(2013) 11 JH CK 0095

In the Jharkhand High Court

Case No : C.W.J.C. No. 3296 of 2000 (R)

Zafar Eqbal Ahmad APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 1 JLJR 191

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Sudarshan Srivastava, for the Appellant; Arbino Kumar, J.C. to G.P.-II, for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking quashing of order dated 07.01.2000. The brief facts of the case are that, initially the petitioner was appointed as Assistant Teacher by order dated 30.04.1976. He obtained Bachelor of Science degree in the year, 1980 and Master in Science degree in the year, 1991. The petitioner under-went Teachers Training Course in the Academic Session 1982-1983 and on completion of training, degree was awarded to the petitioner on 03.03.1984. The petitioner was granted B.Sc. trained scale by order dated 08.04.1991. The petitioner made representation for grant of B.Sc. trained scale from the date he was granted degree of Teacher Training Course and his juniors were granted the same. On the representation of the petitioner, B.Sc. trained scale which was earlier granted to the petitioner on 08.04.1991 was granted to him w.e.f. 01.04.1984 by order dated 29.05.1995. Subsequently, by order dated 26.10.1997 the order dated 29.05.1995 was recalled and therefore, the petitioner moved this Court in C.W.J.C. No. 543 of 1998(R) which was disposed of on 20.07.1999 with a direction to the respondents to decide the claim of the petitioner. Pursuant to order dated 20.07.1999, the impugned order dated 07.01.2000 has been passed which is impugned in the present proceeding.

2. A counter-affidavit has been filed stating as under:

6. That the statement made in paragraph No. 2, 4, 5, 7, 8, 9, 15 and 18 to 29 of the writ petition require no comment.

....

8. That the statements made in para-10 of the writ petition is misleading wrong and hence denied, it is submitted that only senior to the petitioner has been granted B.Sc. trained scale in accordance with vacancy. None of the junior to the petitioner has been granted B.Sc. trained scale.

9. That with regard to statement made in para-11 of the writ petition, it is stated that the petitioner along with other teachers were granted B.Sc. trained scale vide Memo No. 4522 dt. 8.4.91 (annexure-5) by the District Education Establishment committee according to approved gradation list.

10. That with regard to par-12 and 13 of the writ petition, it is submitted that the District Education Establishment committee is empowered to grant promotion to primary teachers as per gradation list, make corrections to it But the then District Suptd. of Education Mr. Selestien Hansda by setting aside all the departmental rules granted promotion to the petitioner with retrospective effect which is fit to be rejected.

11. That the statements made in para-14 of the writ petition are misleading and hence denied in view of facts stated in earlier paragraphs.

3. Heard the learned counsel for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that the B.Sc. trained scale which was earlier granted to the petitioner by order dated 29.05.1995 has been recalled without issuing any show-cause notice to the petitioner. The impugned order dated 07.01.2000 has been passed on a premise that Rule 58 of Bihar Service Code and Rule 74 of Bihar Financial Rules would be applicable in the case of the petitioner however, as these Rules relate to retrospective promotion, the order dated 07.01.2000 has been passed on an erroneous ground. He has further submitted that there is no dispute that the petitioner completed the Teachers Training Course in the Academic Session 1982-1983 and he was granted degree on 03.03.1984 and he has been granted B.Sc. trained scale w.e.f. 01.04.1984. The learned counsel for the petitioner has relied on orders passed by this Court in C.W.J.C. No. 2115 of 2001, C.W.J.C. No. 294 of 1998 (R) and C.W.J.C. No. 2028 of 1991 (R) and a judgment reported in Arbind Bhushan Dey and Others, Suresh Kumar Sharma and Others and Ashok Kumar Prajapati Vs. State of Jharkhand and Others,

5. As against the above, the learned counsel appearing for the State of Jharkhand has relied on Rule 58 of the Bihar Service Code and Rule 74 of Bihar Financial Rules, and contended that since there is an express bar for granting retrospective benefits, the grant of B.Sc. trained scale which was granted to the petitioner with retrospective effect has been withdrawn and an order of recovery

has been passed, which is just, fair and equitable in the facts of the case.

6. On a perusal of the documents on record, I find that it has not been disputed by the respondents that the petitioner obtained B.Sc. degree in the year, 1980 and he completed Teachers Training Course in the Academic year 1982-1983. He was granted degree on 03.03.1984 and the B.Sc. trained scale has been granted to the petitioner w.e.f. 01.04.1984 by order dated 29.05.1995 and therefore, I am of the view that in this case it cannot be said that the benefit of B.Sc. Trained scale has been granted with retrospective date. The petitioner was entitled for grant of such benefit after obtaining Teachers Training Course degree on 03.03.1984 and merely because such order was passed on 29.05.1995, it cannot be said that it has been granted with retrospective date. Further, on perusal of Rule 58 of Bihar Service Code and Rule 74 of Bihar Financial Rule, I find that these Rules relate to promotions of Government servant and these Rules prohibit grant of monetary benefit to an employee prior to the date of actual promotion. Rule 58 of Bihar Service Code is extracted below:

58.(a) Subject to any exceptions specifically made in these rules and to the provisions of clause (b) of this rule, a Government servant shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date on which he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties.

(b) Unless in any individual case the State Government otherwise direct a person recruited overseas shall commence to draw pay on first appointment as follows:-

(i) in the case of a person who receives a first class passage to India, from the date of his arrival in India, [subject to his proceeding to take up his duties without avoidable delay]

(ii) in the case of a person who receives a second class passage to India from the date of his embarkation for India.

7. Rule 74 of Bihar Financial Rules, which is contained in Section (VI) is under the heading ''retrospective sanction'' and it provides that the retrospective sanction for monetary benefits (financial sanction) would not be given except in exceptional circumstances without the special approval of the Government. A perusal of the impugned order dated 07.01.2000 would disclose that the respondent-authority has proceeded on a premise that the petitioner was granted promotion whereas, as a matter of fact the petitioner has been granted B.Sc. trained scale. The grant of pay-scale would not involve any element of promotion in the present case. The Rules as noticed hereinabove are applicable only in the case for grant of promotion and these Rules prohibit grant of monetary benefits prior to the date of actual promotion.

8. In " Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, the Hobble Supreme Court has held that an order of restrainment for recovery of excess payment, is granted by the Courts not because any right in the employees, but in

equity and in exercise of judicial discretion to relieve the employees from hardship that will be caused if recovery is implemented. In paragraph 28 of the said judgment, the Hon''ble Supreme Court has held as under:

28. Such relief, restraining back 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. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it as any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

9. In Syed Abdul Qadir and Others Vs. State of Bihar and Others, the Hon''ble Supreme Court has held as under:

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur.

10. After examining the previous judicial pronouncements of the Court, the Hon''ble Supreme Court in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, has held that any excess amount paid to the Government employee can always be recovered and absence of misrepresentation or fraud played by the employee cannot be a ground not to

recover the excess payment made to the employee however, in exceptional circumstances the Court may interfere with the order of recovery. In paragraph Nos. 14 & 15 of the said Judgment the Hon''ble Supreme Court has held has under:

14. We are concerned with the excess payment of public money which is often described as "taxpayers'' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favoritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations taw implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong/irregular pay fixation can always be recovered.

11. From the facts as noticed hereinabove, I find that the petitioner completed the Teachers Training Course and was granted degree on 03.03.1984 and he has been granted benefit of B.Sc. trained scale w.e.f. 01.04.1984 and therefore, in the facts of the case no inference can be drawn that the respondent-authority who had granted B.Sc. trained scale to the petitioner by order dated 29.05.1995 was mislead due to any mistake of fact. This is a case in which under a misconception of law regarding applicability of Rule 58 of the Bihar Service Code and Rule 74 of the Jharkhand Financial Rules, the impugned order dated 07.01.2000 has been passed. I find that in C.W.J.C. No. 2028 of 1991 (R), C.W.J.C. No. 2115 of 2001 and C.W.J.C. No. 294 of 1998 (R), the Single Judge of this Court has also allowed the petitions filed by the employees challenging the order of recovery, though on different grounds. In the present case the petitioner has since been retired w.e.f. 31.05.2013 and when this matter was heard by this Court, by order dated 22.09.2000, the following order was passed:

Until further orders, the Respondents will not make any further recovery in pursuance of order dated 7th January, 2000.

In view of the aforesaid, this writ petition is allowed to the extent that any order of recovery as contained in impugned order dated 07.01.2000 is hereby quashed. The writ petition is allowed in the aforesaid terms.