(2015) 04 SHI CK 0100

In the High Court Of Himachal Pradesh

Case No : CWP No. 1409 of 2015

Sant Ram APPELLANT

Vs

Himachal Road Transport Corporation and Others RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2015) 04 SHI CK 0100

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J

Bench : Division Bench

Advocate : Onkar Jairath, for the Appellant; B.N. Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Reply not filed. The right to file the reply is closed.

2. The petitioner was appointed as Conductor in the respondent-Corporation on 21.4.1975. He retired on 31.1.2013. The petitioner was legitimately expecting that his pensionary/retiral benefits will be released to him at the time of his superannuation. However, the fact of the matter is that vide Annexure P-1 dated 26.2.2014, the petitioner''s salary has been reduced from Rs. 17,640/- to Rs. 16,200/-.

3. The petitioner has suffered civil and evil consequences. He should have been granted reasonable opportunity of being heard before the decision was taken to reduce his salary from Rs. 17,640/- to Rs. 16,200/-. The decision to reduce the salary of the petitioner has been taken after his retirement on 26.2.2014 affecting his pensionary and retiral benefits.

4. Their Lordships of the Hon''ble Supreme Court in the case of Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others, AIR 2007 SC 181 : (2006) 206 CTR 175 : (2006) 287 ITR 91 : (2006) 10 JT 76 : (2006) 11 SCALE 409 : (2007) 2 SCC 181 : (2006) 8 SCR 284 Supp : (2006) 157 TAXMAN 168

have held that:

"26. Effect of civil consequences arising out of determination of lis under a statute is stated in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, AIR 1967 SC 1269 : (1967) 15 FLR 209 : (1967) 2 LLJ 266 : (1967) 2 SCR 625 . It is an authority for the proposition when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed. In such an event, although no express provision is laid down in this behalf compliance of principles of natural justice would be implicit. In case of denial of principles of natural justice in a statute, the same may also be held ultra vires Article 14 of the Constitution."

5. Their Lordships of the Hon''ble Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, (2009) 1 JT 385 : (2009) 1 SCALE 36 : (2009) 3 SCC 475 : (2009) 1 SCC(L&S) 744 : (2009) 3 SLJ 38 have culled out the following principles governing the circumstances in which the excess amount cannot be recovered by the employer:

"55. That apart, it also appears from the record produced before us that while the Finance Department of the Government of Bihar was in favour of making the amended provisions of FR. 22-C applicable to the appellants-teachers after having come to know that the said rule did not exist and had been substituted, the Department of Human Resource Development, Government of Bihar, wanted to apply the unamended provision to the appellants teachers so as to make available the benefit of additional increment provided for under FR.22-C to its teachers, unaware of the fact that even under FR.22-C they were not entitled to the additional increment as they were not discharging duties and responsibilities of greater importance on the promoted post.

56. This further goes on to show that the authorities in the State of Bihar were not even aware of the basic requirement for grant of additional increment and the decision appears to have been taken without proper application of mind. Otherwise, there was no reason for the Finance Department to state in the counter affidavit filed before the High Court that any affidavit filed on behalf of the Education Department may be ignored as Finance Department was the competent authority. In this very affidavit, the Finance Department while admitting that the pay fixation by the Education Department was wrong, stated as under:--

"...the fixation of pay under Fundamental Rule 22-C has wrongly been made as it was not in existence. Pay fixation on the basis of a non-existent rule is a bona fide mistake."

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular

interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram Vs. State of Haryana and Others, (1995) 1 JT 24 : (1995) 1 SCC 18 Supp : (1994) 3 SCR 674 Supp : (1995) 1 SLJ 151 , Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, (1994) 68 FLR 812 : (1994) 1 JT 574 : (1994) 1 LLJ 815 : (1994) 1 SCALE 469 : (1994) 2 SCC 521 : (1994) 1 SCR 700 : (1994) 2 SLJ 99 : (1994) 1 UJ 797 ; Union of India (UOI) and Another Vs. M. Bhaskar and Others, (1996) 73 FLR 1676 : (1996) 5 JT 500 : (1996) 4 SCALE 670 : (1996) 4 SCC 416 : (1996) 2 SCR 358 Supp : (1996) 2 SLJ 25 ; V. Gangaram Vs. Regional Joint Director and others, AIR 1997 SC 2776 : (1997) 5 JT 385 : (1997) 4 SCALE 92 : (1997) 6 SCC 139 : (1997) SCC(L&S) 1652 : (1997) 3 SCR 1043 : (1997) AIRSCW 2754 : (1997) 4 Supreme 446 ; Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, (2007) 207 ELT 3 : (2006) 9 JT 125 : (2006) 10 SCALE 206 : (2006) 11 SCC 709 : (2007) 1 SCC(L&S) 529 : (2006) 7 SCR 58 Supp : (2007) 2 SLJ 8 : (2008) 11 STR 305 ; Purshottam Lal Das and Others Vs. The State of Bihar and Others, (2006) 12 JT 581 : (2006) 10 SCALE 89 : (2006) 11 SCC 492 : (2007) 1 SCC(L&S) 508 : (2006) 7 SCR 51 Supp : (2007) 2 SLJ 68 ; Punjab National Bank and Others Vs. Manjeet Singh and Another, AIR 2007 SC 262 : (2006) 111 FLR 587 : (2006) 9 JT 247 : (2006) 8 SCC 647 : (2007) 1 SCC(L&S) 16 : (2006) 6 SCR 825 Supp : (2007) 2 SLJ 53 ; and Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr., [2000] 10 SCC 99.

59. Undoubtedly, the excess amount that has been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.

60. Learned counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some instalments/ amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant-teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them."

6. Accordingly, the writ petition is allowed. Impugned Annexure P-1 dated 26.2.2014 is quashed and set aside. In normal circumstances, we would have given liberty to the respondent-Corporation to issue notice to the petitioner, however, since the petitioner has retired now, in these circumstances, no fruitful purpose will be served by initiating fresh proceedings in the matter. Retiral benefits, if any, if not paid to the petitioner shall be paid within a period of six weeks from today. Pending application(s), if any, shall stand disposed of.