

(2015) 04 AHC CK 0201

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32262 of 2001

Shyama Ranjan Dixit

APPELLANT

Vs

District Magistrate, Etawah and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2015) 5 ADJ 400 : (2015) 6 ALJ 244 : (2015) 4 AWC 3514 : (2015) LabIC 4330 : (2015) 3 UPLBEC 1828

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : Anu Jaiswal, Devesh Vikram, R.L. Shukla, Sukesh Kumar and U.C. Misra, for the Appellant

Final Decision : Allowed

Judgement

M.C. Tripathi, J—Heard learned counsel for the petitioner and learned Standing Counsel for the respondents. By means of present writ petition, the petitioner has prayed for quashing the charge-sheet dated 29.6.2001 (Annexure No. 1 to the writ petition); the order dated 17.8.2001 passed by respondent No. 1 (Annexure No, 8 to the writ petition) and to direct the respondents to pay the pension and other retiral benefits including salary of June, 2001 to him.

2. By the amendment application allowed on 14.5.2002, the petitioner has also prayed for quashing the order dated 16.3.2002 (Annexure-11 to the writ petition) and to direct the respondents to pay pension, gratuity and other retiral benefits in the Pay-scale of Rs. 1350-2200 in accordance with law. By another amendment application allowed on 16.2.2005, he has also prayed for quashing the order dated 24.6.2002 (Annexure-12 to the writ petition).

3. It appears from the records that vide order dated 25.5.1968 passed by the District Magistrate, Etawah, the petitioner was appointed on the post of Bhumi Bhawan Kar Amin in the Collectorate. After some time the post of Bhumi Bhawan Kar Amin was abolished, and the petitioner was posted on various other posts in

the Collectorate. Ultimately he was appointed as Clerk in the pay-scale of Rs. 354-550 on 25.5.1973, and since then he was discharging his duties continuously. In the year 1987 he was promoted as Clerk Grade-II in the pay-scale of Rs. 1200-2040. By order of the District Magistrate dated 3.4.1992 the petitioner was promoted from pay-scale of Rs. 1200-2040 to the pay-scale of Rs. 1350-2200 on the recommendation of Selection Committee. Since the year 1992 he was working as Clerk in First Grade pay-scale. He retired on 30.6.2001 after attaining the age of superannuation.

4. After retirement of the petitioner, he was served with the charge-sheet dated 29.6.2001 alleging that his initial appointment as Bhumi Bhawan Kar Amin in the year 1968 was irregular. The petitioner had given his reply on 27.7.2001 to the charge-sheet dated 29.6.2001 stating that the charge-sheet was given to him after about 15 years only to harass him. The respondent No. 4 passed an order on 17.8.2001 stating that the petitioner is entitled for Clerical II Grade in pay-scale of Rs. 1200-2040 only and he was wrongly given the pay-scale of Rs. 1350-2200 and cancelled the order of the then District Magistrate dated 30.4.1992, by which the petitioner was given the pay-scale of Clerk 1st Grade. On 25.8.2001 he received an office order dated 17.7.2001, by which Shri Udai Bhan Tripathi, Sub Divisional Magistrate was appointed as enquiry officer. On 17.8.2001 the respondent No. 1 had taken a decision that the petitioner is not entitled for 1st Grade Pay-scale, giving rise to the writ petition.

5. On 15.10.2001 this Court passed following orders:

"Advocates are agitating on the issue of creation of a Bench of the High Court in Western U.P. Petitioner has appeared in person.

Heard and perused the record.

Admit.

Issue notice.

Respondents may file counter-affidavit within two months. Rejoinder-affidavit, if any, may be filed without within one month of the receipt of the counter-affidavit.

Stay application shall be listed immediately thereafter.

Until further orders, it is directed that respondents may proceed with the disciplinary inquiry and shall complete it expeditiously, preferably within six months.

It is further directed that petitioner shall be provisionally paid his pension in the meantime without one month of receiving a certified copy of this order."

6. In spite of the aforesaid interim order, the respondents did not conclude the enquiry and by the impugned order dated 16.3.2002 the respondents in most illegal and arbitrary manner fixed the final gratuity of the petitioner of Rs. 18,900/- after deducting from the total amount of Rs. 1,04,375/-. The

respondents fixed the pension of the petitioner at Rs. 1965/- stating that the service of the petitioner before 25.5.1993 were not regular, hence the same were not pensionable.

7. Learned counsel for the petitioner submits that the petitioner received the charge-sheet dated 29.6.2001 on the date of his retirement on 30.6.2001, alleging that he was wrongly given benefit of selection grade and staffing pattern as an adverse entry was given to him in the year 1986 and therefore, the said excessive payment is liable to be recovered from him. On 17.8.2001 without giving any opportunity of hearing to the petitioner, the respondent No. 1 passed another order canceling the order of the then District Magistrate dated 3.4.1992, by which the petitioner was given promotion in 1st Grade Clerical pay-scale of Rs. 1350-2000 on the recommendation of the Selection Committee and passed the order that the petitioner is only entitled for 2nd Grade Clerical pay-scale of Rs. 1200-2040. The respondents are illegally and arbitrarily harassing the petitioner inasmuch as on 17.8.2001 the respondent No. 1 directed the authority concerned to proceed further as per order dated 17.8.2005 and on the other hand, they passed another order on the same day on 17.8.2001 appointing the enquiry officer to enquire into the alleged complaint against the petitioner and to submit his report. The petitioner was not given any information about the alleged complaint.

8. Learned counsel for the petitioner further submits that the respondents are harassing the petitioner for some alleged entry of the year 1986 after expiry of about 15 years and no objection was raised before giving promotion to the petitioner and as per Clause (7-Kha) of Clause-5 of the Government Order dated 28.7.1989, the enquiry against the employee cannot be started on the basis of incident pertains to the four years before the retirement.

9. Learned counsel for the petitioner submits that as per Government Order dated 28.10.1980, if any departmental proceedings are pending against the employee, then the employee is entitled for pension only and pension will be equivalent to the pay-scale he has lastly drawn. He submits that inspite of the order of this Court dated 15.10.2001 the enquiry has not been completed by the respondents.

10. Learned Standing Counsel, on the other hand, submits that after abolition of the post of Bhawan Kar Amin in the year 1973, the petitioner was temporarily appointed on the leave vacancy of Shri Vishambhar Dayal, Clerk who proceeded on earned leave from 25.5.1973 to 24.7.1973. Thereafter, he was appointed temporarily from time to time and in the year 1980 by the order of the District Magistrate dated 16.2.1980 the petitioner's services were regularized. Thereafter in the year 1983-84 a Committee was constituted in connection with staffing pattern of the employees of the Collectorate. The Committee submitted its report on 10.12.1985 making note with regard to the petitioner that the petitioner will continue to work on the post of Assistant Vasil Baki Navis (4th), Tehsil Auraiya, and draw salary in the pay-scale of Rs. 354-550 till conclusion of

the departmental enquiry against him and in future he will not get benefit on the post. In the year 1987 he was not found fit for promotion vide order of the District Magistrate dated 2.9.1987. Thereafter in the year 1987 in the report of Prabhari Adhikari dated 26.11.1987, which was approved by the District Magistrate on 26.11.1987, the departmental enquiry against the petitioner was concluded on 16.7.1986. At present, the post of Assistant Vasil Baki Navis (4th) Tehsil Auraiya was mentioned and against the transferred post, he will get the benefit of Second Grade on the post of Misc. Clerk Revenue Records and the arrangement will be made later on the post of Assistant Vasil Baki Navis, Auraiya. This note was decreased increased by making cutting by hand. It appears that inspite of giving pay-scale of staffing pattern Rs. 354-550 with recommendation that he will not get benefit of the said post in future and he was not found fit for promotion in the year 1987, the petitioner was given benefit of pay-scale of Rs. 430-685, which was not payable to him as per rule.

11. It is undisputed that in the present matter, the petitioner was initially appointed in the year 1973. Thereafter he was appointed temporarily from time to time and in the year 1980 by the order of District Magistrate dated 16.2.1980 the services of the petitioner were regularized. Surprisingly just one day before his retirement on 30.6.2001 the petitioner was served the charge-sheet dated 29.6.2001 alleging that he was wrongly given certain benefits of selection grade and staffing pattern as an adverse entry was given to him in the year 1986. This Court, while entertaining the writ petition, vide an order dated 15.10.2001 had directed the respondents to complete the enquiry expeditiously preferably within six months" times. Finally the respondents vide an order dated 16.3.2002 in most arbitrary manner had finalised the gratuity and other benefits of the petitioner and had given only Rs. 18,900/- and illegally deducted total amount of Rs. 1,04,375/- from the gratuity amount as has been paid excess to him on the basis of alleged fixation.

12. It has been averred that the petitioner was in fact entitled for the second grade pay-scale of Rs. 1200-2040, instead of pay-scale of Rs. 1350-2200 i.e. clerical 1st grade. It is not disputed in the matter that the services of the petitioner were regularized way back in the year 1980 and admittedly he had worked in the pay-scale of Rs. 1350-2200 clerical 1st grade and at the verge of his retirement the charge-sheet was given and by means of impugned order certain amount had been realised from the retiral benefits of the petitioner.

13. In Rajendra Prasad Singh v. State of U.P. and others, 2008 (1) UPLBEC 245, the Division Bench of this Court has held as under:

"5. We are of the view that the contention of learned Counsel of the petitioner-appellant has substance in view of the law laid down by the Apex Court as well as this Court in the judgments relied upon by learned Counsel for the petitioner-appellant which have been followed by this Bench also in Special Appeal No. 1317 of 2003, M.D./Chief Engineer, U.P. Jal Nigam and others v. Sri Nath Singh and others, connected matters in which this Bench has held as under:

"In the matter of recovery, we may remind to the authorities that now it is well-settled if certain payment has been made to the employees on account of any fault of the employer, and for which the employee is not responsible, namely, not guilty of fraud or misrepresentation, in such case, the amount which has already been received by the employee and he has spent, should not be recovered."

14. In Syed Abdul Qadir and Others Vs. State of Bihar and Others, (2009) 1 JT 385 : (2009) 1 SCALE 36 : (2009) 3 SCC 475 : (2009) 1 SCC(L&S) 744 : (2009) 3 SLJ 38 , as follows:

"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, (1995) 1 JT 24 : (1995) 1 SCC 18 Supp : (1994) 3 SCR 674 Supp : (1995) 1 SLJ 151 , Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, (1994) 68 FLR 812 : (1994) 1 JT 574 : (1994) 1 LLJ 815 : (1994) 1 SCALE 469 : (1994) 2 SCC 521 : (1994) 1 SCR 700 : (1994) 2 SLJ 99 : (1994) 1 UJ 797 ; Union of India (UOI) and Another Vs. M. Bhaskar and Others, (1996) 73 FLR 1676 : (1996) 5 JT 500 : (1996) 4 SCALE 670 : (1996) 4 SCC 416 : (1996) 2 SCR 358 Supp : (1996) 2 SLJ 25 V. Gangaram Vs. Regional Joint Director and others, AIR 1997 SC 2776 : (1997) 5 JT 385 : (1997) 4 SCALE 92 : (1997) 6 SCC 139 : (1997) SCC(L&S) 1652 : (1997) 3 SCR 1043 : (1997) AIRSCW 2754 : (1997) 4 Supreme 446 Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, (2007) 207 ELT 3 : (2006) 9 JT 125 : (2006) 10 SCALE 206 : (2006) 11 SCC 709 : (2007) 1 SCC(L&S) 529 : (2006) 7 SCR 58 Supp : (2007) 2 SLJ 8 : (2008) 11 STR 305 Purshottam Lal Das and Others Vs. The State of Bihar and Others, (2006) 12 JT 581 : (2006) 10 SCALE 89 : (2006) 11 SCC 492 : (2007) 1 SCC(L&S) 508 : (2006) 7 SCR 51 Supp : (2007) 2 SLJ 68 ; Punjab National Bank and Others Vs. Manjeet Singh and Another, AIR 2007 SC 262 : (2006) 111 FLR 587 : (2006) 9 JT 247 : (2006) 8 SCC 647 : (2007) 1 SCC(L&S) 16 : (2006) 6 SCR 825 Supp : (2007) 2 SLJ 53 ; and Bihar State Electricity Board and another v. Bijay Bahadur and another, [2000] 10 SCC 99."

15. The Supreme Court further explained the principle in paragraph-9 of the

judgment in Registrar, Co-operative Societies Haryana Vs. Israil Khan and Others, (2009) 15 JT 45 : (2009) 13 SCALE 484 : (2010) 1 SCC 440 : (2010) 1 SCC(L&S) 1123 : (2009) 14 SCR 1162 : (2010) 2 SLJ 5 , which reads as follows:

"What is important is, recovery of excess payments from employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, Courts will not use their discretion to deny the right to recover the excess payment."

16. It is not the case that the department had fixed their salary on account of any misrepresentation or fraud played on the part of the petitioner or the department applied a wrong principle for calculating the pay/allowances, but in fact in the present matter, the petitioner had not misrepresented. The respondents in most arbitrary manner without affording any opportunity to the petitioner deducted total amount of Rs. 1,04,375/- from the gratuity amount as has been paid excess to him on the basis of alleged fixation, which is also in violation of principle of natural justice.

17. Even though the aforesaid judgments clearly indicates that even in the case of wrong fixation, the department cannot proceed in an arbitrary manner, in the present matter the petitioner's case is on better footing as the department itself initially fixed the scale of the petitioner and further without giving any opportunity of hearing the respondents had deducted Rs. 1,04,375/- from the gratuity amount. In view of the above, the writ petition is allowed and the impugned orders are hereby quashed. Whatever amount deducted from the gratuity of the petitioner will be returned to the petitioner alongwith simple interest @ 6% per annum within one month from the date of production of a certified copy of this order.