
(2014) 08 GUJ CK 0041

In the Gujarat High Court

Case No : Letters Patent Appeal No. 536 of 2013

S.N. Sinha

APPELLANT

Vs

Chief Secretary

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2014) LabIC 4016

Hon'ble Judges : V.M. Sahai, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Sangita Pahwa, Advocate for the Appellant; N.J. Shah, Advocate for the Respondent

Judgement

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R.P. Dholaria, J.—The present appeal is filed against the judgment and order dated 28.2.2013 (Reported in S.N. Sinha Vs. Chief Secretary Govt. of Gujarat and Others, passed by the learned single Judge in Special Civil Application No. 6476 of 2002 whereby the learned single Judge has dismissed the writ petition filed by the present appellant - original petitioner challenging the order passed by the respondent dated 16.2.2002 directing the appellant to deposit the amount of Rs. 1,39,212/- back to the Government exchequer, as the same amount has been drawn in excess by the appellant to which he was entitled as salary while working as President of the Gujarat Civil Services Tribunal. The brief facts of the case may be mentioned that the present appellant was, after retirement, appointed as President of the Gujarat Civil Services Tribunal vide Government Notification dated 11.3.1996 for a period of three years. While appointing as President of the Gujarat Civil Services Tribunal, the appellant was entitled to receive emoluments of last pay drawn by him minus pension basis. The appellant served as President of the Gujarat Civil Services Tribunal from 12.3.1996 to 11.3.1999 during which period, he was entitled to receive emoluments of last drawn pay minus pension basis as per the terms of his appointment. At the time of retirement on 31.1.1996, the appellant was drawing salary of Rs. 7900/- per

month and thereafter, his pension was fixed at Rs. 3910/- per month. Thus, the appellant was entitled to receive Rs. 7900/- last drawn pay by him minus Rs. 3910/- being pension fixed in his case which comes to Rs. 3990/-. The aforesaid last pay as well as pension came to be revised. So, precisely, the appellant was entitled to receive the amount of Rs. 24,700/- minus Rs. 8158/- which comes to Rs. 16,542/- from the date of his appointment i.e. 12.3.1996 to the date of retirement i.e. 11.3.1999. The Government subsequently noticed that the pension of the appellant was further revised from Rs. 8158/- to Rs. 12,025/- per month, due to which his pension was to be deducted at Rs. 12,025/- and not Rs. 8158/- per month and, therefore, difference amount of Rs. 3867/- per month has been directly paid to him being further revised pension and that precisely, the Government has directed to recover from the appellant. The salary as well as pension came to be revised with effect from the year 1996, but the said notification was issued in the year 1998 with retrospective effect. As the salary as well as pension came to be revised with retrospective effect, consequently therefore, the appellant was drawing his salary as per the old pay scale and due to revision of pay scale, the State Government has noticed that the amount of Rs. 3867/- per month is being paid more to the appellant for a period of 36 months during which period, the appellant had served as President of the Gujarat Civil Services Tribunal. Hence, the order dated 16.2.2002 came to be passed asking the appellant to pay back the aforesaid amount i.e., Rs. 3867 x 36 = Rs. 1,39,212/.

2. On receipt of the aforesaid order from the Government, the appellant preferred the aforesaid writ petition before the learned single Judge contending that the aforesaid action on the part of the Government is arbitrary, illegal, in gross violation of the principles of natural justice and once the salary is drawn as per the rules and due to subsequent revision of pay scale, such excess amount cannot be recovered as per the settled principles of law.

3. Learned single Judge, after hearing the petitioner in person and learned AGP for the respondents, was pleased to dismiss the writ petition and hence, the present appeal is preferred before us.

4. We have heard learned advocate Ms. Sangeeta Pahwa for M/s. Thakkar Associates for the appellant and learned AGP Mr. N.J. Shah for the respondents.

5. Learned advocate Ms. Sangeeta Pahwa for the appellant has argued that the aforesaid emoluments have been paid to the appellant not under the misrepresentation or fraud and it was the mistake of the respondents for which the appellant cannot be held liable. In support of her submission she has put reliance upon three Judges decision of the Hon'ble Apex Court in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, which are reproduced below wherein it has been held that if an employee has retired and there was no fraud or misrepresentation on behalf of an employee and the excess amount was paid to the employee due to inaction, negligence and carelessness of the concerned Government employee, then such amount cannot

be recovered from the appellant.

"25. We now come to the question as to whether the amount that has been paid in excess to the appellants-teachers should be recovered or not. It is the submission of the learned counsel appearing on behalf of the appellants-teachers that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount that has been paid to the appellants cannot and should not be recovered; it having been paid without any misrepresentation or fraud on their part.

26. xxxx xxxx xxxx

27. 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. 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 & Anr. v. Bijay Bahadur & Anr.*, 2000 10 SCC 99.

28. 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 appellants-teachers should be made."

6. Against the aforesaid argument of Ms. Pahwa learned advocate for the appellant, learned AGP Mr. N.J. Shah has argued that the order passed by the learned single Judge is just and proper which does not call for any interference by this Court. He placed reliance on the decision of the Hon"ble Supreme Court in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, read 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.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir and Others Vs. State of Bihar and Others, and in Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, , the excess payment made due to wrong/irregular pay fixation can always be recovered."

7. We have carefully gone through decisions cited by learned counsel for the parties. The argument of Mr. Shah that the amount of pension cannot be included in the emoluments. The said argument is misconceived. If the pension is payable, it is part of the service condition and it would not be included in the emoluments and allowances. No other view can be taken by this Court. Further, the Division Bench has not referred three Judges Division Bench judgment to the Larger Bench and has accepted the principle propounded in Syed Abdul Qadir's

case (supra) wherein in paragraph 14, it is categorically held that Syed Abdul Qadir and Others Vs. State of Bihar and Others, would be applicable to this case where an employee has either retired or who was on the verge of retirement. Admittedly, in the present case the appellant has retired prior to initiation of the proceedings of recovery by the respondents and has also died and this petition is being prosecuted by the heirs and legal representatives of the deceased employee. In this view of the matter, the ratio propounded by the Hon"ble Supreme Court in the aforesaid decision is squarely applicable to the facts of the present case. In the peculiar facts and circumstances of the case, due to post retirement, recovery will have to be carried out form the heirs and legal representatives of the deceased employee which will cause great hardships to them.

8. Under the circumstances, the order of the learned single Judge cannot be maintained and deserves to be set aside. In the result, this appeal succeeds and the same is allowed. The order passed by the learned single Judge S.N. Sinha Vs. Chief Secretary Govt. of Gujarat and Others, is set aside. The entire recovery proceedings initiated by the respondents for recovering the excess amount paid to the appellant towards pension are quashed. The parties to bear their own cost. In view of the above, Civil Application No. 4429 of 2013 does not survive and stands disposed of accordingly.