
(2010) 03 SHI CK 0114
In the High Court Of Himachal Pradesh
Case No : C.W.P (T) No. 8112 of 2008

Sh. Prem Chand and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Citation : (2010) 2 ShimLC 7

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—A notification was issued by the respondent-State vide Annexure : A-2. The pay scales of Rs. 1500-2700 was revised to Rs. 5000-8100. In sequel to Annexure : A-2, the petitioners were also placed in the higher pay scales as is evident from Annexures : A-3, A-4, A-5, A-6 and A-7. However, an amendment was carried out on vide Annexure : A-7 to the following effect:

II Ministerial Staff 1. Clerk (i) 950-1800 with initial start of The rate of type-writing allo- 3120-5160 (50%) Rs. 1000- wance to the Typist Clerks (Clerk) (20%)

(ii) 1200-2130 (Sr. Clerk) (40%) In the scales of 3120-5160 4020-6200 deployed on full time basis shall be Rs. 75/- from 1st Sept. 1997 and for sanctioning typewriting allowance a certificate to the effect that the concerned Clerks were actually deployed on typing work from the Head of Office will be required every month.

(iii) 1500-2700 (Junior Asstt.) 5000-8100 (50%) (40%)

The designation and the revised equivalent of the unrevised pay scale of official working as Senior Clerks and Junior Assistant, as on 1st January, 1996, shall be protected as a measure personal to them. For future this total number of posts or Clerk including Senior Clerk and Junior Assistant in a cadre existing on 1st

January 1996 shall be divided into the posts of Clerk in the scale of Rs. 3120-5160 and Junior Assistant in the Scale of Rs. 4400-7000 in the ratio of 50 : 50. The new posts of Junior Assistant shall be created on the basis of actual requirements.

The posts of Junior Assistant shall be filled up by promotion to the extent of 100% from amongst the Clerks who have an experience of working as such for a minimum period of 5 years in the cadre of the department in which he is working at the time of promotion.

2. Consequently, the office order dated 22nd November, 2001 was issued whereby the pay of the petitioners was reduced. Admittedly, the petitioners have not been heard at the time of issuance of Annexures : A-7 and A-9 respectively. The petitioners have suffered civil and evil consequences after the issuance of Annexure : A-7 and A-9. Since their pays were reduced, the petitioners ought to have been heard before the issuance of Annexures : A-7 and A-9. The petitioners have neither misled nor mis-represented the authorities at the time of issuance of Annexure A-2 on the basis of which higher pay scale was granted to them. There is violation of the principle of natural justice.

3. 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 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*, , *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.

4. Accordingly, the writ petition is allowed. The impugned Annexures A-7 and A-9 are quashed and set aside. However, liberty is reserved to the respondents to proceed with the matter in accordance with law. No costs.