

(2007) 04 AHC CK 0108
In the Allahabad High Court

Ramesh Chand Tayagi

APPELLANT

Vs

Director Agricultural Marketing, Additional Director
(Agricultural Marketing), Assistant Agricultural Marketing
Officer, Naveen Mandi Ashthal and Assistant Agricultural
Marketing Officer

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Citation : (2007) 5 ADJ 413 : (2007) 4 AWC 3261 : (2007) 2 UPLBEC 1593

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioner was appointed as Junior Clerk on 10.10.1961. After completion of twenty years of service the petitioner was granted Selection Grade with effect from 1.7.1982. On further completion of six years he was granted Promotional Pay Scale with effect from 1.7.1988. He was, however, transferred on promotion to the post of Senior Clerk on 6.11.1995. Thereafter, the petitioner retired from service on 31.7.2000. His retiral benefit and pension have been fixed on the basis of last drawn salary. However, by order dated 5.9.2000 passed by respondent No. 2 a direction was issued to stop payment of his gratuity amount on the ground that he was wrongly given promotional pay scale with effect from 1.7.1988 whereas, according to the respondents, he was actually promoted only on 6.11.1995 By subsequent order dated 16.9.2000 passed by the respondent No. 3, a direction to withhold the gratuity amount of Rs. 50,000/- was issued. Then, by order dated 18.4.2001 passed by the respondent No. 1, it was directed that the excess payment made to the petitioner be deducted from his gratuity amount. Aggrieved by the aforesaid orders, this writ petition has been filed.

2. Heard Sri S.N. Yadav, learned Counsel for the petitioner as well as learned Standing Counsel appearing for the respondents. Pleadings have been exchanged

and with consent of learned Counsel for the parties, this writ petition is being disposed of at this stage.

3. The specific case of the petitioner is that the promotional pay scale was granted to him in normal course and there was no misrepresentation or fraud on his part at any stage. The promotional pay scale given to the petitioner with effect from 1.7.1988 was on the basis of the orders passed by the respondents. Learned Standing Counsel has not been able to point out any misrepresentation on the part of the petitioner in being granted the promotional pay scale on 1.7.1988.

4. A Division Bench of this Court in the case of Bindeshwari Sahai Srivastava v. Chief Engineer Irrigation Department, U.P., Lucknow and Ors. 1996(2) L.B.E.S.R. 225, has held that when salary of employee had been fixed voluntarily by the employer without there being any fraud or misrepresentation on the part of the employee, the employer could not recover any excess payment made to him during his service period after his retirement. Another Division Bench of this Court in B.N. Singh v. State of U.P. 1979 A.L.J. 184 has also laid down that if an employee has been paid excess wages voluntarily by the employer without there being any fraud or mis-representation committed by the employee, the excess amount cannot be recovered from him. Relevant extract of the judgment is reproduced below:

It is well settled principle that wages paid to an employee by an employer voluntarily in bona fide manner without there being any element of fraud or misrepresentation, cannot be recovered from the employee subsequently merely on the ground that some mistake of interpretation of rules might have been committed by the employer for which the employee could not be held responsible. This view finds support from the decision of this Court in Gulab Chand v. State of U.P. Civil Misc. Writ Petition No. 1479 of 1962 decided on 19th March, 1969.

5. As such, since there is no fraud or misrepresentation on the part of the petitioner in the fixation of his salary by the respondents during his service period, hence recovery being now made from the petitioner, after his retirement, is totally unjustified and liable to be quashed.

6. Accordingly, this writ petition stands allowed. The impugned orders dated 5.9.2000, 16.9.2000 and 18.4.2001 passed by the respondents No. 2, 3 and 1 are quashed. The petitioner shall be entitled payment of the entire retiral benefits within a period of; three months from the date of filing a certified copy of this order before the Assistant Agricultural Marketing Officer, Meerut, respondent No. 4, failing which the petitioner shall be entitled to interest at the rate of 9% per annum from the date it became due, till the date of actual payment. It is however provided that in case if the payment is made within the aforesaid period of two months, the respondent shall not be liable to pay any interest.

7. No order as to cost.