
(2009) 07 CHH CK 0042
In the Chhattisgarh High Court

Surendra Nath Tiwari

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Citation : (2009) 07 CHH CK 0042

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Heard learned Counsel for the parties.

2. By this petition, the petitioner seeks to challenge the legality and validity of the order dated 27-7- 2004 (Annexure - P/1) passed by the respondent No. 2 herein wherein recovery order for Rs. 38,470/- has been passed. The petitioner also seeks to challenge the legality and validity of the letter dated 5-6-2004 (Annexure - P/2).

3. Case of the petitioner, as projected by the learned Counsel appearing for the petitioner, is that the petitioner was promoted from the post of Head Master to the post of Lecturer and accordingly he was granted the benefit of provisions of Section 22- D of the Fundamental Rules (for short "the FR") from January, 1987. On retirement, a sum of Rs. 38,470/- was directed to be recovered by order dated 27-7-2004 (Annexure - P/1). Thus, this petition.

4. Shri Pandey, learned Counsel appearing for the petitioner, would submit that once the amount has been paid not on account of misrepresentation of the facts or any miscalculation or misinterpretation of the provisions of law, the same is not recoverable, as held by this Court as well as by the Supreme Court in a catena of decisions.

5. Per contra, Ms. Ghai, learned Panel Lawyer appearing for the State, would submit that the circular dated 21-5-1999/9-6-1999, which provides for grant of

benefit of 22-D of the FR to the Lecturers of Tribal Welfare Department, came into force in the month of June, 1999. Thus, granting benefit to the petitioner w.e.f. January, 1987 i.e. prior to issuance of circular dated 21-5-1999/9-6- 1999 was erroneous and on wrong interpretation of the circular. Learned Counsel relies on provisions of Rule 65 of the Chhattisgarh Civil Services (Pension) Rules, 1976, which provides that the recovery and adjustment of Government dues can be made from the retiring Government servant on cash deposit or by deducting from the gratuity amount.

6. I have heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the payment was made to the petitioner not on account of any misrepresentation or fraud. It is also not clear as to whether the petitioner knew about the fact that the payment made to him was in excess. Admittedly, according to the respondents, the payment was made on miscalculation or misinterpretation of the provisions.

7. The petitioner seeks quashing of the letter dated 5- 6-2004 (Annexure - P/2) on the ground that the said letter amounts to cancellation of grant of benefit of 22-D of the FR. On perusal of the said letter, it appears that the Joint Director (Treasury, Accounts, Pension), Bilaspur, has sought guidance from the Assistant Commissioner, Tribal Welfare Department in respect of the cases wherein the Lecturers were granted benefit of Section 22-D of the FR and no order, it appears, thereafter has been passed.

8. Law is well-settled. The Hon'ble Supreme Court, in Syed Abdul Qadir and Ors. v. State of Bihar and Ors., having considered all the decisions of the Supreme Court in Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, v. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purushottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bahadur, observed as under:

57. This Court, in a catena of decisions has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle of calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employee from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in case where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of

India, Union of India v. M. Bhaskar, v. Gangaram v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bahadur.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.

9. This is a case where no misrepresentation or fraud has been established on the part of the employee. Confusion was created on account of inaction, negligence or carelessness of the officials, if any.

10. Having regard to the facts situation of the case, when the petitioner has already utilized the money for up-keep of his family, it would not be proper to direct recovery of the amount which has been paid to the petitioner. Even otherwise, recovery order has been passed without following the basic principles of natural justice as no opportunity of hearing was afforded to the petitioner before the impugned order was passed.

11. In view of foregoing, the petition is allowed and the order dated 27-7-2004 (Annexure - P/1) directing recovery of the excess payment is quashed. In case the amount has been recovered, the same shall be refunded back to the petitioner with simple interest within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the petitioner is entitled to benefits of 22-D of the FR. No order asto costs.