**(2013) 10 DEL CK 0151**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 6413 of 2013 and CM No. 13976 of 2013

Sh. Mahender Singh and Another APPELLANT

Vs

Union of India and Another RESPONDENT

**Date of Decision :** 07-10-2013

**Acts Referred:**

**Citation :** (2013) 10 DEL CK 0151

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Y.D. Nagar, for the Appellant; Hashmat Nabi, Advocate for R-1 and Mr. Jagat Arora, Advocate for R-2 and 3, for the Respondent

**Final Decision :** Dismissed

## Judgement

Valmiki J Mehta, J.—This writ petition is filed by two petitioners. The two petitioners impugn the action of the employer-Dena Bank, represented by respondent nos. 2 and 3 herein, whereby the employer has sought to make recovery of amounts which were wrongly paid to the petitioner as increments. Petitioners had claimed benefits of payment of increments by claiming that they had cleared the B.A. Graduation Degree by passing the ''Sahitya Sudhakar'' Examination of ''Bombay Hindi Vidyapeeth''. There is a little bit of history to this case and which needs to be noted because actually the first recoveries were sought to be effected by the employer in terms of the letter dated 16.7.1999. An association of the employees alongwith the two petitioners herein, approached this Court in W.P. (C) No. 6661/1999 challenging the actions of recoveries initiated by the employer. This writ petition was disposed of in terms of the order dated 21.7.2009 by a learned Single Judge of this Court whereby the petitioners were entitled to make representations and the employer was to take clarification from the Ministry of Human Resource and Development with respect to equivalence of Sahitya Sudhakar Examination of Bombay Hindi Vidyapith being equal or not equal to a Graduation Degree.

2. Ministry has now given the following clarification vide its letter dated

19.3.2010:-

To

The General Manager (HRM & GAD)

Human Resource Management Department

Dena Corporate Centre, 3rd Floor

Plot No. C-10, G Block, Bandra-Kurla

Complex, Bandra (East), Mumbai-400051

Sub: Recognition of the Sahitya Alankar examination conducted by Bombay Hindi Vidhyapeeth, Mumbai-Regarding.

Ref: In the matter of Order dated 21-07-2009 passed by Hon''ble High Court of Delhi in Writ Petition(Civil) No. 6661/1999 Dena Bank Supreme Court/ST Employees Welfare Association (Regd.) & others versus Union of India and others.

Sir,

With reference to your letter No. DCC/LEG/HC-564/748/2009 dated 30-12-2009 addressed to the Under Secretary, M/O. HRD, New Delhi on the subject cited above in this connection it is clarified that on recommendations of Hindi Shiksha Samiti the Central Hindi Directorate M/O. H.R.D. Govt. of India has been extendening recognisation to the various Hindi courses run by Voluntary Hindi Organizations. These courses have been recognized for one subject Hindi to their corresponding equivalent courses of Boards/Universities etc.

It is confirmed that Sahitya Sudhakar examination conducted by Bombay Hindi Vidyapeeth, Mumbai is recognized as equivalent to B.A. (Hindi Standard) for one subject of Hindi only. It is further stated that recognition of the said course is not full-fledged B.A. Degree.

Yours faithfully

(Phool Singh)

Assistant Director

3. The last line of the aforesaid letter clearly shows that the Ministry had opined that the Sahitya Sudhakar examination conducted by Bombay Hindi Vidyapeeth is not a full-fledged B.A. Degree course. Counsel for the petitioners also agrees that the Sahitya Sudhakar examination is only a 2 year course of four subjects whereas a normal graduation degree is of 3 years and which comprises of various subjects for each of the three years.

4. Petitioners have been enjoying benefits of monetary emoluments in terms of the increments which were granted by the employer itself. In this case, petitioners no doubt have acted bonafidely because before pursuing their course

 

of studies for Sahitya Sudhakar examination of Bombay Vidyapeeth, they took positive clarification from the employer and only thereafter pursued their Sahitya Sudhakar Studies, however, now this aspect of wrong amounts bonafidely received has been clarified in the recent judgment of the Supreme Court in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, wherein the Supreme Court has said that even if monies which are not due are paid under a bonafide mistake, yet such monies can always be recovered. Supreme Court has observed that public monies and tax payers monies if are received by a person without any legal sanction, there is no law which de-bars recoveries of such monies except in the cases of extreme hardship. The relevant para of the judgment in the case of Chandi Prasad Uniyal (supra) is para 14 and the same reads as under:-

14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any 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.

(underlining added)

5. In the present case, the only aspect which therefore to be examined is whether there would be extreme hardship upon the petitioners.

I am of the opinion that so far as the petitioner no. 2 is concerned, there would be hardship for the reasons stated hereinafter but so far as the petitioner no. 1 is concerned, there would be no hardship. Petitioner no. 1 had received increments for the first time in March, 1999 and they were withdrawn soon thereafter in July, 1999. Thereafter, petitioner no. 1 has received amounts only pursuant to the interim orders of this Court and therefore, it cannot be said that there would be hardship upon the petitioner no. 1 when the respondent nos. 2 and 3 recover the amounts. Therefore, so far as the petitioner no. 1 is concerned, the employer-Dena Bank can recover all the amounts which are paid under mistake as increments, though actually they were not due. However, to the extent of tuition fees incurred by petitioner no. 1, directions are being subsequently given.

6. So far as petitioner no. 2 is concerned, he has received increments w.e.f. June

1993. This increment was withdrawn for the first time only in terms of the order of the employer dated 16.7.1999. Recoveries are however sought to be made right from June, 1993 onwards. In my opinion, for the period of 3 years prior to July, 1999, there would be grave hardship upon the petitioner no. 2 and therefore it is directed that so far as the period prior to July, 1996 is concerned, viz. from June 1993 to July 1996, respondent nos. 2 and 3 should not recover this amount including interest because petitioner no. 2 has incurred expenditure including tuition fees for Sahitya Sudhakar studies for being successful.

7. Therefore, in the peculiar facts of this case, considering that respondent nos. 2 and 3 themselves allowed the petitioners to believe that they were to get the benefits of monetary increments on account of passing of the Sahitya Sudhakar examination, and consequently petitioners pursued such studies, petitioners on account of extreme hardship will be entitled to the relief that respondent nos. 2 and 3 should not recover the tuition fees which the petitioners paid for appearing in and passing the Sahitya Sudhakar Examination conducted by Bombay Hindi Vidyapeeth. Petitioners will give the details of these amounts alongwith proofs of the expenditure incurred by them, and to the extent of such expenditure incurred, respondent nos. 2 and 3 would not recover the amounts from the petitioners.

8. In view of the above, the writ petition is dismissed, however, petitioners are given the limited relief that so far as the petitioner no. 2 is concerned, no recovery will be made for payments made to him prior to July, 1996 and so far as both the petitioners are concerned, on their giving details of expenditure incurred for their tuition fees alongwith necessary proof, such amounts will not be recovered by the respondent nos. 2 and 3 from the petitioners. The writ petition is dismissed except to the limited extent stated above. Parties are left to bear their own costs.

 