(2009) 01 RAJ CK 0030

In the Rajasthan High Court

R.M. Mathur APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Citation : (2010) 2 RLW 1469 : (2009) 2 WLN 542

Hon'ble Judges : Mohanmmad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Under challenge in this writ petition is the order dt. 22.01.2001 whereby the respondents decided to recover from the petitioner amount of salary paid to him in excess of what according to them was admissible as per Rule 144A of the Rajasthan Service Rules read with Circular of the Finance Department dt. 22.02.1986.

2. Shri Prahlad Singh, learned Counsel for the petitioner has argued that the petitioner was serving on the post of Assistant Engineer with the Government of Rajasthan. He was selected for appointment by way of deputation as Fellow (Project) with the Institute of Development Studies (for short- I.D.S.) on a project ''Water Resources Management of Rajasthan''. This project was fully funded by ''Ford Foundation''. Learned Counsel referred to the communication dt. 20.08.1994 which was sent by Shri V.S. Vyas, Director of I.D.S. to Shri D.S. Meena, the Secretary, Irrigation Department, Government of Rajasthan informing that the petitioner has been selected for being taken on deputation as Fellow with the I.D.S. on deputation with the institute initially for a period of one year, which period was likely to be extended by one more year and that the I.D.S. offered to him pay in the scale of Rs. 3700-5300 with ususal allowances but without any deputation allowance. It was argued that the petitioner was after his selection given the offer for working with IDS on deputation basis in the pay scale of Rs. 3700-5300 with the ususual allowances and unlike in the case of government servants sent on deputation to other departments, he was not to be

paid any deputation allowance. It was therefore that the petitioner accepted the offer. Learned Counsel submitted that when the petitioner was serving I.D.S, the audit party of the Accountant General (Audit) raised an objection with regard to payment of salary to the petitioner in the scale of Rs. 3700- 5300 on the premise that according to Rule 144A, supra and the order issued by the Finance Department of the State Government thereunder, the petitioner being a substantive employee of the State Government, could be paid salary in the same scale in which he was receiving his pay in the parent department.

3. Shri Prahlad Singh, learned Counsel for the petitioner invited attention of the Court towards the communications dt. 31.08.2000 and 16.01.2001 which were sent by Secretary of I.D.S. to the Senior Accounts Officer and the Accountant General (Audit) respectively explaining that the objection of the audit party was based on misconceived assumption that I.D.S. was controlled / owned by the Government, which is not the case. It was stated that the present matter would not fall within the ambit of Rule 144A, supra and the orders issued thereunder. Salary was paid to the petitioner at the basic of the scale of Rs. 3700-5300 as was being paid to all other Fellows in the institute and was spent by him in good faith. The institute further informed that the recovery of the amount paid to the petitioner now would be financially very hard hitting besides being unfair, unjust and also against all cannons of propriety as it is not covered by relevant orders issued in this behalf. It was also informed that the salary of the petitioner was charged to the project funding instead of grant given by State Government, which aspect of the matter has completely been overlooked by the audit party. Shri Prahlad Singh further argued that I.D.S. was a non-government organisation which was neither owned, nor controlled by the State Government and/or Central Government and that the project in which the petitioner was taken on deputation was fully funded by the "Ford Foundation" and there was no budgetary support from either of the Governments. There was therefore no question for applying Rule 144A of R.S.R. or the orders issued there under. Learned Counsel relied on the decision of the Government under Rule 144A, which especially in its Clause (10) of the very same Circular dt. 22.02.1986 which is relied on by the learned Additional Government Counsel, has carved out an exception to provide as to in what situation, the other conditions of the said Circular would not apply and Clause (10)(iv) clearly states that such government servants, who are sent on deputation and whose terms are regulated under specific statutory rules or orders would not be covered by Rule 144A. In the present case, when the selection of the petitioner as Fellow was made by I.D.S. in the pay scale of Rs. 3700-5300 just like all other Fellows so selected and when such offer emanated from I.D.S. itself to the Government and Government allowed the petitioner to proceed on deputation on that basis, no recovery can be made from the petitioner as he has actually worked as Fellow with I.D.S. in terms of their offer and his acceptance. Learned Counsel lastly submitted that the payment of salary in the scale of Rs. 3700- 5300 to the petitioner was neither owning to any fraud or misrepresentation on the part of the petitioner. It is trite law that even if there

has been a mistake in making fixation or there was any excess payment of salary, which is not attributable to fraud or misrepresentation on the part of the petitioner, recovery of such excess amount cannot be made by the respondents. Learned Counsel in support of his arguments relied on the judgements of Supreme Court in Syed Abdul Qadir and Ors. v. State of Bihar and Ors. 2009 (1) Supreme 163 , Sahib Ram Vs. State of Haryana and Others, and Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, . Shri Zakir Hussain, learned Additional Government Counsel for the respondents opposed the writ petition and submitted that in view of Rule 144A read with Circular of the Finance Department dt. 22.02.1986, the petitioner even on deputation was entitled to receive salary in his basic pay of the parent department plus personal pay if any plus deputation allowance at the rates mentioned in para 3 of the said Circular. It was argued that the audit party of the Accountant General (Audit) raised the objection, therefore, the recovery was proposed to be made from the petitioner. The petitioner was paid in excess of what was due to be paid to him and action of the respondents was in conformity with Rule 144A of the Rules. It was therefore prayed that the writ petition be dismissed.

5. Upon consideration of the arguments aforenoted and perusal of the material on record, especially of Circular of the Finance Department, I find that this Rule 144A provides that the terms and conditions of the State Government servants transferred on deputation / foreign service to Central Government, other State Government Public undertakings, autonomous bodies and other bodies wholly or substantially controlled by the Government etc. shall be regulated in accordance with the orders issued by the Government from time to time. The Government Circular on which the respondents are placing their case and on which the objection of the audit party based its objection itself carved out an exception for the categories to which the conditions enumerated there under would not apply. Clause (10) of the said Circular provides as under:

10. NON-APPLICABILITY:

These orders shall not apply to:

(i) Government servants sent on deputation to Panchayat Samities and Zila Parishads;

(ii) A Government servant who is appointed by the Government as an Administrator / Executive Officer / Municipal Commissioner or in any other capacity or whose services are placed on deputation to a superseded Municipal Council or Board;

(iii) Government servants of Cooperative Department sent on deputation to Cooperative Institutions registered in the State;

(iv) Government servants sent on deputation whose terms are regulated under specific statutory rules or orders;

It would be evident from the above that what is being insisted upon by the respondents and the audit party is based on the conditions enumerated in Clause (4) of the said Circular whereas the last clause of the Circular namely Clause (10) has given an exception to such category of cases in which terms and conditions of deputation of the government servant is made on specific statutory rules and orders. In the present case, the petitioner has successfully demonstrated before this Court that he was selected as Fellow (Project) by I.D.S. and after his selection, the Director of I.D.S. in his letter of offer which was routed through the Secretary of the Irrigation Department clearly offered to take the petitioner on deputation with I.D.S. on payment of salary of Rs. 3700 in the pay scale of Fellow i.e. Rs. 3700-5300 with usual allowances but without any deputation allowance. It is thus clear that unlike in the normal case of deputation of government servant, the petitioner was not even granted any deputation allowance, but at the same time he was selected and was proposed to be paid the salary in the pay scale of the post of Fellow i.e. Rs. 3700-5300 with usual allowances, which was also paid to all other Fellows selected like the petitioner. I.D.S. in its communications dt. 31.08.2000 and 16.01.2001 has clearly tried to impress upon the Accountant General (Audit) that Government instructions issued under Rule 144A would not apply to them as it is a non-government organisation and in any case, payment of the salary of the petitioner was made out of the funding received from Ford Foundation and was not charged to the grant given by the State Government. This aspect of the matter was completely lost sight of the audit party. I am inclined to uphold this contention of the petitioner and that of I.D.S., who also suggested that recovery of this amount from the petitioner at this stage would be very hart hitting besides being unfair and unjust. Even otherwise, as per the law enunciated by catena of Supreme Court judgements as relied on by the petitioner, since there was no fraud or misrepresentation on the part of the petitioner in receiving the salary in the aforesaid pay scale, there could be no question of recovery of such amount. Although on facts of the case, it is clearly proved that I.D.S. offered to take the petitioner on deputation as Fellow (Project) in the pay scale of Rs. 3700-5300 and the petitioner accepted that offer and accordingly went on deputation to I.D.S. The objection raised by the audit party was thus wholly unfounded and is liable to be rejected.

6. In the result, this writ petition is allowed. The impugned order dt. 22.11.2001 is quashed and set aside. There shall be no order as to costs.