
(2017) 03 AHC CK 0063
In the Allahabad High Court
Case No : Service Bench No. 6335 of 2017

State of U.P.

APPELLANT

Vs

Bhim Sen Sharma

RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 4 ADJ 768 : (2017) 3 ALLJ 532

Hon'ble Judges : Sudhir Agarwal and Ravindra Nath Mishra-II, JJ.

Bench : Division Bench

Advocate : C.S.C, for the Petitioner; C.S.C., and Hemendra Pratap, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Standing Counsel for petitioners and Sri Hemendra Pratap, Advocate for respondent no. 1.
2. This is a thoroughly misconceived and illadvised writ petition and ought not to have been filed particularly in view of the fact that question raised in this writ petition has already been considered and decided against State by this Court as well as Supreme Court.
3. In the present case, claimant-respondent no. 1, retired from the post of Assistant Engineer from Irrigation Department on 31.12.1998. At the time of retirement his basic pay was Rs. 11,850/but his pensionary benefits were fixed on pay scale of Rs. 10,200 on the ground that one increment in 1979, i.e., about 19 years back, was wrongly awarded to him and his actual pay at retirement should have been Rs. 10,200/. Consequent thereupon recovery of Rs. 2,07,353.20 was also sought to be made from claimant respondent no. 1.
4. Against aforesaid recovery claimant respondent no. 1 filed Claim Petition No. 359 of 1999 which was decided on 15.04.2004. Tribunal held that no recovery can be made from claimant respondent no. 1. Against said order of Tribunal

State preferred writ petition which was also dismissed on 13.05.2015. After dismissal of writ petition State of U.P. again took a decision on 13.05.2015 and refixed pension of claimant respondent no. 1 which was already fixed on the basis of modified last drawn salary. It is this order dated 13.05.2015 which gave fresh cause of action to claimant respondent no. 1, who challenged the same in Claim Petition No. 1307 of 2015. Tribunal has allowed claim petition by means of impugned judgment dated 15.09.2016 entitling claimant respondent no. 1 to get pensionary benefits on the basis of pay scale of Rs. 11,850/and observed that Finance Controller had no right to reduce pay on the basis of any incorrect fixation of pay made in 1979.

5. Learned Standing Counsel submitted that the issue was already considered by High Court. However, we find that thereafter a fresh order has been passed by State rectifying alleged mistake committed in 1979, i.e., after almost 19 years, which was not permissible in view of Government Order dated 16.01.2007 as also law laid down by Supreme Court in Civil Appeal No. 5262 of 2008, decided on 17.04.2014. The order of Supreme Court has been referred to in Tribunal's order, which reads as under:

"7. Upon perusal of the afore stated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the afore stated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

xxxxx xxxxxx xxxxx

10. For the afore stated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of refixing pension of the appellant."

6. Besides, this Court in Writ Petition No. 3137 of 2017 (State of U.P. and another v. Ram Naresh and another), decided on 10.02.2017 has also taken a view that if there is any error or mistake committed by authorities, after an indefinite or long period and that too after retirement of Government servant, Government cannot reduce benefits by rectifying said mistake since even if mistake has been committed, same cannot be rectified after a long period. It is true that there is a power of rectification but when a power is there, it must be

exercised within a reasonable period. Court in paras 5 to 10 said:

"5. It is not in dispute that in revised pay scale, basic pay of petitioner was found to be fixed at Rs. 7580/-. That being so pay band granted to him by Tribunal, in our view, is in accordance with relevant Government order. This is evident from page 44 of the paper book of writ petition.

6. Be that as it may, even if there is some error in fixation of pay committed almost more than a decade back, fundamental question which needs be examined in this matter is, how long it is open to State and its authorities to reopen the issue and put a retired Government servant in jeopardy, financial scarcity and other difficulties, particularly when he has no access to Government record, retired long back and has arranged his funds and maintenance of family in the light of ultimate retiral benefits already determined, computed and being paid to him.

7. This Court has experience of similar matters coming in large numbers, where, after 10 or 20 or 30 years, irrespective of any time limit, and that too after retirement of Government servant, this type of alleged wrong fixation is claimed and for entire long period of decades, pay is reduced and recovery is ordered. This ultimately results in large number of litigation before this Court and mostly this Court has directed in such matters, not to make any recovery of the amount, already paid.

8. Learned Standing Counsel stated that there is no bar for review or rectification of mistake and there is no time limit prescribed anywhere, therefore, it can be done at any point of time.

9. However, we do not find ourselves in agreement with aforesaid submission. Whenever any action prejudicial to interest of a Government servant is taken, Competent Authority must exercise its power within a reasonable time and it cannot be appreciated that such power should be exercised after decades and that too after retirement of Government servant. In the present case, impugned order has been passed after almost 6 years from the date of retirement.

10. It is well established that when a power is there and there is no period prescribed under law, power should be exercised reasonably and within a reasonable period also and not after a very long time or at any time. In these facts and circumstances, we are of the view that if there is any error in pay fixation etc., Competent Authority is entitled to rectify mistake within a period of three years. We further provide that in case such a mistake is detected after three years in that case instead of taking action against the person who is benefited with such wrong fixation, Competent Authority must take action against the person who caused such mistake and is responsible and recover loss suffered by department.

7. Learned Standing Counsel could not dispute that alleged one increment was wrongly granted in 1979 and pension of claimant respondent no. 1 was sought to

be fixed by rectifying said mistake only after almost 19 years and more. It is clearly barred in view of the law laid down as referred to herein above, as also Government Orders dated 13.12.1977, 05.12.2001 and 16.01.2007.

8. The writ petition, therefore, lacks merit.

9. Dismissed accordingly with cost of Rs. 5,000/.