(2015) 05 AHC CK 0112

In the Allahabad High Court

Case No : Special Appeal No. 276 of 2015

U.P. Jal Nigam and Others APPELLANT

Vs

Urmila Khare RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Citation : (2015) 2 UPLBEC 1433

Hon'ble Judges : D.Y. Chandrachud, C.J;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : Vimlesh Kr. Rai, for the Appellant; N. Srivastava, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. D.Y. Chandrachud, C.J—The spouse of the petitioner-respondent [Petitioner] held a class-Hi post in the Jal Nigam and died on 12.1.2010 during his tenure of service. On 23.6.2011, an order was passed by the Chief Accounts Officer stating that the deceased employee had been regularized on 1.4.1994. Hence, it was noted in the order that on 1.1.1996, his salary was wrongly fixed in the pay-scale of Rs. 4000-100-6000 whereas he was entitled to an additional increment on 1.4.1994 and on the completion of fourteen years on 1.4.1998, he was entitled to a pay-scale of Rs. 3285-5070; to an additional increment on completing nineteen years of service on 1.4.2003 and upon the completion of twenty four years of service on 1.4.2008 to a pay scale of Rs. 4000-100-6000. A recovery was ordered from gratuity. In the writ petition, which was filed by the petitioner, she sought the setting aside of the order passed by the second respondent recovering an amount of Rs. 1,14,267/- from gratuity; the payment of the withheld amount and interest. The petitioner also sought enhanced pension from the date of death of her husband on 12.2.2010 in terms of a G.O. dated 11.1.2010. The learned Single Judge has allowed the writ petition in the following terms:

I am of the view that the order impugned cannot be sustained, the department cannot recover the excess amount from the gratuity. This is admitted situation that the said amount has not been paid to the petitioner, therefore, she is also liable to receive 12% interest from the date of its due.

It is hereby directed to the respondents concerned to ensure that complete amount towards the forfeited gratuity and other remaining amount may be paid to the petitioner forthwith with interest as indicated above. The said exercise may be completed within six weeks from the date of production of a certified copy of this order.

2. Insofar as the recoveries are concerned, the view of the learned Single Judge is in accordance with law. In the judgment of the Supreme Court in State of Punjab Vs. Rafiq Masih, (2014) 10 SCJ 700 , the following principles have been laid down in regard to the issue of recoveries:

It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer''s right to recover.

3. In the present case, the deceased employee was belonging to a class-Ill cadre. He died while in service on 12.2.2010. After his death, an order was passed by the Chief Accounts Officer on 23.6.2011 purporting to raise the issue of his pay fixation as far back as on 1.1.1996 onwards.

4. Recoveries in this manner especially from the gratuity would be impermissible having due regard to the judgment of the Supreme Court. There was no fraud on the part of the employee. However, we find that the award of interest at 12% per annum would be excessive and, hence we modify the direction by directing that the award of interest would be at 8% per annum from the date when the

payment fell due.

5. The learned Single Judge has also directed the payment of the "other remaining amount" forthwith with interest. There is no discussion in the impugned judgment on what the remaining amount is. In fact, as we have noted earlier in the relief which was sought, the petitioner had sought enhanced pension on the basis of a Government Order. All that remained to be directed was that the claim for enhancement in pension shall be duly considered in accordance with law and an order shall be passed by the competent authority within a period of three months from today.

6. The judgment of the learned Single Judge shall, accordingly, stand modified to the aforesaid extent. The special appeal is, accordingly, disposed of. There shall be no order as to costs.