
(2010) 08 AHC CK 0129
In the Allahabad High Court

Ram Chandra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Citation : (2011) 128 FLR 502

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Judgement

A.P. Sahi, J.—Heard learned Counsel for the petitioner.

2. The petitioner retired as a class-IV employee from a Junior High School established and run under the provisions of the U.P. Basic Education Act. The institution is run by the Basic Education Board. The petitioner does not dispute his date of birth which is 5.8.1944. Accordingly, the petitioner attained the age of superannuation on 31.8.2004 yet on account of the fault attributed to the authorities, the petitioner claimed that he was permitted to discharge his duties till the month of May 2005. The petitioner, accordingly, received salary for this extended period of performance of his duty as a class-IV employee till May 2005. The salary paid for the said period was sought to be recovered, therefore, a notice dated 16.5.2005 was issued and an order was passed to that effect on 31.5.2006. The said order was challenged by the petitioner before this Hon'ble Court in Writ Petition No. 57798 of 2006. The writ petition was entertained and it was found that there was no misrepresentation or fraud on the part of the petitioner and, therefore, the Basic Education Officer was directed to get an inquiry held to fix the responsibility on such employees, who had allowed such excess payment to the petitioner. A copy of the judgment dated 18.10.2006 has been brought on record.

3. Consequently, the Basic Education Officer has proceeded to pass the impugned order on 30.12.2007 whereby the responsibility has been fixed on the then Assistant Basic Education Officer as being negligent in his duties and further on the petitioner that in spite of having knowledge of his date of birth, the

petitioner has received the salary in excess of the period to which he was entitled upon having attained his age of superannuation on 31.8.2004.

4. Learned Counsel for the petitioner has advanced the same submissions that were advanced earlier that there was no fraud or misrepresentation on the part of the petitioner and, therefore, the petitioner cannot be saddled with any recovery of salary which has been made in excess.

5. Learned Standing Counsel, on the other hand, contends that the payment of excess salary was on account of an act of the then Assistant Basic Education Officer coupled with the act of the petitioner himself, who, in spite of having knowledge of his date of birth, continued to receive salary over and above the period for which he was otherwise entitled. To this, learned Counsel for the petitioner contends that the petitioner is an illiterate person and he was a class-IV employee, therefore, there is a presumption that the petitioner did not commit any fraud nor did he misrepresent facts with the object to receive payment of salary in excess.

6. The question that arises for consideration is as to whether the petitioner had any knowledge of his date of birth or not. The service book is prepared which contains the signature of the employee and in the event of an illiterate person, it contains his thumb impression. Therefore, a presumption can be raised in law that the petitioner has knowledge of the contents of the service-book when he put his thumb impression on the same. It is difficult to believe that the petitioner was never informed about his date of retirement. The petitioner knew that he would retire at the age of 60 years. In such circumstances, this is a case which is neither a situation where it is a case of established fraud or any misrepresentation. Rather this is a case where the petitioner knowingly and deliberately served in excess of the period of his retirement with the collusion of Assistant Basic Education Officer, who has been found guilty under the impugned order. The petitioner, therefore, is the beneficiary and recipient of this action which cannot be condoned and which could not be faulted with. The judgment, which has been relied upon by the learned Counsel for the petitioner and mentioned in the earlier judgment dated 18.10.2006, does not come to the petitioner's rescue as this is not a case of wrong fixation of salary or any other inadvertent error not attributable to the petitioner.

7. Accordingly, the petitioner cannot claim that the respondents are not entitled to recover that excess salary. It is for the respondents to recover the salary either from the petitioner or from the Assistant Basic Education Officer, who is responsible for the same.

8. So far as the excess payment to the petitioner is concerned, if his date of birth is 31.8.2004, the petitioner was not entitled to salary thereafter. The petitioner ceased to be an employee w.e.f. 31.8.2004 and the relationship of the employer and employee ceased immediately thereon. In view of the conditions of service, the petitioner was not entitled to full salary from the state exchequer after

31.12.2004. In such circumstances, the retiral benefit from 31.8.2004 till 16.5.2005 are admissible to the petitioner. This emolument has to be adjusted towards the excess payment and thereafter the recovery can be made. In the event the respondents choose to recover the entire amount from the petitioner then the same shall be recovered within 2 years in easy installments. However, before proceeding further, it will be appropriate for the respondents to fix the responsibility of proportionate recovery from any officer who was equally liable for such excess payment. The order shall be passed within 3 months from the date of production of a certified copy of this order before the Basic Education Officer, who shall forthwith proceed to calculate the entire amount payable to the petitioner with his date of retirement as 31.8.2004 and make payments without any further delay including the post retiral benefits.

9. With the aforesaid observations, the writ petition is disposed of.