

(2013) 11 RAJ CK 0073
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10995 of 2010

Shri Peer Chand Daiya

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0073

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : H.R. Soni, for the Appellant; G.R. Kalla, Government Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—The petitioner has filed this writ petition essentially against the order dated 21.07.2010 passed by the District Education Officer whereby the benefit of second selection grade granted to the petitioner was withdrawn and it is ordered that the excess amount paid to the petitioner on account of wrong fixation of his pay while granting him the benefit of second selection grade is liable to be recovered. In pursuance of the orders dated 21.07.2010 and 02.09.2010 passed by the District Education Officer, Jodhpur, a recovery of Rs. 2,22,589/- was effected from the gratuity payable to the petitioner and the amount of pension of the petitioner was fixed accordingly. After arguing the matter for some time, learned counsel for the petitioner has failed to convince this Court that grant of second selection grade to the petitioner was in accordance with law and the action of the District Education Officer of withdrawing the benefit of second selection grade vide orders dated 21.07.2010 and 02.09.2010 is not justified. At this stage, the learned counsel for the petitioner has fairly conceded that the second selection grade was wrongly granted to the petitioner, however, has argued that though the benefit of second selection grade was wrongly granted to the petitioner, the excess amount received by him due to grant of said benefit, cannot be recovered under any

circumstance, as the petitioner has not obtained the said benefit by misrepresentation or fraud.

2. The learned counsel for the petitioner has placed reliance upon the judgments of this Court rendered in case of Vijay Kumar Vs. State of Rajasthan and Others, and Goverdhan Lal Vs. State of Rajasthan and Others,

3. Learned counsel for the petitioner has argued that the benefits of selection grade, once granted to an employee, cannot be withdrawn after a lapse of long time and the respondents were estopped from denying such benefits and the petitioner was entitled to the same benefit as already accrued in his favour.

4. Learned counsel for the respondents has argued that the benefit of second selection grade was wrongly granted to the petitioner and, therefore, the respondents have all the right to recover the excess amount paid to the petitioner on account of wrong fixation of pay, though it might have done on account of mistake of the officials of the Education Department.

5. Learned counsel for the respondents has placed reliance upon the decisions rendered by the Hon''ble Apex Court in case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others,

6. Heard learned counsel for the parties and perused the record.

7. Since the learned counsel for the petitioner has failed to convince this Court that the benefit of second selection grade had rightly been granted to the petitioner, the impugned orders dated 21.07.2010 and 02.09.2010, whereby the benefit of second selection grade was withdrawn by the respondents, cannot be interfered with.

8. Now the question remains that whether the excess amount paid to the petitioner on account of incorrect grant of benefit of second selection grade to him can be recovered or not?

9. Though the petitioner has not misrepresented or committed any fraud in getting the benefit of second selection grade, but it is also clear that the excess amount paid to the petitioner was public money, which neither belong to the officers of the Education Department nor to the petitioner. The Hon''ble Apex Court in Chandi Prasad Uniyal's case (supra) after noticing its earlier judgments, has held as under:-

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. 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.

10. In such circumstances, when it is clear that the petitioner has received certain amount without authority of law, the same is liable to be recovered from him. In view of the above discussions, this Court does not find any merit in this writ petition. Hence, the same is hereby dismissed.