
(2012) 10 AHC CK 0201

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 164 of 2010

Ram Chandra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Citation : (2013) 1 ADJ 244 : (2013) 2 ALJ 358 : (2013) 1 AWC 661

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : G.B. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The petitioner was appointed on the post of Clerk in the year 1962 and retired from the post of Stenographer on 30th May, 2004. Pursuant to his retirement, the petitioner was paid his gratuity, provident fund and other retirement dues. In the year 1983, pursuant to the Government Order dated 4.2.1983, the petitioner was granted a time bound pay-scale upon competition of 10 years service. After retirement, the respondents realized that the time bound pay-scale should not have been given to the petitioner from 1983, but should have been given from 1985 onwards and consequently issued an order dated 06th September, 2004, directing the stoppage of Rs. 60,000/- from the gratuity and deduction of Rs. 229/- per month from the pension till the life time of the petitioner. The petitioner being aggrieved by the aforesaid action of the respondents, has filed present writ petition. The learned counsel for the petitioner submitted that the time bound pay-scale was given to the petitioner in accordance with law as per the Government Order dated 04th February, 1983 and that the petitioner under no circumstances, misrepresented or concealed any material fact and that the time bound pay-scale was given by the respondents on their own violation as per the Government Order.

2. The learned counsel further submitted that if any extra payment was made

wrongly by the respondents, the petitioner cannot be faulted nor any such amount given in good faith could be recovered.

3. The respondents in the counter-affidavit have admitted that a wrong payment was made pursuant to the Government order of 1983 and that the payment was to be made only from 1985 onwards and not from 1983 and consequently, excess amount already paid on account of wrong fixation was being recovered from the gratuity and from the pension. Nothing has been indicated in the counter-affidavit that there has been misrepresentation on the part of the petitioner in obtaining excess payment.

4. In *Sahib Ram Vs. State of Haryana and Others*, , a relaxation was given by the Government in consultation with UGC for Librarians working in College to a higher pay-scale if they possessed the minimum educational qualification. The appellant did not possess the requisite educational qualification and was not entitled to a higher pay-scale, but nonetheless, a higher pay-scale was paid. When the error was noticed, the excess amount was sought to be recovered. The Supreme Court held that the appellant was not responsible for any misrepresentation and that no fraud was committed by him and consequently the amount so paid to the said appellant, could not be recovered. The Supreme Court accordingly quashed the recovery order.

5. The petitioner's case stands on a similar footing and, since no misrepresentation or fraud was played by the petitioner, the excess payment made in good faith, cannot be recovered from the petitioners gratuity or from his pension. In the light of the aforesaid, the writ petition is allowed. The impugned order dated 6.9.2004 passed by respondent No. 2 is quashed and a writ of mandamus is issued commanding the respondents to release the amount of Rs. 60,000/-, which has been stopped from the gratuity and also pay full pension, as per the pension order within six weeks from the date of production of a certified copy of the order.