

(2020) 04 CAL CK 0032

In the Calcutta High Court

Case No : Wp. Central Tribunal (WPCT) No. 116 Of 2019

Santosh Kumar Dutta

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 24-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 136, 141, 226

Citation : (2020) 04 CAL CK 0032

Hon'ble Judges : Dipankar Datta, J; Protik Prakash Banerjee, J

Bench : Division Bench

Advocate : Biswaroop Bhattacharya, Somali Mukhopadhyay, Arijit Majumdar

Final Decision : Allowed

Judgement

Protik Prakash Banerjee, J

1. This is a petition under Article 226 of the Constitution of India directed against the order dated July 22, 2019 passed by the learned Central Administrative Tribunal, Kolkata dismissing O.A. No.350/1236/ 2016. It has been brought before us sitting in Division in terms of the law laid down by the Hon'ble Supreme Court in L. Chandrakumar-v-Union of India reported in AIR 1997 SC 1125.

2. The said original application was heard on affidavits. These are before us as part of the Annexures to the writ petition. From the said original application and the affidavits, it appears that the writ petition was instituted for the following main reliefs: -

? An order to set aside and or quashed (sic!) the alleged part II order dated 1st August, 2016 passed by the respondent authority directing to deduct amount for availing LTC for his parents and sisters with panel (sic!) interest.

? An order directing the respondents to issue Balance leave certificate of the applicant forthwith without deducting any amount therefrom.

? An order directing the respondents to pay the balance leave salary to the

applicant along with accrued interest at the rate of 10% per annum without deducting any amount therefrom.

3. It appears from the original application that the applicant retired from service under the respondents as "3A'C" category of employee on September 31, 2015. Therefore, he was a group "C" category employee. The respondents were purporting to recover money from their retired Group "C" employee on the ground that he had taken leave travel concessions for visits of his father, mother, and four sisters to Pahalgaoon and again for his mother and three sisters to Pahalgaoon and for his two sisters to Trivandrum, in 1978-81, 1982-85 and 1986-89 respectively, without producing any dependency certificate of the said persons on his income, but only on the basis of his declaration that they were "Family" for the purposes of Central Civil Services (LTC) Rules. It is an admitted position that the applicant in the original application had been paid his gratuity, commutation of pension and service pension, but was not being paid 300 days of Balance Leave Encashment due to the said dispute relating to leave travel concession raised by the audit department. Ultimately an order was passed by the respondents granting cash equivalent of leave salary for 300 days earned leave and 298 days of Half Pay Leave after adjustment of the leave travel concession availed by the petitioner for his parents and sisters as aforesaid. This is why the petitioner approached the learned tribunal for the above reliefs.

4. This storm in the tea cup continued in strange ways. As I will endeavour to show hereinafter, though the respondents had no jurisdiction to recover any amount from a retired Group "C" employee, the respondents contested the petition but on May 31, 2018 advised the petitioner that they were taking necessary action to make payment of the Balance Leave Encashment due to the petitioner and therefore the petitioner may drop the case, that is to say, withdraw the case. Leave encashment was thereafter released to the petitioner during the pendency of the above case, and therefore, the petitioner continued the case only for the purpose of obtaining interest on delayed payment [prayer (c) of the main reliefs prayed for].

5. The question of whether any amount could be recovered from a retired employee on any ground, is no longer *res integra* as the law has been laid down by the Hon'ble Supreme Court as to when it can be done, conclusively. Let us see what exactly was laid down.

6. A bench-strength 3 decision of the Hon'ble Supreme Court is the first. This was on a reference answered in *State of Punjab-v-Rafiq Masih* reported in (2014) 8 SCC 883. Here the Hon'ble Supreme Court was called upon to decide which of the decisions in *Chandi Prasad Uniyal and Others-v-State of Uttarakhand & Others* reported in (2012) 8 SCC 417 and the case of *Shyam Babu Verma- v- Union of India* reported in (1994) 2 SCC 521 was good law. There the question was whether grant of a higher pay-scale than which the petitioners were entitled could be adjusted by recovery by the employer, where the grant of the higher scale and payment of the higher amount were not due to any fault of the

petitioners.

7. While in *Shyam Babu Verma* (supra) it was held to be not recoverable, as "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", and "it shall be only just and proper not to recover any excess amount which has already been paid to them",

in *Chandi Prasad Uniyal* (supra) the Hon'ble Supreme Court held that the case involved public money, the tax-payers' money which belongs neither to the officers who effected over-payment nor to the recipients. Thus, the Hon'ble Supreme Court was pleased to hold that it failed to see why the concept of fraud or misrepresentation was being brought in these situations. The question to be asked is whether excess money has been paid or not, may be due to bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such a situation does not belong to the payer or the payee. Situations may arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment".

The Hon'ble Supreme Court was pleased to hold that the law laid down in the case of *Chandi Prasad Uniyal* (supra) in no way contradicted the observations made by the court in two other cases, since the case of *Chandi Prasad Uniyal* (supra) laid down the law after entertaining a matter under Article 136 of the Constitution of India and was a declaration of the law under Article 141 of the Constitution of India, whereas observations and directions made in the earlier cases were directions made by the Hon'ble Supreme Court to do complete justice to the parties and do not constitute a binding precedent.

Holding the reference unnecessary, their Lordships remitted the matters to the Division Bench of the Hon'ble Supreme Court for their appropriate disposal.

8. This led to a Division Bench decision of the Supreme Court of India in *State of Punjab-v-Rafiq Masih* reported in (2015) 4 SCC 334. In its judgment, the Hon'ble Supreme Court of India reviewed its prior decisions wherein the benefit of non-recovery was extended to employees and the recovery of the excess payment was disallowed on grounds that such recovery would be iniquitous and arbitrary for an employer to require an employee to refund the wages even if the employee was allowed such wages on the basis of irregular pay-fixation or miscalculation. The Hon'ble Supreme Court categorically held at paragraph 7 of the report, that

"we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made."

Reviewing the authorities before it, the Supreme Court held the following:

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

9. Reliance was also laid upon a subsequent judgment of the Hon'ble Apex Court in High Court of Punjab & Haryana & Others-v-Jagdev Singh reported in 2016 SCC OnLine SC 748. In this case, the petitioner relied upon the proposition (ii) laid down in the decision in Rafiq Masih (Supra). A Division Bench of the Hon'ble Supreme Court, after going through the decision in Rafiq Masih (Supra) denied the claim of the petitioner therein after making the following observation:

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

10. It is the opinion of this court that the ratio laid down by the Hon'ble Supreme Court in Rafiq Masih (supra) of 2015 when read along with the decision in Jagdev

Singh (supra), lays down a very clear proposition of law. This proposition is that recovery of amount drawn in excess of what was admissible to the employee cannot be made from retired employees, or employees who are due to retire within one year, of the order of recovery unless such employees are bound by any undertaking on their part to return over-drawal or excess payments. Any qualification if attached to the aforesaid principle on account of any factual dissimilarity would only result into diluting the effect of law laid down by the Hon'ble Supreme Court. These also lay down the law that no "Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service)" can be made.

11. Admittedly, the writ petitioner/applicant belongs to Group C (that is to say Class III) service. As we had noted in our order dated November 8, 2019, though it was not mentioned specifically in the original application that he belonged to Group "C" service, it was pleaded that the nature of his service was "3A'C' category and the documents on record also substantiate the same. Therefore, the question of recovering any amount from the petitioner after his retirement, whether on the ground of not submitting dependency certificate for availing leave travel concession or otherwise, does not and cannot arise. Therefore, by delaying the payment of his Balance Leave encashment until such adjustment of leave travel concession was done by recovery was also wholly without jurisdiction and arbitrary. That ultimately no recovery was done, does not absolve the respondents of their liability to pay interest on the Balance Leave Encashment amount to the petitioner from the day that the payment had become due till recovery.

12. Unfortunately, by the impugned order dated July 22, 2019, the learned tribunal wholly misdirected itself, failed to appreciate the above settled position of law or apply it and dismissed the original application on the basis of the following findings, which were contrary to the materials on record: -

"We considered the matter on the basis of the facts stated and the decisions cited in support. We find that, in fact, the delay was attributable to the applicant due to the time taken to adjust the amount towards cost of tickets of the LTCs, as stated supra. However, since the applicant did not tender the amount, it was recovered from him whereafter Leave Encashment was released, the Respondent ought not to be saddled with penal interest on delayed payment of Leave Encashment. Accordingly, the OA stands dismissed. No costs."

13. In the first place, the leave encashment was released without any deduction whatsoever, so that the delay had been due to the adjustment made with the costs of tickets of Leave Travel Concession was based on no material on record and the finding that there was recovery was contrary to the records. In the second place, the law laid down by the Hon'ble Supreme Court clearly indicates that no recovery of can be made from the retirement benefits of a Group "C" employee, like the petitioner. Therefore, the impugned order refusing to award interest on the delayed payment on the basis of such findings, is perverse and

contrary to the law and cannot be sustained.

14. Therefore, we set aside the said order dated July 22, 2019 passed by the learned tribunal, and allow OA No.350/1236/2016 recording that the reliefs prayed for in prayers (a) and (b) having already been granted by the respondent authorities, no direction needs to be passed thereon, and so far as prayer c) is concerned, we hold that the delayed payment of the amount of Balance Leave Encashment is wholly due to the wrongful and arbitrary act of the official respondents to try and recover money from a retired Group "C" employee, which it had no jurisdiction to do, in terms of the discussions as in above. Therefore, it shall carry simple interest at the rate of 8% per annum - reasonable in the facts and circumstances of the case, and commensurate with that available in term deposits with a nationalized bank - from the date that the said sum of Balance Leave Encashment was payable to the date when it is actually paid. The writ petition is allowed to the above extent. There shall be no order as to costs.