

(2009) 05 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5803 of 2009

Sheetla Devi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Citation : (2011) 1 ILR (P&H) 331

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—Common question of law with similarity of facts and circumstances being involved, these petitions were heard and are

being disposed of by common order.

2. Most of the petitioners are the retired employees of the State Government or of various State owned Corporations and autonomous bodies.

However, some of them still in service. They are aggrieved of action of the respondents in realization of their salary and consequential recovery

either on the basis of the objection raised by the Accountant General, the audit inspection or under other circumstances. The issue involved is re-

fixation of the salary, consequential recovery and even reduction in the pensionary benefits. Since on the basis of the legal issues, the controversy

involved in all these petitions can be conveniently sorted out, settled, factual back ground in each case is not being addressed to.

3. The question of re-fixation and recovery had been considered by the Hon'ble Apex Court in the case of Sahib Ram versus State of Haryana,

1994 (5) SLR 753 which was later on followed in the case of Purshotam Lal and

others versus State of Bihar and others, 2007 (1) RSJ 150

wherein it has been held that where any benefit has been granted to an employee without any misrepresentation or fraud attributed to him, the

employer has the right to re-fix the salary/emoluments, but without right to recover such benefits already granted to the employee.

4. However, other version of the issue came to be opined in some of the judgments passed in the case of Union of India and Others Vs. Smt.

Sujatha Vedachalam and Another, , Comptroller and Auditor General of India and others versus Farid Sattar, J.T. 2000 (4) S.C. 374 and

Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, Since the judgment passed in the case of Sahib Ram (supra) held the

field for a number of years, various judgments came to be delivered by the Court following the dictum therein.

5. A Division Bench of this Court, however, noticing both sets of judgments referred the matter to a larger Bench for an authoritative

pronouncement and following question of law was referred to the larger Bench:-

Whether the Government is entitled to recover from an employee any payment made in excess of what he was otherwise entitled to, on account of

any mistake or bona fide but erroneous interpretation or belief regarding any Rule, Regulation or Government instructions whatsoever especially in

cases where the employee concerned is not guilty of any fraud or misrepresentation in claiming or receiving such monetary benefits.

6. The Hon"ble Full Bench of this Court presided over by Hon"ble the Chief Justice heard and answered the reference,--vide judgment dated

22nd May, 2009 passed in CWP No. 2799/2008 etc. (Budh Ram and others versus State of Haryana and others ILR 2009 (2) P&H 445. On

consideration of the controversy, Hon"ble Full Bench formulated following three issues to answer the reference:-

(i) Cases in which the benefits sought to be recovered from the employees were granted to them on the basis of any fraud, misrepresentation or

any other act of deception.

(ii) Cases in which the benefits sought to be recovered were granted on the basis of a bona fide mistake committed by the authority granting the

same while applying or interpreting a provision contained in the service rule, regulation or any other memo or circular authorizing such grant

regardless whether or not grant of benefits involved the performance of higher or more onerous duties by the employee concerned;

(iii) Cases that do not fall in either one of the above two categories but where the nature of the benefit and extent is so unconnected with his service

conditions that the employee must be presumed to have known that the benefit was flowing to him undeservedly because of a mistake by the

authority granting the same.

(7) On consideration of various judgments, issue no. 1 was answered as follows:-

...It follows that a person, who has committed a fraud, misrepresentation or any other act of deception cannot possibly qualify for any relief in

equity. A priori, it must be held, that any benefit received or obtained by an employee by reasons of fraud, misrepresentation or any other act of

deception would disentitle him to retain the benefit, which he has obtained as a result of such acts or any one of them.

8. Issue No. (ii) has been answered with the following observations:-

It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even

when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to

recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee

is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting

on that belief the employee would, as any other person placed in his position arrange his affairs accordingly, which he may not have done if he had

known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct

interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a

manner that he would not otherwise have done. It would be unfair inequitable and harsh for the Government to direct recovery of the excess

amount simply because on a true and correct interpretation of the rules, such a benefit was not due...

We have, therefore, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous

interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor

have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the

future, but the amount already paid to the employees cannot be recovered from them...

9. While considering issue No. (iii), Hon''ble Full Bench perceived certain situations and made following observations :-

It is a case where by reason of sheer neglect of a functionary of the State Government, a payment that is undeserved and wholly-uncalled for is

made to the employee....

We cannot for obvious reasons exhaustively enumerate situations where such payments are received and can be lawfully recovered. All that we

propose to point out is that while generality of the cases would fall in category (i) and (ii), some freak cases like the one in category (iii) that we

have been able to conceive may need to be dealt with independently depending upon whether the employee can be attributed the knowledge that

the payment was undeserved and whether the duty to verify the factual position and refund the amount when the same came to his notice could be

read into his duty as an employee of the State or its instrumentalities. The reference is answered accordingly. These petitions shall now be placed

before the appropriate Bench for disposal in the light of what we have said above.

10. The claims of the petitioners in the present petitions have been considered in the light of the aforesaid judgment of the Full Bench and the issues

decided therein. Two categories of cases are being disposed of by this order. In writ petitions shown under Category (i) in the cause title of this

judgment, the petitioners have assailed only the recovery part and have not challenged the re-fixation of the salary. I have perused the orders

impugned whereby the recoveries have been ordered on re-fixation either during the service or after retirement. In none of the cases, the State has

attributed mis-representation or fraud to the employee(s). All these cases thus fall in Category (ii) noticed by the Hon''ble Full Bench. In all these

cases the benefit was passed on to the employees without mis-representation/ fraud on the basis of either bona fide mistake or misinterpretation of

any rule, Circular or order of the employer. In view of the answer to issue No.

(ii), no recovery can be effected from these petitioners.

11. In the cases shown in Category (ii) in the cause title above, even though re-fixation has been challenged, but during the course of the

arguments, Learned Counsel for the petitioners abandoned the challenge to the re-fixation and confined their relief only to the recovery part. Since

the challenge to the re-fixation in these petitions has been given up, these petitioners will also be entitled to be placed in Category (ii) noticed in Full

Bench judgment and thus, no recovery is to be made from them.

12. In some of the petitions, no recovery has been effected either on account of any interim order or otherwise by the employer. However, in some

cases, part recovery has been made and in some cases full amount sought to be recovered on re-fixation stands recovered. Mr. B.S. Chahal,

Learned Counsel appearing on behalf of the State has attempted to argue that where the recovery has already been made the same cannot be

ordered to be refunded. I am unable to accept his contention for the simple reason that the benefit was given to the petitioners by either mistake or

misinterpretation of the rules/regulations/circulars by the functionaries of the employers and the employees/petitioners were/are not responsible for

extraction of any illegal benefits. In most of the cases, the recoveries are being effected from their pensionary benefits after a number of years of the

retirement. In some cases pensionary and retrial benefits have been withheld for a number of years forcing the retired employees to approach this

Court. It is also noticed that in most of the cases, the employees have not even been put to notice. However, in none of the cases, the fraud or

misrepresentation has been attributed to the petitioners and thus, the respondents cannot be permitted to effect recovery or retain the recovered

amount. In all such cases where the amounts have been recovered in part or in whole, the same shall be refunded to the petitioners within a period

of two months from the date a certified copy of this order is served upon the competent authority.

13. In view of the above, these petitions are thus, allowed. The action of the respondents and the impugned orders passed for recovery are hereby

quashed while upholding the re-fixation of their salaries etc. It is, however, directed that the respondents will refund the amount already recovered

either in part or whole wherever applicable as indicated here-in-above.

14. A copy of this judgment be placed on record on each concerend file.