
(2008) 10 MP CK 0018
In the Madhya Pradesh High Court

State of Madhya Pradesh and Others	Vs	APPELLANT
Ghanshyam Swaroop Sharma		RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2009) 120 FLR 194 : (2009) 1 MPHT 173 : (2009) 2 MPLJ 263

Hon'ble Judges : R.K. Gupta, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

In the present intra-Court appeal filed by the appellants-State u/s 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, the order dated 21-3-2007 passed by the learned Single Judge in Writ Petition No. 5998/2005 (Ghanshyam Swaroop Sharma v. State of M.P. and Ors.) has been called in question.

It is worth mentioning that aforesaid writ petition was filed by said Ghanshyam Swaroop Sharma (respondent herein), who got superannuated from the services of the State Government on the post of Deputy Superintendent of Police w.e.f. 1-7-2002. As put forth before the learned Single Judge, according to the writ petitioner, on 18-9-2001 one annual increment was added to his basic pay and his salary was increased from Rs. 9375/- to Rs. 9650/- vide Annexure P-2 to the writ petition and the gross salary along with the basic salary of Rs. 9650/- was fixed. The writ petitioner was drawing Rs. 14,467/- at the time of his retirement. A dispute arose at the time of retirement on three counts, as according to the writ petitioner, the pension was calculated at the basic salary of Rs. 8,125/- per month; gratuity amount was also wrongly calculated by the respondents-appellants at Rs. 1,94,387/- and that a sum of Rs. 62,575/- was deducted from the gratuity amount without assigning any reason. Being aggrieved by which, the

writ petitioner ultimately approached this Court in W.P. No. 5998/2005 (S) for issue of a direction to the respondents to re-assess the pensionary benefits and gratuity amount taking into consideration the last salary drawn by him and accordingly release the pensionary benefits and gratuity amount according to the rules. A further direction against the respondents therein to refund the deducted amount of gratuity and give all other benefits including interest was also sought.

As is evident from the record, it was urged on behalf of the appellants, who were respondents in the said writ petition that the pay fixation of the original petitioner was properly made on retirement from various posts. It was further stated that after the formation of Special Branch Police, the State Government had taken a policy decision on 22-8-1984 that officers upto the rank of Deputy Superintendent of Police would be given posting on one step promotion in the Special Branch and such upgraded posts were non-cadre posts and were to persist only upto the repatriation of the employees to the original post held by them in the parent department. It was only conditional that the benefit would stop on their obtaining higher pay scale in the parent department. Thereafter, there was a change in the policy decision on 22-1-1985, which laid down a condition that in case a person joins the Special Branch he would get the pay scale as original post, however, would be entitled to get an increase of Rs. 250/- as a special pay in lieu of serving in a special branch and the post in the special branch was converted into cadre post subject to the condition. Said circular dated 22-1-1985 is Annexure R-2 on record of the writ petition. However, the department of the special branch continued to provide higher pay as per the previous order as well as requested the State Government to lift the limit of Rs. 250/- which was finally turned down by order (Annexure R-4) to the return filed by respondents in the writ petition. It was refuted on behalf of respondents that promotion of the petitioner was a regular promotion on the post of the Deputy Superintendent of Police. It was also stated that the post was under one step promotion scheme and under the same he was not entitled to get higher pay scale, and the petitioner was only entitled to original pay after adding maximum of Rs. 250/- as a special pay and the petitioner had received higher pay scale contrary to the policy decision taken by the State Government on 22-1-1985 and since audit objections were raised and it was found by the audit department that writ petitioner had been drawing salary on the higher post since 1994, the recovery had been shown in the pension payment order and hence, the petitioner's pension at Rs. 9650/- was contrary to the Rules and it ought to have been fixed at Rs. 8125/- per month, therefore, it is urged that recovery was a means to make good the loss suffered by the public exchequer.

It was also the stand taken by the writ petitioner before the learned Single Judge that, other persons who have been retired, were given the similar benefit and no recovery as such have been made.

The learned Single Judge has not accepted the stand of the State Government and came to the conclusion that no such discrimination is permissible and further

held that amount as such cannot be withheld.

In the aforesaid factual backdrop of the case, the learned Single Judge has allowed the petition.

A short question in the present case is that when the pay of the writ petitioner was upgraded by granting him one annual increment then whether such an action was because of any fraud or misrepresentation by the writ petitioner. The appellants have not stated that the writ petitioner at any point of time misrepresented for getting the said benefit.

In view of the law laid down by the Apex Court in *Sahib Ram Vs. State of Haryana and Others*, , the reference of which also finds mention in the order passed by learned Single Judge, we are of the considered view that no fault can be found with the order passed by learned Single Judge.

Here, we may also refer with profit to the Apex Court decision rendered in *Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others*, , wherein a question of hardship which results to the pensioner, if any recovery, is made has been addressed directly and Their Lordships have come to the conclusion that pensioners are in more disadvantageous position when compared to in-service employees and thus any attempt made to recover excess wrong payment would cause undue hardship to them particularly when the employees are not guilty of any misrepresentation or fraud in regard to excess payment and on that basis Their Lordships held that no recovery of any excess payment can be made from the retiral benefits. Relevant Paragraphs 27,28 and 29 from the *Col. Akkara's* case (*supra*), are quoted as below:

27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (*vide Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar and V. Gangaram v. Regional Jt. Director*):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

Such relief, restraining back recovery of excess payment, is granted by Courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend

it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, Courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are, therefore, of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.

In view of the aforesaid, we are of the considered opinion that the recoveries which were effected of Rs. 62,575/- from the amount of gratuity of the petitioner-respondent as held by the learned Single Judge is bad in law and we do not find any fault with the order passed by the learned Single Judge. Accordingly, the present appeal is dismissed. No order as to costs.