(2010) 08 SHI CK 0222

In the High Court Of Himachal Pradesh

Case No : C.W.P. (T) No. 4708 of 2008

Savita Sood APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Citation : (2010) 08 SHI CK 0222

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Petitioner was appointed on the basis of recommendations made by the H.P. Public Service Commission on 6th February, 1987 to the post of Steno-typist in the pay scale of Rs. 400-600. The following condition was enumerated in her appointment letter:

7. She shall have to qualify short-hand/typewriting test in both the languages i.e. English and Hindi for the post within 18 months from the date of appointment, to be conducted by the HP PSC, failing which her services are liable to be terminated.

2. The petitioner did not qualify short-hand/typewriting test within the stipulated period. However, the fact of the matter is that she was permitted to continue to work as Steno-typist. In the meantime, respondent-State issued instructions on 6th April, 1991. Operative portion of the instructions reads thus:

Keeping in view the above discussed actual position and the amended provisions of R and P Rules for direct recruitment, the Govt. has now decided that such candidates, who were appointed on the suggestion of HPPSC before amendment of R and P Rules for Direct recruitment of Steno-typist, in accordance with speed prescribed for shorthand and typing under 1984 Rules in English and Hindi and were appointed without passing with the requisite speed with a condition that they would have to pass the said test within 18 months and who have still not passed test either in one or both the languages with prescribed speed, they are given last opportunity to pass the above said test in accordance with the above said amended/prescribed speed in stenography/typing within 1 year from the issuance of this letter. If such candidates pass the shorthand and typing test in both the languages in the prescribed speed, they would be entitled to annual increments from the due date(s) otherwise they would be entitled to annual increment from the same date, from which they would pass they typing and shorthand test with requisite speed in both languages.

Keeping in view the above position/decision, you are requested that all such candidates who have not passed the above said test, their appointment letters may be amended as per the above said instructions and they may be made aware of this decision and advised to take advantage of this last chance.

3. The petitioner, on the basis of this letter dated 6th April, 1991 has not been held entitled to annual increments which had been earned by her with effect from her initial appointment, i.e. 6th February, 1987. The Court is of the considered opinion that the instructions issued on 6th April, 1991 shall apply prospectively and the annual increments earned by the petitioner with effect from 6th February, 1987 to 6th April, 1991 could not be taken back. Moreover, it is also not the case of the respondent/State that the petitioner has misled, misrepresented the facts or played a fraud on the authorities at the time of release of annual increments with effect from 6th February, 1987 to 6th April, 1991.

4. Their Lordships of the Hon''ble Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, 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 nonexistent 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, Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, Union of India (UOI) and Another Vs. M. Bhaskar and Others, V. Gangaram Vs. Regional Joint Director and others, Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, Purshottam Lal Das and Others Vs. The State of Bihar and Others, Punjab National Bank and Others Vs. Manjeet Singh and Another, ; and Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. .

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 installments/ 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.

5. Accordingly, in view of the observation made hereinabove, the petition is allowed. Annexures A-3 dated 3rd December, 1994, A-4 dated 16.12.1994, A-5 dated 10th January, 1995, A-11 dated 29th October, 1996 and A-12 dated 30th September, 1997 are quashed and set aside. Consequently, the respondents are restrained from effecting recoveries of the amount from the petitioner which she had earned by way of annual increments with effect from 6th February, 1987 to 6th April, 1991. The pending application(s), if any, also stands disposed of. There shall be no order as to costs.