

(2014) 02 RAJ CK 0159
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4058 of 2013

Yudhister Alimchandani

APPELLANT

Vs

Nuclear Power Corporation

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 CDR 1818 : (2014) 141 FLR 769 : (2014) LabIC 3392 :
(2014) 3 RLW 2075 : (2014) 2 SCT 816

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : R.S. Shekhawat, Advocate for the Appellant; Dinesh Mehta,
Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—The petitioner, an employee of respondent-Nuclear Power Corporation of India Ltd. is aggrieved by the order Annex. 6 dtd. 13.2.2013 passed by the Dy. Manager (HR), Nuclear Power Corporation of India Ltd., seeking to recover back a sum of Rs. 1,32,466/- which according to the respondent-employer, Nuclear Power Corporation of India Ltd., the petitioner wrongly availed under the Welfare Scheme promulgated by the respondent known as Children Education Assistance Scheme, 2009 effective from 1.4.2009. The earlier scheme known as Nuclear Power Corporation of India Ltd. (Hostel Subsidy) Scheme, 1991 was superseded w.e.f. 1.4.2009 vide order Annex. 7 dtd. 3.7.2009. The petitioner-employee, Mr. Yudhishtar Alimchandani, working as Assistant Grade-II availed the said subsidy from the respondent-employer, NPCIL admittedly in respect of his 4 th child, Mr. Daulat Ram for pursuing his course of B.Pharm from the year 2008 to 2012. He was born on 4.1.1990 after the cut off date 31.12.1987 as given in Clause 5.1.5 of the earlier Hostel Subsidy Scheme, 1991, which is reproduced below for ready reference:

5.1.5. Hostel Subsidy shall be admissible to a employee in respect of not more

than three children at any time, born upto 31.12.1987 and shall be restricted to two children at any time born thereafter, provided that the total number of children in respect of whom the subsidy is drawn shall not exceed three children born upto 31.12.1987 and two children born thereafter.

2. The original sanction order in favour of the petitioner-employee under the old 1991 Hostel Subsidy Scheme was issued vide letter dtd. 24.10.2009 for the period from 1.3.2009 to 31.3.2009 of Rs. 1000/- under the old Scheme for pursuing his studies in Apex Institute of Management and Science Pharmacy, Jaipur and for next year from 1.4.2009 to 30.6.2010, sanction was made vide communication of same date 24.10.2009 under the new CEA Scheme, 2009, which repealed the earlier Scheme of 1991 since new Scheme of CEA was made effective from 1.4.2009.

3. The learned counsel for the petitioner, Mr. R.S. Shekhawat urged that in view of Clause 5.1.5 quoted above, three children born before 31.12.12987 were separately entitled to said Scheme of 1991, whereas if two more children are born after 31.12.1987, those two children will also be entitled to said subsidy under the 1991 Scheme and even though admittedly, the 4 th child Daulat Ram was born on 4.1.2009 after 31.12.1987, still the subsidy was rightly paid to the petitioner-employee under the old Scheme of 1991 as the children should add upto 5 as per said Clause 5.1.5 and therefore, there was no question of recovering back the said amount of subsidy paid to the petitioner as the concession or subsidy in respect of education expenses of his children.

4. On the other had, the learned counsel for the respondents, Mr. Dinesh Mehta drew the attention of the Court towards Clause 4.3 of the new CEA Scheme of 2009 which reads as under:

4.3. Number of children eligible for assistance under the Scheme.

Only the first two children of the employee shall be eligible for assistance under the Scheme. However, where the number of children exceeds two as a result of second child birth resulting in twins or multiple births, this restriction shall not be applicable for the assistance in addition to the eldest child. Further, where all the children were born prior to 31.12.1987, the first three children shall be eligible for the assistance.

5. The said CEA Scheme of 2009 restricted the benefit of subsidy only for two children and where number of children exceeds two as a result of second child birth resulting in twins or multiple births, this restriction shall not be applicable. Admittedly, it is not the case here. The said Clause 4.3 also specifically provided that where all the children were born prior to 31.12.1987, the first three children shall be eligible for assistance so in no case the benefit was extendable to the fourth child. The learned counsel for the respondents urged that the first three children of the petitioner had already availed this subsidy/concession and the 4 th child, Daulat Ram, who was admittedly born after 31.12.1987 on 4.1.1990 was not entitled to such concession/subsidy for pursuing the course of

B.Pharmacy in the period 2008 to 2012 and therefore, the money paid under the Hostel Subsidy Scheme of 1991 and under the new CEA Scheme of 2009 wrongly to the petitioner for the 4th child, Daulat Ram, could definitely be recovered back even without giving any specific notice to the petitioner-employee as was stipulated in Clause 4.10 of the said Scheme of 2009, which is also reproduced below for ready reference:

4.10. Procedure for releasing payment of the assistance.

Sanction for payment of the children education assistance will be issued in individual cases, by the concerned HR Section in Form CEA/2009/02. The amount shall be released on a monthly basis, along with salary, during the period for which sanction is valid. If there is any overpayment noticed, the same shall be recovered forthwith, for which no notice to the employee shall be necessary.

6. Thus, the learned counsel for the respondents submitted that the recovery to be effected is perfectly justified and the recovery order does not call for any interference by this Court under Article 226 of the Constitution of India.

7. Having heard the learned counsels for the parties, this Court is of the opinion that the petitioner was not entitled to any subsidy or concession in respect of the 4th child, Daulat Ram born on 4.1.1990. The distorted interpretation, with great respect, as put by the learned counsel for the petitioner on Clause 5.1.5 of the old Hostel Subsidy Scheme of 1991 is wrong and it does not entitle him to get the said subsidy under the new CEA Scheme of 2009. When there is a clear restriction on the number of children in clause 4.3 quoted above. With effect from 1.4.2009, the benefit of said subsidy/concession under the new Scheme given to the petitioner under the bonafide mistaken belief assuming the 4th child, Daulat Ram to be only the 3rd child of the petitioner does not entitle the petitioner to retain that concession/subsidy wrongly availed by him. It may be noticed that in view of Clause 4.7, the principles of natural justice were specifically excluded from the said Scheme, if money is found to be wrongly paid or excessively paid to the employee under the said CEA Scheme of 2009. The petitioner had in fact approached the concerned higher Authority by way of a representation Annex. 9 dtd. 14.2.2013 which was disposed of vide Annex. 10 dtd. 22.3.2013 in the following terms:

The matter has been examined and Shri Y. Alimchandani, AG 2(F & A) is hereby informed that Hostel Subsidy Scheme, 1991 was replaced as Children Education Assistance in the year 2009 which states that the CEA will be payable for the first two children only and continued cases of third child will be treated the same as before till completion. Mast. Daulat Ram S/o of Shri Alimchandani was considered as third child and accordingly, the CEA was sanctioned. However, later on it was found out that Mast. Ram's DOB is 31/12/1987 (sic 4.1.1990) and he is not the third child, rather he is fourth child subject to which approval of Competent Authority to recover the overpayment without interest was taken and letter was issued to F & A and Shri Alimchandani.

8. Thus, the respondents have clearly decided against the petitioner that under the bonafide mistake of the 4th child being taken and treated as 3 rd child only, the said subsidy was disbursed to him, but actually and admittedly, the said child, Daulat Ram was the 4th child of the employee-petitioner. Therefore, the mistake deserves to be rectified and corrected and the subsidy already paid under the mistaken belief deserves to be recovered back. This Court finds considerable force in the said contentions of the learned counsel for the respondents and it deserves to be held that de facto and de jure, the petitioner was not entitled to any subsidy/concession from the respondent-Corporation in respect of education expenses for his 4th child, Daulat Ram. The said welfare measures taken by the respondent-Corporation with the amendment in the Scheme restricting the number of children in the new Scheme was obviously with a view to put a check on the population and in the aid of population control Policy of the country as well as the respondent-NPCL. The petitioner obviously availed the said subsidy scheme, may not be with malafide mis-representation of facts, but definitely under a mistaken and bonafide belief of the respondent-sanctioning Authority at the relevant point of time. That does not entitle him to retain the money received by him under such mistake of facts and mistake of law, in as far as interpretation of relevant clauses of the scheme is concerned. Therefore, this Court is of the opinion that the writ petition filed by the petitioner is absolutely misconceived and the same deserves to be dismissed. Accordingly, the present writ petition is dismissed. No order as to costs. A copy of this order be sent to the parties concerned forthwith.