(2012) 01 AHC CK 0551

In the Allahabad High Court

Case No : Writ A No. 27879 of 2011

Union of India and Others APPELLANT

Vs

Radhey Shyam and Another RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0551

Hon'ble Judges : Sunil Ambwani, J;Manoj Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Sri A.K. Gaur for the petitioners. Sri A.K. Dave appears for the respondent No.1.

2. The respondent No. 1 retired on 30.4.2003, as Chief Traveling Ticket Inspector, N.E. Railway, Varanasi, in the pay scale of Rs. 6500-10500/-, drawing pay @ Rs. 7,900/-. By the orders challenged in the Central Administrative Tribunal, Allahabad, an amount of Rs. 61,484/- was deducted from gratuity - Rs. 26,834/- on account of excess payment of salary and Rs. 34,650/- on account of commercial debit. His pension was also reduced, calculated on the last pay drawn by him as Rs. 7500/- instead of Rs. 7,900/-.

3. In the Tribunal, the petitioners took a stand that applicant-respondent No. 1 was subjected to punishments between the years 1995 to 2002 by stoppage of increments on temporary basis, which were not implemented, and his pay was wrongly treated to be Rs. 7,900/-. On calculation after implementation of the punishment orders, his pay was reduced to Rs. 7,500/- and consequently deductions were made.

4. The Tribunal found that applicant was not given any opportunity of hearing before making any deduction and reducing his pension. The recovery and reduction in pension was thus not justified. The Tribunal did not find it appropriate to grant any liberty to the department, to issue a show cause to the

applicant-respondent, and to explain whether deduction and reduction in pay was justified. The impugned orders were quashed, and the entire deducted amount was directed to be paid with 9 % interest from 1.5.2003. The Tribunal also directed that the pension of the applicant to be revised treating his pay at the rate of Rs. 7,900/- as on 30.4.2003.

5. Sri A.K. Gaur, submits that when an amount has been wrongly calculated and paid, the department is not required to give notice the employee, even if he has retired. He has relied upon judgment of the Supreme Court in Col. B.J. Akkara (retd) Vs. Government of India and others [2007 (1) SCC (L&S) 529].

6. We have gone through the reply given by the petitioners in their counter affidavit filed in the Tribunal, and find that each and every punishment was implemented after it was imposed; the pay was thereafter restored after the deductions. It is useful to quote paras 8 to 11 of the counter affidavit of the petitioners, submitted in the Tribunal.

8. That the contents of paras 4 (6) and 4 (7) of the claim petition are not admitted in the form they stand. It is further stated that the promotion of the applicant in Grade Rs. 2000-3200 vide G.M. (O) Gorakhpur''s letter dated 10.12.1995 could not be given effect to with effect from 1.3.1993 due to various punishments of withholding of increment temporarily as under:-

W.I.T. for one year vide letter No. C/82/6-C/248/88-5 dated 4.11.1988.

W.I.T. for one year vide letter No. C/82/332/5/88 dated 22.2.1989.

W.I.T. for one year vide letter No. C/378/125/R/84 dated 20.2.1990.

W.I.T. for one year vide letter No. C/83/Vig./35/90 dated 31.7.1990.

W.I.T. for six months vide letter No. C/562/M/34/91/1 dated 17.2.1992.

W.I.T. for one year vide letter No. C/362/M//13/9/1 dated 10.10.1991.

on expiry of the aforesaid punishments, the applicant was given promotion w.e.f. 1.3.1993 vide office order No. 111/96 dated 5.7.1996, the actual benefit of promotion was given effect to, with effect from 1.2.1995 vide letter No.

9. That the contents of paragraph 4 (8) of the claim petition call for no comments. It may further be stated that amending the aforesaid orders dated vide personnel branch letter No. 111/96 dated 5.7.1996, after adjusting the applicant''s various punishments, with effect 1.3.1993 by allowing proforma seniority the actual benefit of promotion of the applicant, had in fact actually been allowed with effect from 1.2.1995 which has already been stated and explained in the preceding paragraph of this written statement.

10. That the averments made in paragraph of 4 (9) of the claim petition are not admitted and denied. The applicant''s pay has, in fact, been regularized in accordance with the recommendation of Vth Pay Commission as under:-

1.2.1995 2660/- in grade of Rs. 2000-3200/-

1.1.1996 6500/- in grade Rs. 6500-10500

1.5.1996 6700/- on account of L.W.P. for 95 days

1.6.1998 7100/- on account of WIT for one year

vide letter No. C/448/88/last EFT/Vara. dated 25.2.1997 and suspension vide letter No. SS/DAE.M/c/43/97/vig. dated 24.6.1997 to 8.8.1997

Further reduction from grade Rs. 6500-10,500 to grade Rs. 500-9000/- on pay @ Rs. 6200/- permanently P.M. vide letter No. G/DRM/C/43/47 vig dt. 12.3.1999 made effective with effect from 12.3.1999 i.e. with immediate effect which come to an end on 11.3.2001 and accordingly the pay of the applicant was restored to Rs. 7100/- p.m. Further an imposition of punishments of withholding increment temporarily for 4 months vide punishment notice No.C/562/39/99 dated 23.2.2000 and 6 months vide punishment Notice No. C/402/3114/11/98 dt. 28.3.2000 and expiry, the pay of the applicant restored @ Rs. 7300/- w.e.f. 1.4.2002 and raised to Rs. 7500/- with effect from 1.6.2002 accordingly. It is significant to point it out here that the applicant was drawing his pay @ R. 7500/- p.m. in the grade Rs. 6500-10,500/- on the eve of his retirement on 30.4.2002.

11. That the averments made in paragraph 4 (10) of the claim petition are admitted partially to the extent the payment of the pay of the applicant @ Rs. 7,900/- p.m. in grade Rs. 6500-10,500/-, continued due to non-imposition of various penalties as stated and explained in the preceding paragraphs of this written statement.

7. From these averments it is clear that the punishments imposed for withholding salary were implemented and the pay was restored after each of the deductions. The recommendation of the Vth Pay Commission was also made applicable, after reduction, on the revised pay. After referring to reduction from paragraphs 8 to 10, it is abruptly stated in para 11, that the claim of the applicant to be paid retirement dues and pension on the last pay of Rs. 7,900/- in the grade of Rs. 6500-10,500/-, is not admitted due to non-imposition of various penalties. There is no mention of any of the penalty, which was not implemented.

8. In Col. B.J. Akkara (Supra), it was held by the Supreme Court that relief, restraining recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. On the same principle it was held that pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The principles elaborated in the judgment do not help the petitioners-department.

9. Further, we find from the counter affidavit filed by the petitioners in the Original Application, that the last pay, which was being actually drawn by the petitioner was reduced without reference to any particular penalty, which was not implemented and without giving notice to the petitioner

10. The writ petition is dismissed.

