

(2012) 11 MP CK 0144

In the Madhya Pradesh High Court

Case No : Writ Petition No. 18475 of 2003 (s) (Original Application No. 3825 of 2001)

R.K. Pandey

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2013) ILR (MP) 310 : (2013) 1 MPLJ 295

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Arun Shukla, for the Appellant; Piyush Dharmadhikari, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—This petition was originally filed as original application before the M.P. Administrative Tribunal at Jabalpur, which has come on transfer to this Court after closure of the Tribunal and has been registered as writ petition aforesaid. The claim made by the petitioner is that he was appointed on the post of Senior Research Scientist in the State Forest Research Institute, but subsequently it was treated as if he was posted on deputation on the said post and treating that substantive post of the petitioner was that of the Forest Botanist, reducing the pay scale, a recovery has been made. The petitioner has opted for depositing the aforesaid amount in installments, but that was not being considered, therefore, he has approached the Court for grant of relief. It is contended that earlier the petitioner was appointed in the services of the State Government in Forest Department on the post of Botanist. At the relevant time, the State Forest Research Institute was part and parcel of Forest Department. Subsequently, a decision was taken and the aforesaid Research Institute was made an autonomous body. The petitioner was willing to be appointed on the post of Senior Scientist for which a recruitment process was started by the Research Institute. On selection, since the order of appointment was issued in

respect of petitioner on 30th of June, 1998, he gave his joining. In the order of appointment it was specifically prescribed that the petitioner was appointed on the post of Senior Scientist in the pay scale of Rs. 3700-5000/-. However, after joining of the petitioner, some consideration was done and as the petitioner was willing to continue his lien in the State Government Department, ultimately an order was passed and it was said that the petitioner was to be treated on deputation in the Research Institute and was not to be allowed higher pay scale. He would be entitled to continue on his post of Forest Botanist. The petitioner made a representation that he may be repatriated back to his parent department, but that was not considered. Ultimately by the impugned order it was communicated that in fact the petitioner has been paid salary in the higher pay scale whereas he was entitled to lower pay scale and, thus, it was necessary to recover the amount from the petitioner. On receipt of such an order, the petitioner made representation, but the same was not considered, therefore, the original application was required to be filed.

2. Contesting the claim made by the petitioner, the respondents have filed their return. Respondent No. 1 has categorically contended that petitioner could not have accepted appointment in the Research Institute without relinquishing the post he was holding in the Forest Department if at all he was interested to continue in the services of Research Institute, He could be treated on deputation to the said institute if he was willing to continue his lien on the post in the Forest Department. The petitioner took part in the selection, got an order of appointment in this respect in the Institute, but never relinquished the post in the Forest Department. This being so, he was treated as a Forest Botanist in the Forest Department and was allowed to continue as Senior Research Scientist in the Research Institute only on deputation. A person sent on deputation is not entitled to the salary of the post on which he was working on deputation. At the best he will get the benefit of deputation allowance. That being so, the petitioner would not be entitled to claim the salary of the post of Senior Scientist in the Research Institute. It is further submitted by the respondent that since the petitioner has not resigned from his post in the Government Department, he was granted the benefit of Kramonnati. Merely because Kramonnati was granted, there was upgradation in the pay scale of petitioner, but his post remained the post of Forest Botanist in the Forest Department. This being so, again the petitioner even after grant of Kramonnati was not entitled to the benefit of higher pay scale on the post of Senior Scientist. This being so, the recovery was directed in appropriate manner. It is contended that the petitioner himself has made the representation, accepting the said situation and made a request that the amount may not be recovered from him in lump sum but the same may be recovered in installments from his salary.

Thus, it is contended that the entire claim made by the petitioner is misconceived and the petition deserves to be dismissed.

3. After hearing learned counsel for parties at length and perusing the record,

this Court is of the opinion that the petitioner had never relinquished the post of Forest Botanist in the Forest Department of Government of M.P. On earlier occasion also he was simply sent to work in the Research Institute when he was in the folds of the State Government. When the Institute became an autonomous body, it was necessary on the part of the petitioner to seek permission of his employer to take part in the selection for appointment on any of the post in the Research Institute. Merely because the petitioner has made an application through proper channel, it cannot be said that sanction was accorded to take part in such selection. Even otherwise when the order of appointment was issued in respect of petitioner, appointing him in the services of the Research Institute, he was required to submit his resignation in the Forest Department in appropriate manner. Though the State Government has issued circulars in this respect way back directing that formal notice of resignation would not be necessary in such circumstances, but at least resignation was required to be given. Since this was not done, the petitioner was not relieved from the Department of the Government to take over the charge on the post in the Research Institute and, therefore, his joining could not have been accepted at all by the Research Institute.

4. The other aspect is that the petitioner himself has admitted that he was willing to continue in the services of the Forest Department of Government of M.P. If he was willing to continue in the Department, there was no question of his resignation. If he has not resigned and his lien continues in the Forest Department, at the best he could be treated as working on deputation in the Research Institute. Thus, there was a mistake committed by the authorities in making payment of salary to the petitioner on the pay scale which was not applicable on his substantive post. If such a mistake is committed, well settled law is that it can be remedied at a later stage, in the case in hand it was expeditiously done and, therefore, it cannot be said that any wrong was committed by the respondents.

5. The Apex Court in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, has held that in case any amount has been paid in excess even without the fault of recipient party, if the law so permits, an obligation is always on the payee to recover the said amount. Even recovery of the amount can be made from the retiral dues if the same is paid in excess to the entitlement of an employee. The law laid down by the Apex Court in the case of Sahib Ram Vs. State of Haryana and Others, has also been considered in the aforesaid case. In view of the aforesaid annunciation of law by the Apex Court recently, the petitioner has no right to claim the refund of amount recovered from him. Consequently, the writ petition fails and is hereby dismissed. However, there shall be no order as to costs.