(2007) 07 MP CK 0121

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6861 of 2007 (S)

Ramchandran Prasad Sharma APPELLANT

Vs

Central Administrative Tribunal Jabalpur and Others RESPONDENT

Date of Decision : 04-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 3 MPJR 212

Hon'ble Judges : S.R. Waghmare, J;Dipak Misra, J

Bench : Division Bench

Advocate : K.N. Pethia, for the Appellant; Sheel Nagu, Advocate for Respondents No. 2 and 3 and Mr. Sanjay Agrawal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Article 226 and 227 of the Constitution of India the Petitioner has called in question the legal sustainability and defensibility of the order dated 14.5.2007 passed by the Central Administrative, Tribunal, Jabalpur Bench (in short ''the Tribunal'') in OA. No. 875/2006.

Sans unnecessary details the facts which are imperative to be exposited are that the Petitioner retired from the Railways in the year 1993. After retirement he got pension through the Shahdol Branch of State Bank of India till 14.11.2006 on which date an order was passed by the Railway Administration directing to recover the excess amount of Rs. 6,44,290/- payable as pension to him. The said order came to be passed on the bedrock that his pension had been erroneously computed and debited to his account. Assailing the said order it was contended before the Tribunal that he had deposited certain sum in a fixed deposit in the bank and he had to undergo treatment for coronary thrombosis at All India Medical Institute of Medical Science, New Delhi, and for the aforesaid purpose when he approached the bank authorities he was asked to deposit the so called excess amount of Rs. 6,44,290/-. He was not permitted to withdraw the amount from the bank as there had been an order by the authorities. It was contended before the Tribunal that the Petitioner was not responsible for any excess payment made to him and at no point of time he had made any misrepresentation on facts. It was also put forth that assuming that the amount had been credited to the account of the Petitioner by mistake the same could not be recovered. To bolster the aforesaid contention reliance was placed on the decisions rendered in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, . Sahib Ram Vs. State of Haryana and Others, and Purshottam Lal Das and Ors. v. State of Bihar and Ors. AIR 2006 SCW 5325.

On behalf of the employer it was urged before the Tribunal that at the time of grant of pension an undertaking was submitted by him that in the event of any excess amount received by him from the Bank he would be bound to refund such amount which he was not legally entitled to. A stance was taken that the Petitioner could not retract from such an undertaking. Additionally it was contended that the Bank had already filed a suit in the Court of the learned Additional District Judge. Shahdol for suitable directions for recovering of the excess amount from the Petitioner. It was also put forth that if the original application was allowed the suit filed by the Respondents would be rendered in fructuous.

The Tribunal distinguishing the decision placed reliance upon by the Petitioner expressed the opinion that an undertaking was given by the Petitioner and hence, the amount paid in excess could be recovered. The Tribunal did not perceive any error in the orders directing recovery of the amount and accordingly thought it appropriate to state that the order passed by the authorities did not warrant any interference. The Tribunal further opined that the controversy is between the Petitioner and the bank and when a suit is already pending with the learned First Additional District Judge, Shahdol the original application is not to be entertained.

We have heard Mr. K.N. Pethia, learned Counsel for the Petitioner, Mr. Sheel Nagu, learned Counsel for the Respondents No. 2 and 3 and Mr. Sanjay Agrawal, learned Counsel for the Respondent No. 4.

Before we proceed to deal with the legal facets in the field it is apposite to reproduce the undertaking given by the Petitioner. The same is as under:

In consideration of your having at my request agreed to make payment of pension due to me every month by credit to my account with you. I, the undersigned agree and undertake to refund or make good any amount to which I am not entitled of any amount which may be credited to my account in excess of the amount to which I am or would be entitled. I further hereby undertake and agree to bind myself and my heirs, successors, executors and administrators to indemnify the bank from and against any loss suffered or incurred by the bank in so editing my pension to my account under the scheme and to forthwith pay the same to the bank also irrevocably authorize the bank i.e. recover the amount due by debit to my said account or any other account deposits belonging to me in the possession of the Bank.

As is evident the Petitioner''s Pension Payment Order (P.P.O) was received from South Eastern Railway and payment of his pension started with effect from 1.11.1993. As per Part II of the P.P.O the Respondent-Bank paid the pension to the Petitioner at the rate of Rs. 611/- per month after commutation i.e. Rs. 916/- minus Rs. 305/-. The Petitioner was paid the amount for Rs. 611/- towards pension per month from 1.11.1993 till 31.12.1995. On account of recommendation of Vth Pay Commission the pension was revised and the same was consolidated at Rs. 2781/- and the reduced pension came to Rs. 2781/- minus Rs. 305/- i. e. Rs. 2476/- per month w.e.f. 1.1.1996. The Petitioner was also entitled to dearness allowance at the rate declared from time to time by the Central Government. There was again a revision of payment of pension from 2004 and the Petitioner was entitled to pension of Rs. 4172/- (Basic) + Rs. 4459/- (D.A.) = Rs. 4631/- minus Rs. 305/- i.e. Rs. 4326/-. The said amount was payable from 1.4.2004. The Respondent/Bank had obtained the services of a private person only for the purpose of checking/verification of the calculation contained in Pension Paper Orders and such person started his job assigned in the first week of November, 2006. In all there are 1700 pensioners who were having their account with the Respondent/Bank and their pension amount was regularly deposited in their respective accounts. On such checking/verification of calculation of Pension Payment Orders it was discovered that the Petitioner has been made excess payment of pension between 1.1.1996 till 30.9.2006 an amount of Rs. 6,44,290/-. The Bank prepared a chart and calculated the excess payment and the recovery of the amount to be made form the Petitioner. Subsequently there was some reduction with regard to excess payment. The Bank entered into communication with the Senior Divisional Finance Manager of South Eastern Railway, Bilaspur on 13.11.2006 for recovery of excess amount paid to the Petitioner. The Railway Administration confirmed an excess payment of Rs. 6,44,290/- to the Petitioner and asked the Bank to take steps for recovery of such excess amount. The said communication dated 14.11.2006 has been brought on record as Annexure A/1. In pursuance of the said letter the Bank issued a letter to the Petitioner for payment of excess amount of Rs. 6,44,290/-. The Petitioner, as has been set forth had submitted a letter dated 13.11.2006 to the Respondent/Bank for encashment for F.D.R. No. 146332 but as the Bank had to recover the amount made in excess of pension to the Petitioner the encashment of F.D.R. was not permitted. It is the stance of the Bank that it had appropriated a sum of Rs. 1,50,000/- which was lying in the Petitioner''s Saving account. Two FDRs have been kept on hold for recovery of the excess amount.

As is evincible the Respondent/Bank had issued a notice dated 18.11.2006 to the Petitioner requiring him to make payment of the excess amount with interest failing which appropriate action for recovery of the same would be taken. It is the stand of the Bank that on re-calculation it was found that the excess amount was only to the tune of Rs. 5,05,669/- and not Rs. 6,44,290/- and, therefore, a fresh notice dated 6.12.2006 was issued. It is also mentioned in the said notice that an amount of Rs. 1,50,000/- was lying in the Saving Bank Account and that had been appropriated towards the excess payment of amount of Rs. 5,05,669/- and he was required to make payment of the balance amount of Rs. 3,55,669/-. Despite the legal notice the Petitioner did not make the payment of the balance amount and, therefore, the Bank having no other option filed Civil Suit for recovery of the balance sum in the Court of First Additional District Judge, Shahdol which is pending for adjudication. The Bank had also filed an application under Order 38 Rule 5 of the Code of CPC for attachment before the judgment of the aforesaid F.D.Rs. It is contended by the Bank that it is entitled to release the amount in view of the andertaking and the decisions cited by the Petitioner are distinguishable.

In this context we may refer with profit to the decision rendered in Shyam Babu Verma and Ors. (supra). In the said case a three Judge Bench of the Apex Court expressed the opinion that when the Petitioner therein had received the higher pay-scale due to non fault of theirs, it is just and proper not to recover any excess amount already paid to them.

In Sahib Ram (supra) a two-judge Bench of the Apex Court held as under:

5. Admittedly the Appellant does not possess the required educational qualifications. Under the circumstances the Appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the Appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the Appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the Appellant cannot be held to be at fault Under the circumstances the amount paid till date may not be recovered from the Appellant.

In this context we may profitably refer to the decision rendered in Purushottam Lal Das & Ors, v. The State of Bihar and Ors. AIR 2006 SCW 5325 wherein the Apex Court concurred with the view rendered in Sahib Ram (supra) and The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others, and expressed the opinion as under:

10. High Court itself noted that the Appellants deserve sympathy as for no fault of theirs, recoveries were directed when admittedly they worked in the promotional posts. But relief was denied on the ground that those who granted had committed gross irregularities. 11. While, therefore, not accepting the challenge to the orders of reversion on the peculiar circumstances noticed, we direct that no recovery shall be made from the amounts already paid in respect of the promotional posts. However, no arrears or other financial benefits shall be granted in respect of the concerned period.

In this context we may fruitfully refer to a three-Judge Bench decision of the

Apex Court rendered in P.H Reddy and Ors. v. N.T.R.D. and Ors., 2002 (2) SLR 694 whereby their Lordships expressed the opinion that when an employee has been in receipt of higher amount on account of erroneous fixation of pay by the authority, should not be asked to re-pay the excess pay drawn.

The question that emerges for consideration is whether the Tribunal is justified in holding that the action of the Department is not unjustified. The decisions which have been placed reliance upon by Mr. K.N. Pethiya, learned Counsel for the Petitioner, in our considered opinion are distinguishable. In those cases certain benefits were conferred on the employees without any representation or misrepresentation. In certain cases recovery was circumscribed. The Apex Court also took note of the fact that in certain circumstances the employee had worked in the promotional post and hence, there was no justification for recovery. But in the case at hand, the most significant factor is the Petitioner availed the benefit to promotion by furnishing an undertaking which we have reproduced above. If the language of the undertaking is scanned in proper perspective, there can be no shadow of doubt that the Petitioner is bound by the undertaking given by him. There may not be a misrepresentation, but, the fact remains that the calculation was not in certitude and there was possibility of erroneous calculation. Precisely that was the reason why undertaking was taken. It is also worth-noting that more than 1700 employees have got the benefit. A benefit of this nature which is not due and has been availed, there can be recovery. The State exchequer cannot be allowed to suffer in this manner. Hence, we distinguish the decisions cited by the learned Counsel for the -Petitioner and hold that any amount paid in excess to the Petitioner is recoverable. However, we would hasten to clarify, we would not like to refer to the facet pertaining to quantum. We would not comment on any other aspect as that may affect the suit filed by the Bank against the employee. We only conclude and hold that the excess amount paid to the Petitioner than what is due to him is recoverable as per law.

In the result, the writ petition being sans merit, stands dismissed. There shall be no order as to costs.

