts by the employees engaged the attention of a Constitution Bench of the Apex Court in *State of Punjab Vs. Rafiq Masih (White Washer)*, . A reading of the report shows that the Court after noticing the apparent conflict in the judgments rendered on this issue was pleased to make a reference to a larger Bench for an authoritative pronouncement on the same. Considering the reference made to it, the Constitution Bench of the Apex Court held that the cases where the Hon"ble Supreme Court of India restrained the employer from affecting recoveries was traceable to the Court exercising its powers under Article 142 of the Constitution of India and made primarily in the larger interests of

justice and in the facts of those particular cases.

15. In light of the above, the Constitution Bench of the Apex Court in paragraph 13 of the report was pleased to hold as under:

"13. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same rounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment." 16. Upon the reference being so returned, the main matter [Civil Appeal No. 11527 of 2014 State of Punjab and others v. Rafiq Masih (Whitewasher), decided on 18.12.2014] came up for consideration before the Hon"ble Supreme Court of India again when the Court after taking note of all its earlier judgments handed down in this regard was pleased to record its conclusions in paragraph 12 as under:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

It is relevant to mention here that this judgment was rendered consequent to the reference being returned by the Constitution Bench with the observations made therein and referred to hereinabove. The case of the petitioner, as would be evident from a reading of the categories carved out by the Hon"ble Apex Court would clearly fall not only in category (i) but also in categories (ii) and (iii). For this reason also it is clear that the action of the respondent Corporation cannot be sustained.

In view of the aforesaid discussion, this writ petition is liable to be and is

accordingly allowed. The impugned order dated 3.1.2009, is quashed. The respondents shall recompute the pensionary benefits payable to the petitioner in terms of its final computation order dated 21.2.2005 and in light of the observations made hereinabove. All deductions already made from the petitioner shall be restored to the petitioner. Keeping in mind the fact that the petitioner retired in 2004 and that admittedly pension was paid to him only from 2012, the petitioner will also be entitled to interest for the aforesaid period at the rate of 10 percent.

Note: Correction incorporated.