
(2013) 01 CHH CK 0015
In the Chhattisgarh High Court
Case No : Writ Petition No. 2648 of 2004

Smt. H. Uttaramma

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 2 CGBCLJ 547 : (2013) 3 CGLJ 125

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Single Bench

Advocate : Vinod Deshmukh, for the Appellant; Manish Nigam, Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Manindra Mohan Shrivastava, J.—Heard. By this petition under Article 226/227 of the Constitution of India, the petitioner has assailed legality and validity of the action of the respondents and order dated 20/10/03 (Annexure P/4) by which the respondents have refixed the pay of the petitioner since his initial date of appointment in the pay scale of Rs. 950-1530/- and recovered an amount of Rs. 1,26,906/- from the Group Insurance Fund and retrial dues payable to the petitioner-widow on account of death of her husband. The petitioner has also prayed for directions to pay interest @ 18%.

2. Brief relevant facts necessary for determination of controversy involved in the petition are that the petitioner's husband was appointed on the post of Crawler Operator, Grade II vide order dated 28/06/89 (Annexure P/7) in the pay scale of Rs. 975-1650/-. The pay of the petitioner was also fixed in the said pay scale as per pay fixation (Annexure P/2) by the Sub-Divisional Officer. All through his service career till his death, the husband of the petitioner was granted pay in the said pay scale. The petitioner's husband-H. Krishnayya died unfortunate death on 12/07/03. However, thereafter, when for the purposes of fixation of pension, the case of the deceased employee was scrutinized by the pension authorities i.e. Joint Director, Pension, he passed an order on 20/10/03 directing fixation of pay

to the petitioner in a lower pay scale of Rs. 950-1530/- vide Annexure P/4. On account of that fixation of pension, the respondents computed Rs. 1,26,906/- as excess payment which was recovered from the retrial dues/group insurance fund payable to the petitioner. It is this action which is under challenge in this petition.

3. Learned counsel for the petitioner contended that the action of the respondents is highly arbitrary, illegal and in utter violation of the principles of natural justice. It is argued that the husband of the petitioner, right from his first day of appointment, vide appointment order dated 28/06/89 (Annexure P/1), was granted pay scale of Rs. 975-1650/- and he was paid salary in that particular pay scale for 14 years till he died on 12/07/03. Therefore, at such belated stage, it was not open for the respondents to re-fix the pay of the deceased husband of the petitioner. He further contended that as the retrial dues were payable to the petitioner as beneficiary, the petitioner was entitled to opportunity of hearing before such action was taken. It is also urged that present is not a case of any fraud or misrepresentation on the part of the husband of the petitioner. Respondents on their own understanding, with regard to applicability of pay scale for the post of Crowler Operator Grade II have granted particular pay scale. Therefore, at such belated stage, that too after the death of the husband of the petitioner, such recovery of excess payment was not permissible even if it is assumed that in the beginning, a higher pay scale was erroneously granted to the husband of the petitioner.

4. Per contra, the submission of learned counsel for the State is that the husband of the petitioner was not entitled to pay in the pay scale of Rs. 975-1650/-. He submits that as per the circular dated 28/03/86 of the Government, 7075 posts of Crowler Tractor Operator were sanctioned, in respect of which, salary was to be paid from work charge/contingency fund. Out of the aforesaid posts, 515 posts were sanctioned for Crowler Tractor Operator in the pay scale of Rs. 515-800/-. Therefore, the husband of the petitioner who was appointed vide order dated 01/07/89 was only entitled to pay in the pay scale of Rs. 950-1530/-. The pay scale of Rs. 975-1650/- was given to the husband of the petitioner by sheer mistake and it is only when the pension papers were forwarded to the pension authorities that it was detected that higher pay scale was granted erroneously. Therefore, the fixation of pay was arrived at in the appropriate pay scale of Rs. 950-1530/-. After scrutiny, it was found that on account of payment of salary on a higher scale of pay, an excess payment of Rs. 1,26,906/- was paid, therefore, the respondents were fully justified in ordering recovery of excess payment. Learned counsel for the respondent further submitted that declaration was also obtained from the husband of the petitioner in a prescribed proforma on 01/08/90 and thereafter, 31/10/98 that in case, any excess amount is paid, for any reason whatsoever, the same shall be recoverable. Therefore, no grievance can be raised in that regard.

5. It is not in dispute that the husband of the petitioner was appointed on the post of Crowler Operator, Grade-II vide order dated 28/06/89 (Annexure P/1).

The order clearly records that the petitioner was appointed in the pay scale of Rs. 975-1570/-. There is nothing on record to show that in grant of this pay scale, the petitioner had any role to play much less, any misrepresentation on which the respondent acted upon. Annexure P/2 shows that the pay fixation of the petitioner was done by the appointing authority under M.P. Karyabharit tatha Akasmikta Karmachari Vetan Punarikshan Niyam, 1990. At this stage also, the petitioner was found entitled to pay scale of Rs. 975-1650/-. The husband of the petitioner continued to get his pay in the said pay scale and thereafter, in the revised pay scale from time to time until his death on 12/07/03. All through these fourteen long years of service, the respondents did not inform the deceased husband of the petitioner by any notice that the said pay scale was wrongly granted to him. It was only after his death that when pension authorities received relevant pension papers on 20/10/03, pay of the deceased husband of the petitioner was fixed in the pay scale of Rs. 950-1530/-. A perusal of Annexure P/1, the order of appointment, also shows that the pay scale in which the husband of the petitioner was appointed, was pursuant to number of directions issued by the State Government. It also shows that the husband of the petitioner was working as daily wage employee and pursuant to given directions, his case for regularization was screened by the screening committee and based on seniority, the said pay scale was granted to him. The petitioner has also placed on record Government's order dated 22/11/88 (Annexure P/7) which also indicates that daily wage employee who are appointed prior to 01/01/84 and had completed three years of service on 01/04/87, were entitled to regular pay in the revised pay scale as permanent members of the establishment. Grant of regular pay scale and regular appointment vide order dated 28/06/89 (Annexure P/1) was subsequent to this. Therefore, it is clear that at that point of time, there was nothing to show that some other pay scale was applicable and husband of the petitioner knowing fully well that he is not entitled to the said pay scale Rs. 975-1650/- but only of Rs. 950-1530/-, kept on drawing salary in the higher pay scale. Learned counsel for the respondent sought to justify the action on the basis that in view of Government Circular dated 28/03/86 (Annexure R/2) Crawler Tractor Operator were only entitled to salary in the pay scale of Rs. 515-800/-. He has also relied upon another circular dated 11/05/90 to contend that as per the instructions and revised pay scale policy, the husband of the petitioner was only entitled to pay scale of Rs. 950-1530/-. However, from perusal of these two documents i.e. Annexure R/2 and Annexure R/3, it is nowhere reflected that at the time of appointment of the husband of the petitioner, he was entitled to pay in the revised pay scale of Rs. 950-1530/-.

If for the arguments' sake, it is assumed that there was some mistake committed by the respondents in granting pay scale of Rs. 975-1650/- at the time of appointment and fixing his pay in the revised pay scale vide Annexure P/2, the respondents ought to have corrected their mistake within a reasonable time but that was not done.

6. The respondents have also come out with a plea that both in the year 1990 as

well as in the year 1998, the deceased employee had given an undertaking that if any excess payment is made on account of such pay fixation, the same would be recoverable from him. In the considered opinion of this Court, such undertakings would only entitle the respondents to correct the mistake in pay fixation within a reasonable time. In the garb of such undertakings, the respondents could not reserve to themselves, authority to recover excess payment after the death of the Government employee, that too after a long period of fourteen years. Moreover, the deceased husband of the petitioner was not holding a higher post and drawing a higher salary but he was only a low paid employee.

7. In view of the above peculiar situation obtaining in the present case, I am of the opinion that recovery, at such a belated stage, after fourteen years, that too after the death of the employee, has caused grave hardship to the petitioner who is the widow of the deceased employee. Dealing with the aspect of undertaking, this Court, in similar situation in the case of *Gendram Gandharv Vs. State of Chhattisgarh and others* in W.P. No. 2965/04, observed--

12.Though learned counsel for the respondents brought to the notice of this Court provisions contained in Clause 5 of instructions (Annexure R/3), in the circumstances stated above, the respondents cannot be allowed to invoke that clause to utter prejudice of the employee in a manner which become a tool for oppression, harassment and hardship. The respondents could have invoked that clause, had it been discovered at an early stage, may be few months, that higher pay has been erroneously granted. The provision relating to recovery does not confer an unbridled and unanalyzed power of recovery even after an indefinite length of time in a manner so as to cause serious hardship to a low paid employee.

8. It is relevant to note, that was also a case of low paid employee where respondents detected that higher pay was given after more than 10 years. In yet another case involving almost similar facts and circumstances, in W.P.(S) No. 2732/04, this Court considered the illegality of the action in the light of principles laid down by the Supreme Court in the case of *Syed Abdul Qadir and Others Vs. State of Bihar and Others*, in following terms--

13. The legal position in this regard is too well established in plethora of decisions of the Supreme Court. In the case of *Syed Abdul Qadir and Others Vs. State of Bihar and Others*, , the Supreme Court after survey of catena of decisions starting from the case of *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, ropounded as below:

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 v. State of Haryana*, *Shyam Babu Verma v. Union of India*, *Union of India v. M. Bhaskar*, *V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India*, *Purshottam Lal Das v. State of Bihar*, *Punjab National Bank v. Manjeet Singh* and *Bihar SEB v. Bijay Bhadur*.

It is worth mentioning that the petitioner therein was also a teacher subjected to recovery on the ground of excess payment.

14. In a recent decision, in the case of *Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others*, the above legal position as propounded in the case of *Syed Abdul Qadir and Others Vs. State of Bihar and Others*, has been reiterated though explaining its earlier judgment to remove doubt in the following words:

8. We are of the considered view, after going through the various judgments cited at the Bar, that this Court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered.

It was further held--

15. We are, therefore, of the considered view that except few instances pointed out in *Syed Abdul Qadir* case and in *Col. B.J. Akkara* case, the excess payment made due to wrong/irregular pay fixation can always be recovered.

9. The analysis of the facts and circumstances of the case clearly shows that present is a case which falls in the exceptional category. The husband of the petitioner was an Operator and was a low paid employee and recovery was ordered after a long time of fourteen years. Another exceptional circumstances of the present case that this recovery was ordered after death of the employee in a manner that it would affect payment of group insurance fund as also retrieval dues payable to the petitioner, the widow of the deceased employee. Present is not a case, as analysed above, where it can be said that the husband of the petitioner received higher pay, knowing fully well that it, was not admissible to him. On the contrary, it was a conscious decision of the respondents that he was entitled to particular pay scale, on which the deceased husband of the petitioner continued to draw salary till he died.

10. Last but not the least, it is not a case of the respondents that there was any fraud or misrepresentation on the part of the petitioner's husband. Therefore, action on the part of the respondents in directing recovery vide impugned order, is highly unjust. In the result, the petition is allowed. Recovery of Rs. 1,26,906/- made from the group insurance fund and other retrial dues of the deceased employee, which was payable to the petitioner as his widow, is declared illegal and set aside. The entire amount shall be refunded to the petitioner within a period of three months from the date of receipt of copy of this order. Further, the petitioner shall be entitled to interest @ 10% on the amount recoverable from the date of recovery till refund. If the refund is not made within three months as directed above, it shall carry further interest of 12% on the said amount till refund. No order as to costs.