

(2010) 10 AHC CK 0330
In the Allahabad High Court
Case No : Service Bench No. 1264 of 2009

State of U.P. and Others

APPELLANT

Vs

Naresh Chandra Gupta and Another

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Citation : (2010) 10 AHC CK 0330

Hon'ble Judges : Devi Prasad Singh, J; Arun Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. This writ petition has been preferred by the State-petitioners against the judgment and order passed by the State Public Services Tribunal, Lucknow dated 29th September, 2008 passed in Claim Petition No. 1556 of 2000 Naresh Chandra Gupta v. State of U.P. and Ors. whereby the claim petition has been allowed in part.
3. Facts in short relevant for deciding the present writ petition are as follows:

Respondent No. 1 was appointed as Junior Engineer in Irrigation Department. He was promoted on the post of Assistant Engineer. He retired on attaining the age of superannuation on 31st October, 1999. The State Government under the orders dated 26th April, 2000 and dated 16th August, 2000 took a decision to re-fix the salary of the claimant-respondent in accordance with the Rules. These orders were challenged before the Tribunal.
4. On the recommendations of Pay Commission, the pay-scale qua the post of Junior Engineer was revised from Rs. 120-250 to 300-500. Accordingly, the salary of the petitioner was fixed in the revised pay-scale w.e.f. 1st August, 1972. The pay scale of the post of Junior Engineer was again revised from Rs. 300-500 to 515-860. The petitioner was granted selection grade of Rs. 690-1420

w.e.f. 1st July, 1979 and his salary was fixed at Rs. 730/-. On addition of annual increments, his pay was raised to Rs. 770/-, Rs. 810/- and Rs. 850/- w.e.f. 1st August, 1980, 1st August, 1981 and 1st August, 1982 respectively. On his being granted the pay scale of Rs. 850-1720 his salary was fixed at Rs. 930/-. From 1st January, 1986, a new pay scale of Rs. 2200-4000 was introduced, which was opted for by the petitioner. Accordingly, on 1st January, 1986, his salary was fixed at Rs. 2425/- and thereafter, it was raised to Rs. 2500/- and Rs. 2575/- w.e.f. 1st August, 1987 and 1st August, 1988 respectively. The pay-scale of Rs. 2200-4000 was revised to Rs. 8000-13500 and the salary of the petitioner was fixed at Rs. 10,475/- as on 1st August, 1996. The petitioner was promoted on the post of Assistant Engineer on 6th March, 1998 in the pay-scale of Rs. 8000-13,500/- from where superannuated on 31st October, 1999.

5. Under the Government Orders dated 6th August, 1982, dated 31st May, 1990 and dated 20th February, 1998, the pay of the different officers of the department was determined with prior approval of the senior most officer of the Finance and Accounts Department appointed at Headquarters of the Irrigation Department. It was found that in the case of the petitioner, there was incorrect fixation of salary on 1st July, 1979 and on subsequent dates. This led to excess payment to him. The error in fixation of salary required correction, hence pending correction. A conditional PPO was issued in his favour. Subsequently, corrections in the matter of fixation of pay have been made and recovery of the excess amount of money has been directed.

6. Before the Tribunal, it was contended on behalf of the State that as on 1st August, 1979, the petitioner was working in the pay-scale of Rs. 300-500. His salary was fixed at Rs. 464/-. On revision of this pay scale to Rs. 515-860 on 1st August, 1979, the petitioner's pay should have been fixed at Rs. 720/- per month. On the petitioner's getting selection grade in the scale of Rs. 690-1420 w.e.f. 1st July, 1979, his salary in the scale of Rs. 515-860 on 1st August, 1979 was to be fixed at Rs. 720/- and not at Rs. 730/-.

7. It was further contended before the Tribunal that when the said mistake has been corrected and the excess salary paid than that prescribed under the Rules has to be recovered. Because of incorrect fixation of salary, respondent-claimant cannot be entitled to higher pensionary benefits. Therefore, correction has been made and the impugned orders have been passed.

8. It was contended on behalf of the respondent-claimant before the Tribunal that the impugned orders passed by the State-respondents were illegal. The revision of the pay-scale of the claimant was done by the competent authority in accordance with the Service Rules. It was the duty of the State-authorities to fix the salary of the petitioner in accordance with Rules. It was stated that the claimant has not been issued any show-cause notice nor he has been afforded any opportunity of hearing before passing the impugned orders. Hence the impugned orders suffer from non-compliance of the principles of natural justice, therefore, illegal.

9. The Tribunal has set aside the impugned orders with regard to the correction of pay-scale on the ground of non-compliance of principles of natural justice and also on the ground that claimant has not at fault nor he had played any fraud.

10. Challenging the impugned judgment and order of the Tribunal, it is contended on behalf of the State-petitioner that the correction/revision of the pay-scale of the claimant has rightly been done in accordance with the Rules applicable. It was found that the claimant has been paid excess salary than that prescribed. It was not necessary to issue any show-cause notice to the claimant. It is further contended that since the claimant was given higher salary than that prescribed, the State is entitled to recovery the same.

11. We have considered the submissions made by the learned Counsel for the parties and have perused the records of the present writ petition.

12. It is no doubt true that any order, which visits a person to evil civil consequences must be in compliance of principles of natural justice. However, in the facts of the present case, we find that there is no material on record to establish that fixation of salary of the claimant earlier done by the authorities was in accordance with the Rules/ Government Orders applicable. Records establish that there was a mistake on the part of the authorities which has been corrected. It is always within the competence of the State-authorities to correct their mistakes committed earlier. In the facts of the present case, we find that there is only one view possible, insistence upon compliance of principles of natural justice would be a futile exercise. We therefore, hold that the State Government has rightly re-fixed the salary of the petitioner in accordance with the Government Orders/Rules applicable.

13. So far as the recovery of the excess salary paid because of wrongful fixation earlier is concerned, we find that there are no allegations of fraud or misrepresentation against the claimant-respondent. It has rightly been held by the Tribunal that if there are no allegations of fraud or misrepresentation against an employee, any excess salary paid cannot be recovered. More so in the facts of the present case, where the claimant-respondent has already retired from service.

14. We may refer to the following judgments of the Hon"ble Supreme Court as well as of this Court, on this subject:

1. Syed Abdul Qadir and Others Vs. State of Bihar and Others,
2. Registrar, Co-operative Societies Haryana Vs. Israil Khan and Others,
3. State of U.P. and Others Vs. State Public Services Tribunal and Another,
4. State of U.P. and Ors. v. Vindeshwari Prasad Singh Special Appeal No. 503 of 2008; decided on 28th July, 2009.

15. Accordingly, it is held that no recovery for the excess salary paid to the claimant-respondent from his retiral dues can be made. The order of the State to

that extent has rightly been set aside by the Tribunal.

16. In view of the aforesaid, we allowed the present writ petition in part, the judgment and order passed by the Tribunal dated 29th August, 2008 is modified to the extent that re-fixation of salary of the claimant done by the State-petitioners is in accordance with law and justified. Future pensionary benefits of the claimant may be determined accordingly. The State-petitioners, however, have no right to recover the excess amount, which has already been paid to the claimant in any manner whatsoever.