
(2010) 08 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition No. 82 of 2009 (S/B)

State of Uttarakhand and Others

APPELLANT

Vs

State Public Service Tribunal and Another

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Citation : (2011) 3 UC 1628

Hon'ble Judges : Tarun Agarwala, J;Sudhanshu Dhulia, J

Bench : Division Bench

Advocate : K.P. Upadhaya, Addl. Chief Standing, for the Appellant; B.S. Negi, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri K. P. Upadhaya, the learned Additional Chief Standing Counsel for the Petitioners and Sri B. S. Negi, the learned Counsel for the Respondent No. 2.

2. The present writ petition has been filed for the quashing of the order dated 16.05.2008 passed by the Public Service Tribunal allowing the claim of Respondent No. 2.

3. The facts leading to the filing of the writ petition is, that the Respondent No. 2 Ram Nath Sharma was promoted as a Registrar Kanoongo on 26th March, 1990 and, thereafter, promoted as an Assistant Record Officer on 26th September, 2001. The said Respondent, eventually, retired from service on 31st July, 2005. During the course of his service, the said Respondent was granted a second promotional pay scale in the pay scale of Rs. 8000-13,500 w.e.f. 14th August, 2000 by an order of the Collector and, based on the said order, the said Respondent was receiving the promotional pay scale. On 28th March, 2003, the Additional Commissioner (Revenue) submitted a report indicating therein that the said Respondent was wrongly fixed and that a sum of Rs. 1,43,498/- had been paid in excess and was liable to be recovered from the said Respondent.

When the Respondent employee came to know about it, he made a representation which remained pending in the State Government and, eventually, the Petitioner retired on 31 st July, 2005. Since the post retiral benefits were not being released, the . Respondent employee gave an affidavit indicating that the excess amount may be recovered from his provident-fund, gratuity, etc. It has come on record that the excess amount was recovered from his post retiral dues and the balance amount was paid to the Respondent employee.

4. The Respondent, consequently, filed a claim before the Public Service Tribunal alleging that the recovery of Rs. 1,43,498/- was illegally made from the Respondent and, in any case, the said recovery was in violation of the principle of natural justice in as much as no notice or opportunity of hearing was provided.

5. The Tribunal, after considering the matter, allowed the claim and directed the Petitioners to refund a sum of Rs. 1,43,498/- alongwith simple interest @ 6 per cent per annum and, however, directed the appointing authority i.e. the Collector to pass a speaking order regarding the excess payment made to the Respondent No. 2, after providing an opportunity of hearing. The State Government, being aggrieved by this order, has filed the present writ petition.

6. The only ground urged by the learned Additional Chief Standing Counsel for the Petitioners is, that the Respondent No. 2 himself admitted that excess payment had been made and that he gave an affidavit to the effect that the excess payment so received by him may be recovered from his post retiral dues and, consequently, the recovery made by the Petitioners was perfectly justified and that the Tribunal committed an error in directing the Petitioners to refund the amount alongwith interest to the Respondent employee.

7. Having heard the learned Counsel for the parties and having perused the affidavits filed in the writ petition, the court is of the opinion that the order of the Tribunal does not require any interference. We find that the second promotional pay scale was fixed by the Collector and that there was no misrepresentation or fraud played on the part of the employee. Consequently, we are of the opinion that since there was no fault on the part of the employee, 1:he excess amount so paid to the employee could not be recovered.

8. In Ram Briksh Ram v. State of U.P. and Ors. 2007 (2) UPLBEC 1544, a Division Bench of the Allahabad High Court held that if certain benefits, pay scale, etc. was given to an employee incorrectly during his service period and no misrepresentation or fraud was played on the part of the employee, in that event, the excess amount paid to the employee could not be recovered. Similar view was again taken in Ramesh Chand Tyagi v. Director, Agriculture Marketing, Lucknow and Anr. 2007 (2) UPLBEC 1593 and in Ram Murti singh v. State of U.P. and Ors. 2006 (3) UPLBEC 2415 and Awadh Nath Tripathi v. Chief Development Officer, Sant Kabir Nagar and Ors. 2005 (1) UPLBEC 493.

9. In Sahib Ram Vs. State of Haryana and Others, , the Supreme Court also held that where revised scale of pay was paid, which was not on account of the

misrepresentation made by the employee, the employee could not be held at fault and the excess amount so paid could not be recovered. Similar view was again reiterated by the Supreme Court in *Syed Abdul Qadir and Ors. v. State of Bihar and Ors.* 2009 (1) SCC (L&S) 744.

10. In view of the aforesaid, since admittedly the Respondent employee had not misrepresented nor played any fraud and that the promotional pay scale was erroneously paid by the State Government, the excess amount so paid could not be recovered since the employee was not at fault.

11. The contention of the learned Additional Chief Standing Counsel for the Petitioners that the Respondent employee himself admitted and gave an affidavit that the excess amount may be recovered and, consequently, the Petitioners were justified in recovering the amount is patently erroneous. The Tribunal has considered this aspect of the matter and found that the affidavit given by the employee was under coercion and had been given so that the employee could receive his post retiral dues. On the other hand, we find that the employee had also made a representation, which remained pending and the recovery of the amount has been made without giving any notice and without giving any opportunity of hearing to the employee. In view of the aforesaid, this Court does not find any error in the order passed by the Tribunal. The writ petition fails and is dismissed accordingly.