

(2003) 10 AHC CK 0153
In the Allahabad High Court
Case No : C.M.W.P. No. 47104 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

Rakesh Chandra Sharma and Others

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Citation : (2004) 1 AWC 653 : (2004) 3 LLJ 213

Hon'ble Judges : D.P. Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : B.S. Singh, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Dr. B. S. Chauhan, J.—This writ petition has been filed challenging the Judgment and order dated 23rd May, 2003, passed by the Central Administrative Tribunal, partly allowing the application of the respondent Nos. 1 to 5 issuing direction not to recover the amount already paid to them.

2. Facts and circumstances giving rise to this case are that the said respondents were engaged as a casual employees on different dates between 1979 to 1985. They were conferred temporary status in Group "D" category with effect from 29.11.1989. They were treated at par with temporary Group "D" employees after completing three years of service vide order dated 22.11.1995. After considering the recommendations of the Fifth Pay Commission, they had been fixed in the pay-scale of Rs. 750-940. i.e., revised pay-scale of Rs. 2,660. Subsequently, vide Office Memorandum dated 24.10.1997, the instructions were issued to fix their salary at Rs. 2,550. The said order was not given effect to immediately and the said respondents continued to receive the pay as fixed earlier and hence the order was passed to make the recovery. Being aggrieved and dissatisfied, the said respondents approached the learned Tribunal. By impugned judgment and order dated 23rd May, 2003, the Tribunal dismissed their applications to the extent that they were not entitled for the pay-scale of Rs. 2,660 and they could

get the salary in the pay-scale of Rs. 2.550-3.200. But considering the facts and circumstances of the case, it was directed that the present petitioner shall not recover the amount which had already been paid to them and if already recovered, it should be refunded to them. Hence this petition.

3. The only controversy involved in this case is as to whether the learned Tribunal could have passed the order not to make the recovery of the excess amount which had been paid to the said respondents for which they were not entitled in law.

4. In *Sahib Ram v. State of Haryana and Ors.* 1995 1 SCC 18, the Hon''ble Apex Court considered a similar issue and observed as under :

"The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

5. In *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, the Hon''ble Apex Court examined the identical issue and held that if the employee has received the extra money due to no fault of him and that scale is reduced subsequently with effect from back date, it shall be just and proper not to recover any excess amount which has already been paid to him.

6. However, in *Union of India and Others Vs. Shri Ram Gopal Agarwal and Others*, the Apex Court has held that if the amount had been paid by mistake, and there has been no fraud or misrepresentation on the part of the employee, the recovery at a belated stage would result in great hardship. Therefore, in such circumstances, the amount already paid to him, even under the interim order of the Court, be not recovered.

7. In *State of Haryana and another Vs. O.P. Sharma and others*, the Hon''ble Apex Court held that to avoid hardship, the excess amount paid should be recovered in instalments, i.e., in phased manner.

8. In *The State of Haryana and Another Vs. Kamal Singh Saharwat and Others*, while dealing with the same case, the Hon''ble Apex Court held that it was entitled to recover back from the employees whatever had been paid extra to them, if the employer decides to recover the excess amount even after a long lapse of time.

9. Similarly, in *Union of India and Others Vs. Smt. Sujatha Vedachalam and Another*, the Hon''ble Supreme Court held that if pay fixation had wrongly been made and the excess amount had been paid to the employee by mistake and the said mistake is rectified, the amount already paid can be recovered. However, in the said case, it was directed to be recovered in easy instalments.

10. On the contrary, in V. Gangaram Vs. Regional Joint Director and others, the Apex Court held that if the amount has been paid by mistake, the recovery can be made of the excess amount.

11. In Alam Ali v. State of Rajasthan 2000 Lab IC 862, one of us (Dr. B. S. Chauhan, J.) had taken the view that recovery of excess amount can be made by making rectification if the order had wrongly been passed.

12. In The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others, the Supreme Court directed not to recover the excess amount paid till the date of issuance of the order, clarifying the position that though recovery of the extra amount paid is permissible after giving an opportunity of hearing and considering the prejudice likely to be caused to the employees.

13. In Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC, the Hon''ble Supreme Court held that the statutory authority must pass an order only in consonance with law and if it comes to its knowledge that an order requires rectification, the Authority must do it and recover the dues, if any, as per the rectified order passed in compliance of the mandatory provisions of law. In such a case, recovery cannot be quashed by the Courts.

14. In K.S. Satyanarayana Vs. V.R. Narayana Rao, the Hon''ble Supreme Court has held that juristic basis for such an order of recovery, even if not based on contract or tort, may fall on another category of quasi-contract or restitution.

15. In view of the above, it can be held that there is no law of universal application restraining the employer to recover the extra amount paid to the employee beyond his entitlement. Rectification of a mistake is not only permissible but desirable otherwise the system/requirement of auditing of accounts would be rendered nugatory. It would result in a windfall gains to the employees and would amount to unjust enrichment. The situation may become conducive for committing fraud by an employee, in collusion with the high up, and it may not be possible to prove the same by the employer.

16. Whenever, the Court has passed the restrain order, not permitting the employer to make recovery of extra amount, it seems to have been passed to do substantial Justice. Each case requires to be decided on its own facts. In case the Court feels that there had been no misrepresentation/fraud on the part of the employee and excess amount had been paid to him, without any fault of him, which he might have spent considering his own money, and recovery, if permitted, would cause great hardship to him and his family, it may restrain the employer to recover the same or direct to recover in phased manner.

17. In the instant case, as the learned Tribunal has restrained the present petitioner to make the recovery, in the limited jurisdiction of judicial review, the case does not warrant special features to warrant interference. However, it is clarified that the judgment impugned cannot be a precedent for deciding other

cases.

18. Petition is accordingly dismissed.