
(2014) 04 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4993 of 2014 (O&M)

Rajinder Singh Gupta

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Citation : (2014) 3 SCT 823

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Sanjiv Bansal and Manish Prabhaker, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—This order will dispose of three petitions bearing CWP Nos. 4993, 5348 and 5359 of 2014, as common questions of law and facts are involved. In CWP No. 4993 of 2014, the petitioners retired as Professor of Medicine from Government Medical College, Patiala.

2. In CWP No. 5348 of 2014, the petitioner retired as Chief Engineer, Water Supply & Sanitation Department, Punjab.

3. In CWP No. 5359 of 2014, the petitioner retired as Additional Professor, Department of Forensic Medicines from Government Medical College, Patiala.

4. The grievance of the petitioners is that though they retired long back, however, certain deductions were made from their retiral dues on account of some alleged excess payment made during their service career.

5. Learned counsel for the petitioners, while placing reliance upon a Full Bench judgment of this Court in Budh Ram and others v. State of Haryana and others, 2009 (3) SCT 333 and of Hon'ble the Supreme Court in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, and order dated 2.8.2013, passed by Hon'ble the Supreme Court in Special Leave to Appeal (Civil) No. 24607 of 2010, State of Punjab and others v. Krishna Kumar Bansal and Ors.,

submitted that the petitioners having not played any fraud or misrepresentation and not being at fault in the process of fixation of their pay or grant of any benefit during their service career, the amount recovered from their retiral dues deserves to be refunded to them.

6. After hearing learned counsel for the petitioners, I do not find any merit in the present petitions. Hon"ble the Supreme Court in Chandi Prasad Uniyal's case (supra) opined as under:

"12. We may in this respect refer to the judgment of two-Judge Bench of this Court in Col. B.J. Akkara (retd.) case (supra) where this Court after referring to Shyam Babu Verma case, Sahib Ram case (supra) and few other decisions held as follows:

"Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

13. Later, a three-Judge Bench in Syed Abdul Qadir case (supra) after referring to Shyam Babu Verma, Col. B.J. Akkara (retd.) etc. restrained the department from recovery of excess amount paid, but held as follows:

"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.

(emphasis added)"

14. We may point out that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

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

16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favoritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the 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 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."

[Emphasis supplied]

7. In the present petitions, the petitioners retired from senior position as Professor/Additional Professor/Chief Engineer. They were Class-I officers drawing good salary and consequently the pension. In the aforesaid judgment, Hon"ble the Supreme Court had carved out exception where recovery could not be effected from low paid employees, who had retired from service. The petitioners do not fall in that category. In a recent judgment in SLP (C) No. 17881 of 2008 U.T. Chandigarh and others v. Gurcharan Singh and another, decided on 1.11.2013, Hon"ble the Supreme Court in a case where the employee concerned had already retired from service as Clerk, opined as under:

"12. Though a submission had been made on behalf of the respondent that no amount should be recovered from the salary paid to the respondent, the said

submission cannot be accepted because if any amount had been paid due to mistake, the mistake must be rectified and the amount so paid in pursuance of the mistake must be recovered. It might also happen that the employer might have to pay some amount to the respondent as a result of some mistake and in such an event, even the appellant might have to pay to the respondent. Be that as it may, upon settlement of the account, whatever amount has to be paid to the respondent employee or to the appellant employer shall be paid and the account shall be adjusted accordingly."

In view of the authoritative enunciation of law laid down by Hon"ble the Supreme Court in the aforesaid judgments and considering the fact that the petitioners retired from senior positions recovery of excess paid amount to them, may be due to error, will not cause undue hardship to them but will result in unjust enrichment, I do not find any merit in the present petitions. Accordingly, the same are dismissed.