

(2010) 12 GUJ CK 0130
In the Gujarat High Court

Case No : Special Civil Application No's. 12760 and 12761-12763 of 2010

Vikramsinh Chandrasinh Gohil

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0130

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Shalin N. Mehta, for Vidhi J. Bhatt, for the Appellant; Anand L. Sharma, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Anand L. Sharma, learned Assistant Government Pleader waives service of notice of Rule for the Respondents. On the facts, and in the circumstances of the case, the petitions are being heard, and finally decided, today.

2. This group of petitions under Article 226 of the Constitution of India have been filed challenging different orders of recovery dated 18-6-2010 passed by Respondent No. 3 against all the Petitioners, whereby recoveries have been directed to be made and certain recoveries have already been effected from the salaries of the Petitioners, without affording them any opportunity of hearing.

3. As more or less common issues of facts and similar issues of law are involved in these petitions, they are being decided by a common judgment. For the sake of clarity, the facts of Special Civil Application No. 12760 of 2010 shall be referred to:

The Petitioner herein joined service on 21-12-1980 as a daily wage driver. Upon application of the Government Resolution dated 17-10-1988, issued by Roads and Buildings Department, the Petitioner was placed in the pay scale of Rs.

950-1500. Vide Office Order No. 1317 of 1998 dated 25.11.1998 issued by Respondent No. 2, the Petitioner was given higher payscale of Rs. 1150-1500 with effect from 1-10-1988, on account of the fact that he was holding a heavy vehicle licence and was found to be driving a heavy vehicle since 1.10.1988. On revision of pay based upon the recommendations of the 5th Central Pay Commission, the Petitioner's pay was revised to Rs. 3050-4590, with effect from 1-1-1996. Vide Government Resolution dated 24-8-2009, passed by Roads and Building Department, State of Gujarat, the pay Scales of Daily Wagers was further revised with effect from 1-1-2006. As against Rs. 2550-3200, the pay was revised to Rs. 4440-7440 with grade pay of Rs. 1300/-. As against Rs. 3050-4590, the pay was revised to Rs. 5200-20200 with grade pay of Rs. 1900/-. This procedure was adopted after the recommendations of the 6th Central Pay Commission.

4. Consequently, vide Office Order No. 132 of 2010 dated 19-3-2010, the Petitioner was fixed in the revised pay scale of Rs. 5200-20200. However, on 18-6-2010, Respondent No. 3 served the impugned recovery order upon the Petitioner, stating that a sum of Rs. 1,89,341/- is to be recovered from his salary in 47 equal installments of Rs. 4000/- per month. The other Petitioners have also been served with similar notices of recovery, wherein there is a slight difference in the amount stated to be recoverable, and the number and amount of installments. The designation of the Petitioners vary, however, the legal issue involved in all the cases is the same.

5. Mr. Shalin N. Mehta, learned advocate for the Petitioners has submitted that the impugned orders of recovery dated 18-6-2010, have been passed without prior show cause notice or an opportunity of hearing being afforded to the Petitioners, which is against the settled principles of law. The said orders having been passed in violation of the principles of natural justice, cannot be permitted to stand and deserve to be quashed and set aside, on this ground alone. In support of the above submissions, reliance has been placed on a judgment of the Supreme Court in *Bhagwan Shukla Vs. Union of India and others*,

6. Mr. Anand L. Sharma, learned Assistant Government Pleader for the Respondents has submitted that in case the Court thinks it fit, the Petitioners shall be offered an opportunity of hearing and no further recovery shall be made till such period as the decision, after hearing, is taken.

7. I have heard learned Counsel for the respective parties, perused the averments made in the petition and other documents annexed thereto. Respondent No. 3, who is the author of the impugned order, has filed an affidavit-in-reply. In spite of specific averments being made in the petition to the effect that no opportunity of hearing has been afforded to the Petitioners and impugned orders are vitiated as being violative of the principles of natural justice, there is not a whisper in the reply to controvert this submission. At the same time, it is not denied that no opportunity of hearing has been afforded to the Petitioners before passing the impugned orders.

8. In Special Civil Application No. 12760 of 2010, the amount to be recovered is stated to be Rs. 1,89,341/,-, which is to be recovered in 47 equal installments of Rs. 4000/- each. Similarly, in the other petitions, the recovery is directed to be made in installments and in all cases, the Court is informed by the learned Assistant Government Pleader, upon instructions from Shri J.G. Patel, Executive Engineer, Irrigation Mechanical Division No. 1, Vadodara (Respondent No. 2), who is present in the court today, upto 5 installments have been recovered from all the Petitioners, so far.

9. It is a settled position of law, that no order involving a civil consequence, can be passed against a person without affording him, or her, an opportunity of hearing. In the present case, it is evident that the Respondents themselves have conferred the benefits of the 6th Central Pay Commission upon the Petitioners vide order dated 193-2010. It cannot, therefore, be said that the Petitioners are guilty of indulging in any fraud or misrepresentation. The mistake, if any, might have been committed by the Respondents themselves, and the Petitioners cannot be blamed for the same. It is not known to the Court on what grounds the impugned order of recovery has been issued, as no reasons are stated there in. Whatever may be the reason for the said action, it was incumbent upon the concerned authorities to issue a show cause notice to the Petitioners who are bound to be adversely affected by such order, and to give them a proper and reasonable opportunity of hearing before taking any action, which may be detrimental to them. Not only have the impugned orders been passed behind the backs of the Petitioners and without affording them any opportunity of hearing, but about 5 installments have been recovered from the salaries of the Petitioners during the pendency of the petition.

10. In this regard, the observations of the Supreme Court in *Bhagwan Shukla v. Union of India and others* (Supra) are relevant to the cases in hand and, are being reproduced herein-below:

We have heard learned Counsel for the parties. That the Petitioner's basic pay had been fixed since 1970 at Rs. 190 p.m. is not disputed. There is also no dispute that the basic pay of the Appellant was reduced to Rs. 181 p.m. from Rs. 190 p.m. in 1991 retrospectively w.e.f. 18-12-1970. The Appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the Appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in

error indissmissing the petition of the Appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17-9-1993 as well as the order (memorandum)impugned before the Tribunal dated 25-7-1991reducing the basic pay of the Appellant fromRs.190 to Rs. 181 w.e.f. 18-12-1970.

(emphasis supplied)

11. Applying the above principles of law to the facts and circumstances of the present cases, there is no manner of doubt that the impugned orders have been passed in flagrant violation of the principles of natural justice and, therefore, cannot stand the scrutiny of law. For the said reasons, the impugned orders dated 18-6-2010, in each petition, are quashed and set aside.

12. At this stage, Mr. Anand L. Sharma, learned Assistant Government Pleader fairly states, upon instructions from Mr. J.G. Patel, Executive Engineer,Irrigation Mechanical Division No. 1,Vadodara(Respondent No. 2), that the concerned Respondent shall refund the amount that has already been recovered, to the respective Petitioners prior to their being afforded an opportunity of hearing.

It is expected that such action be taken expeditiously.

In the circumstances, it is directed that upon refund of the said amounts to the respective Petitioners, the concerned Respondent shall afford an adequate and reasonable opportunity of hearing to the Petitioners, before taking a fresh decision, and passing a reasoned order, in accordance with law.

13. It is clarified that this order has been passed without entering into the merits of the matter, and only on the ground of violation of the principles of natural justice.

14. The petitions are allowed, to the extentindicated above. Rule is made absolute, accordingly. There shall be no orders as to costs.