
(2014) 03 MP CK 0063
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 833 of 2013

State of MP and Others

APPELLANT

Vs

Sunil Saxena

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2014) 03 MP CK 0063

Hon'ble Judges : Rajendra Menon, J; J.K. Jain, J

Bench : Division Bench

Advocate : Rahul Jain, Deputy A.G. for State, for the Appellant; Amit Verma, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the State u/s 2(1) of the M.P. Uchha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, calling in question tenability of order-dated 17.1.2013 passed by this Court in Writ Petition No. 3843/2009. Facts in brief go to show that the respondent/employee was engaged by the department as an Assistant Electrician-cum-Wireman on 30.3.1979. He was working in the work charged and contingency paid establishment and with effect from 1.5.1984, he was paid salary in the pay scale Rs. 515-800/-. Alongwith the respondent one Prakash Nigam was also working as an Assistant Electrician-cum-Wireman, but it seems that Shri Nigam was drawing salary of lower scale of Rs. 400-525/-. In view of the aforesaid disparity in the pay scale, Shri Nigam challenged his pay fixation by filing an application before the MP State Administrative Tribunal being O.A. No. 189/1994 and after winding up of the Tribunal the same was transferred to this Court and was registered as Writ Petition No. 23133/2003. This writ petition was disposed of vide order-dated 5.2.2008 and after taking note of the totality of the circumstances, the recommendations of the Choudhary Pay Commission, the Vora Pay Commission and the pay fixation done not only of the respondent, but also of Prakash Nigam,

the learned Court found that there is disparity in the pay of both the employees and, therefore, the State Government was directed either to step up the pay of Shri Prakash Nigam to bring it at par with the respondent i.e., in the pay scale of Rs. 515-800/-, or to consider the matter and take a decision with regard to reducing the pay of the respondent employee to Rs. 400-525/-, if any error has been committed. It seems that the matter was re-examined and on re-examination it was found that both the employees-namely respondent Sunil Saxena and Shri Prakash Nigam, were entitled to fixation in the pay scale of Rs. 400-525/- with effect from 1.5.1984 and by some mistake the respondent's pay has been fixed in the pay scale Rs. 515-800/-. Accordingly, an order was passed reducing the pay of the respondent and bringing it in the pay scale of Rs. 400-525/- with effect from 1.5.1984. While doing so, an order was also passed for recovery of the excess amount paid to the respondent. Aggrieved by the aforesaid order, respondent filed the petition in question being W.P. No. 3843/2009, and by the impugned order dated 17.1.2013, the learned Court found that even though reduction of pay scale to the lower scale was proper, but the recovery ordered was found to be unsustainable and the recovery being quashed, this appeal is filed by the State Government.

2. Learned counsel for the State argued that once the pay fixation was found to be unsustainable and the employee was found not entitled to the pay, then the tax payers money could not be wasted in the manner done and, therefore, in directing recovery the State having not committed any error, the learned Writ Court committed an error in interfering with the recovery.

3. However, Shri Amit Verma, learned counsel appearing for the respondent employee, refuted the aforesaid and invited our attention to various judgments and tried to emphasize that as the fixation of pay in the higher pay scale was done because of the mistake of the State Government and as the respondent employee was not responsible for the same, in directing for recovery an error has been committed. It was contended by learned counsel for the employee that normally the principle laid down and relied upon learned counsel for the State will not apply in the facts and circumstances of the present case

4. Keeping in view the totality of the facts and circumstances and the peculiar facts of the present case, it is clear that the learned Writ Court took note of various facts and found that in Writ Petition No. 23133/2003, when the directions were issued on 5.2.2008, the Court had not directed for recovery of any amount, it was only directed to remove the anomaly if any, in accordance with law.

5. Considering the aforesaid aspect of the matter and the fact that the respondent employee was not responsible for the mistake committed, the impugned action is taken. The action taken seems to be reasonable and we see no reason to interfere into the same. Accordingly, the appeal stands dismissed.