**(2011) 09 SHI CK 0259**

**In the High Court Of Himachal Pradesh**

**Case No :** CWP (T) No. 10399 of 2008

Sh. Puran Chand and Another — APPELLANT

Vs

State of H.P. and Others — RESPONDENT

**Date of Decision :** 01-09-2011

**Acts Referred:**

Business of the Government of Himachal Pradesh, 1971 — Rule 22C

**Citation :** (2011) 09 SHI CK 0259

**Hon'ble Judges :** V.K. Sharma, J

**Bench :** Single Bench

## Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers, vide para 7 (i) and (ii):

(i). That the impugned orders dated 23.5.2003 and 2.8.2003 so far the same pertains to grant of revised pay scale to the contract teachers/lecturers may be declared to be validly issued and the applicants may be held entitled for all consequential benefits along with interest at some nationalized bank rate.

(ii). That the Annexure A-1 and Annexure A-2 may kindly be quashed and set aside.

2. In reply, the following stand has been taken on behalf of Respondents No. 1, 2 & 4, vide para 3:

3. That the present original application is not maintainable due to the reason that benefit of revised pay scale was granted erroneously to the contract appointees by the Respondent department vide letter dated 23.5.2003 as concurrence of the Finance Department was not obtained which in fact is always necessary under the provision of Rule of Business of Govt. of H.P., 1971, and letter dated 23.5.2003 has been withdrawn by the Respondent department. Be it submitted that the applicant at the time of accepting contract appointment has entered into an agreement with his employer whereby it was agreed upon that he/she shall be paid pre-revised pay scale of Rs. 1800-3200 & 1640-2925, therefore, his

 

services are governed by the contract policy as well as terms and conditions of contract agreement. The Respondent department has rectified its mistake, therefore, action of the Respondent State is legal and justified as an erroneous order do not have any legal sanctity in the eyes of law and an error can be rectified at any time/stage which needs not be repeated. In view of this position the present original application is liable to be dismissed.

3. It is stated by the learned Additional Advocate General assisted by the learned Deputy Advocate General on behalf of the Respondents that the case of the Petitioners is covered under judgment dated 2.12.2009 rendered by a learned Single Judge of this Court in CWP (T) No. 10806 of 2008 Inder Singh v. State of Himachal Pradesh and Ors. text whereof is as under:

The pay of the Petitioner was revised/enhanced vide order dated 23.5.2003 (Annexure A-1). However, the same was withdrawn vide Annexure A-2 dated 14.10.2003. Admittedly, the Petitioner has not been heard before the issuance of Annexure A-2. He has been visited with civil and evil consequences. His pay has been reduced. The Petitioner has neither misled nor played any fraud upon the Respondents at the time of granting him revised/enhanced pay. A conscious decision had been taken by the Respondent-State to grant revised/enhanced pay to its employees.

Moreover, the learned Counsel submits that on the basis of impugned order, recoveries are likely to be effected from the salaries of the Petitioner.

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 Appellantsteachers 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.

Consequently, in view of the definitive law laid down by their Lordships of the Hon''ble Supreme Court, order dated 14.10.2003 (Annexure A-2) is quashed and set aside. The Respondents are restrained from making any recoveries from the Petitioner. However, liberty is reserved to the Respondents to proceed with the matter in accordance with law.

The petition stands disposed of. No costs.

4. In view of the above, if on facts, the case of the Petitioners is covered under the judgment referred to hereinabove in CWP (T) No. 10806 of 2008 Inder Singh v. State of Himachal Pradesh and Ors. and the same has attained finality and has been implemented and the Petitioners are similarly situate, they shall also be treated similarly without any discrimination and benefit of the said judgment along with consequential benefits, if any, shall be extended to them within three months from the date of production of copies of this judgment and the judgment referred to hereinabove by the Petitioners before the Respondents/competent authority.

5. The petition stands disposed of, so also pending application(s), if any.

 