
(2003) 07 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 28455 of 1991

Ram Kumar Yadav (D) through L.Rs. and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Citation : (2003) 6 AWC 4819

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Anil Kumar, for the Appellant; S.S. Sharma and S.C., for the Respondent

Judgement

R.B. Misra, J.—Heard Sri Anil Kumar learned Counsel for the Petitioners as well as Sri S. S. Sharma learned standing counsel.

2. In this writ petition, the order dated 20th July, 1991 (Annexure-5 to the writ petition) has been challenged by which the Petitioners' salary fixed in the pay scale of Rs. 975-1,660 was released. The case was dismissed in default on 29.4.2003 by the carelessness and non-appearance of the advocate, therefore, the restoration/recall application has been filed. It is also discourtesy not to provide proper justification to recall the order, however, in the interest of justice the order dated 29.4.2003 is recalled and the case is again heard on merits.

3. The counter-affidavit has been filed. Para 3 of the counter-affidavit reveals that the Petitioner was working as "Paricharak" in the pay scale of Rs. 750-940 and after completion of 16 years of service he was entitled for promotional pay scale which is Rs. 775-1,025 as provided in para 10 of the Government Order dated 3.6.1989 providing procedure for pay fixation of revised pay scale. Para 10 of the aforesaid Government Order provides that the cadre/post having no promotional avenue shall be given to the next pay scale, i.e., promotional pay scale of Rs. 775-1,025, however, the Principal Government Fruit Preservation Training Centre, Gorakhpur under bona fide wrong impression allowed the pay

scale of Rs. 975-1,660 to the Petitioner and the matter was brought to the notice of State Government, an explanation was sought on 28.8.1990 from the Director, Horticulture. The Director by his letter dated 26.10.1990 informed the State Government that the said scale was given in reference to para 10 of the Government Order dated 3.6.1989, therefore, further direction was asked for whereupon the matter was referred to the Finance Department, which submitted its report that the pay scale of Rs. 775-1,025 was admissible only and not the pay scale of Rs. 975-1,560. Ultimately the State Government issued Government Order on 11.1.1992 that the Class IV employee working in the Horticulture Department are entitled to the promotional pay scale of Rs. 775-1,025 and not the pay scale of Rs. 975-1,560.

4. According to the contents of para 4 of the counter-affidavit, the Petitioner was entitled to next pay scale of Rs. 775-1,025 in view of para 10 of the Government Order dated 3.6.1989 consequently by the impugned order the recovery of the excess payment made to the Petitioner was initiated, the mistake was apparent which was rectified.

5. Learned Counsel for the Petitioners has submitted that under bona fide impression given, the Petitioners were granted a higher pay scale and were extended pecuniary benefits, the same could not be reduced without proper opportunity of hearing to them.

6. Learned Counsel for the Petitioners has referred and relied upon *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, where the higher pay scale erroneously given under a bona fide impression to the writ Petitioners in the year 1973, was reduced in the year 1984 and the writ Petitioners received the higher scale due to no fault of their, therefore, it was just and proper not to recover any excess amount already paid to them as held by the Supreme Court.

7. In *Bhagwan Shukla v. Union of India and Ors.* (1994) 28 ATC 258, the Supreme Court has held that when the pay fixation on promotion was subsequently reduced on the ground that such fixation was erroneously vague at the initial stage and such reduction passed without affording opportunity of hearing was not justified being in violation of the principles of natural justice. It was held as given below : "The Appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the Appellant has been made to suffer huge financial loss without being heard. Therefore, the impugned order by which the pay of the Appellant fixed on his promotion as Guard-C from the post of Trains Clerk was sought to be reduced is not sustainable."

8. In *Harish Chandra Srivastava v. State of U.P. and others*, 1996 (3) AWC 2198 : 1996 (2) ESC 317 the writ Petitioner was bonafidely promoted and was given

revised pay scale and subsequently on the ground that the Petitioner was not to be promoted and not to be paid salary of the promotional post on recovering proceeding of the excess salary being challenged, this Court has held that since no fraud on authorities promoting the incumbent was proved and writ Petitioner has also not mislead any body, therefore, the recovery of excess salary paid to the employee was not justifiable being against the principle of natural justice and it was observed as under :

No doubt where any order is passed without affording reasonable opportunity of being heard which entails severe consequences including financial one, the said order suffers from the principle of natural justice rendering the same a nullity. The rule of audi alteram partem mandates that the decision makers should afford to the person concerned a reasonable opportunity of being heard *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, . Besides this, in the decision rendered in *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, , the Apex Court dealing with similar situation ruled that since the Petitioner received the higher pay scale due to no fault of his own, it shall not be just and proper to recover the salary already paid to him.

The order impugned to this writ petition is, therefore, liable to be quashed not only on the ground of want of affording reasonable opportunity of being heard to the Petitioner but also on the ground that the Petitioner cannot be held responsible for securing promotion on the higher scale of pay by misleading the department and, therefore, the payment of salary cannot be recovered as has been held in *Shyam Babu Verma's* case (*supra*). Besides this, the Petitioner has discharged his duties efficiently after promotion till the date of his superannuation and if payment of salary has been made at the fault of the department for years together for which the Petitioner cannot be blamed, the same is not liable to be refunded on the principles of equal pay for equal work as other persons who have been promoted on higher pay scale were also given the same pay scale. Therefore, it would not be just and proper to recover the so called excess salary from the Petitioner.

9. In *Mool Raj Upadhyaya v. State of H. P. and Ors.* (1994) 27 ATC 670, the excess amount of pay given to Class IV and Class III employees under interim orders of Supreme Court was not allowed to be recovered.

10. I have heard learned Counsel for the parties and I find that the Petitioners were not entitled to be given salary of Rs. 975-1,560 and para 10 of Government Order dated 3.6.1989 has already been considered and the later on by order dated 28.8.1990 (Annexure-C.A.-2) the State Government sought report from the Director, Horticulture and has also considered the report dated 1.7.1991 (Annexure-C.A.-3), where the allocation of scales of Rs. 975-1,560 to the Petitioners was not to be justifiable, however, since the Petitioners have already been given salary bonafidely in excess in the scale of Rs. 975-1,560 instead of their entitlement to receive in the scale of Rs. 775-1,025, therefore, the excess amount of salary cannot be recovered from them and since the order in question

had not been passed without proper opportunity of hearing and the Petitioners have already rendered work for which they have been bonafidely granted the enhanced salary.

11. In view of the above observations, writ petition is disposed of.