

(2018) 11 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 198 Of 2018

Sr. Regional Manager F.C.I. Jammu And Anr @APPELLANT@Hash Kartar Chand And Others

Date of Decision : 27-11-2018

Acts Referred:

Citation : (2018) 11 J&K CK 0033

Hon'ble Judges : Rajesh Bindal, J;Tashi Rabstan, J

Bench : Division Bench

Advocate : Ravi Abrol, Surinder Kour, Mohd. Latief Malik

Final Decision : Dismissed

Judgement

1. The present intra-court appeal has been filed against the order dated 21.11.2016 passed by the learned Single Judge allowing the writ petition. The issue raised in the writ petition was regarding recovery of amount allegedly wrongly paid to the writ petitioners, when they were in service. Now they stand retired after attaining the age of superannuation.

2. Brief facts are that when the respondents/writ petitioners were working with the appellant-Corporation as Class-III employees, an option was given to them vide circular dated 29.12.1993 for switching over from the C.D.A (Central Dearness Allowance) pattern to I.D.A (Industrial Dearness Allowance) pattern. The same was done in terms of order dated 25.01.1993 passed by the Hon'ble Supreme Court in Contempt Petition Nos. 322-23 of 1991, titled, the All India Trade Union of Food Corporation Employees and workers vs. Shri J. M. Lyngdoh and others. In terms of the conditions laid down in the aforesaid circular, the pay of Category III and IV employees under CDA scales of pay, who opted for IDA scales of pay, was to be fixed notionally from 01.08.1983 or from the date of their recruitment, whichever is later, and to draw the benefit of IDA scales only from the date they submit their options. No arrears for the period prior to the date of submission of the option, were to be paid.

3. The writ petitioners submitted their options in the year 1994. They were,

however, wrongly paid the arrears from 01.08.1983 till the date they submitted their options. Thereafter, appellant-Corporation issued recovery notices to the writ petitioners in the year 1994 for recovery of the amount of arrears, which was challenged by the writ petitioners before this Court by filing SWP No. 1418/1994. The said writ petition was disposed of vide order dated 09.05.2000, directing the authorities to recover the amount, if the same had been paid in excess wrongly after affording an opportunity of hearing to the writ petitioners. The aforesaid order was upheld by the Division Bench of this Court vide order dated 28.03.2001 passed in LPA(SW) No. 467/2000 in an appeal filed by the appellant-Corporation. Subsequent thereto, fresh notice for recovery was issued by the appellant-Corporation to the writ petitioners on 19.06.2002, which was challenged by the writ petitioners in the writ petition in question, which was allowed by the learned Single Judge. The said order of the learned single Judge has been impugned by filing the present appeal.

4. Submission of the learned counsel for the appellants is that the respondents/ writ petitioners very well knew the fact that no arrears could have been paid to them in terms of the circular dated 29.12.1993. It is pointed out that immediately after amount of arrears was paid, recovery notices were issued to the writ petitioners for recovery of the excess amount. In the earlier round of litigation, this Court while disposing the writ petition directed the appellant-Corporation to afford an opportunity of hearing before effecting the recovery, if any, of the excess amount paid to the writ petitioners. Needful was done and at this stage, the writ petitioners could not seek indulgence of this Court to set aside the recovery of the arrears, which admittedly was paid in excess. It is stated that notices were issued to the writ petitioners when they were in service. Learned counsel for the appellants submitted that judgment of Hon'ble the Supreme Court in case *State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.*, AIR 2015 SC 696 is distinguishable as the notices were not issued in this case after retirement of the writ petitioners. Reference has been made to the decision of Hon'ble the Supreme Court in case *Syed Abdul Qadir and others vs. State of Bihar and others*, (2009) 2 SCC 475.

5. On the other hand, learned senior counsel for the respondent Nos. 2, 5 & 6, while placing reliance on the judgment in *Rafiq Masih's case (supra)*, submitted that the writ petitioners having retired from service, recovery at this stage would be harsh as the writ petitioners were Class-III employees and the amount, which is quite meager was received by them in the year 1994 on account of difference of dearness allowance from C.D.A pattern to I.D.A pattern.

6. Having heard learned counsel for the parties, we do not find any merit in this appeal. The learned Single Judge while disposing of the writ petition placed reliance on the judgment of *Rafiq Masih's case (supra)*, which specifies certain conditions regarding recovery of the amount wrongly paid to an employee, which are extracted below:-

"It is not possible to postulate all situations of hardship, which would govern

employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

7. The writ petitioners have now been retired from service and the amount was paid to them way back in the year 1994, which was very meager. The recovery of arrears remained in abeyance on account of pendency of the litigation and appellant-Corporation has withheld the retiral dues of the writ petitioners in order to effect the recovery.

8. We do not find any error to set aside the order of the learned Single Judge which is based on the legal proposition laid down by Hon'ble the Supreme Court.

9. Accordingly, the appeal is dismissed.