

Court No. - 4

Case :- WRIT - A No. - 37539 of 2018

Petitioner :- Amrendra Jeet Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Irrigation Deptt.
And Ors.

Counsel for Petitioner :- R.U. Pandey, Alok Pandey, Sandeep Pathak, Surendra Pratap Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri R.P. Singh, learned counsel for the petitioner and Sri Sandeep Sharma, learned Standing Counsel for the State.

2. By means of this petition, the petitioner has prayed following main relief(s):-

"(i) to issue, a writ order or direction in the nature of Certiorari quashing the impugned letter/order dated 04.10.2018 passed by the opposite party No.5, contained in Annexure No.1 to this writ petition."

3. The precise contention of learned counsel for the petitioner is that the petitioner retired on 31.01.2017 and after retirement, impugned notice dated 04.10.2018 has been issued against the petitioner indicating therein that the petitioner has been paid excess amount while providing him the benefit of pay scale, therefore, the excess amount to the tune of Rs.11,48,181/- is directed to be recovered from the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner retired from the post of Zildar which comes within the purview of Class-IV post and no opportunity of hearing has been provided to the petitioner before issuing the aforesaid impugned order dated 04.10.2018. Learned counsel has also stated that at the time of excess payment no undertaking was received from the petitioner to the effect that if any excess amount is paid to the petitioner the same may be recovered.

5. Learned Standing Counsel has tried to defend the impugned order, but he has submitted that there is no recital in impugned order that as to whether any opportunity of hearing has been afforded to petitioner or not or as to whether any undertaking has been received from the petitioner at the time of making excess payment.

6. Learned counsel for the petitioner has also submitted that in terms of Government Order dated 16.01.2007, wherein it has been categorically indicated that at the time of retirement or after the retirement, record of the employee of last 34 months may be examined, not beyond that, but in the present case, record of the petitioner is being examined from the year 1993 & 1999, which is much beyond the period of 34 months.

7. Attention has also been drawn towards the judgment and order dated 17.04.2014 passed by the Apex Court in **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department & Others, Civil appeal No.5262 of 2008**, referring to paragraphs 7, 10 and 11, which reads as under:-

"7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have be"7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of refixing pension of the appellant.

11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant."

8. The Apex Court has interpreted the purport and intent of Government Order dated 16.01.2007 and has observed that the respondent-employer could not have passed any order for recovery of excess salary paid to the appellant or for reducing the pension of the appellant beyond such period.

9. Learned counsel for the petitioner has also drawn attention towards judgment passed by the Apex Court in **Jagdish Prasad Singh vs. State of Bihar and Others 2024 SCC OnLine 1909** referring to paragraphs 21,22,23 and 24, which reads as under:-

"21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir v. State of Bihar (2009) 3 SCC 475, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir (supra) are extracted here-in-below : -

"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.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

22. Similarly, this Court in *ITC Limited v. State of Uttar Pradesh*(2011) 7 SCC 493, held as under : -

"108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation."

23. In the case of *State of Punjab v. Rafiq Masih (White Washer)*(2015) 4 SCC 334, this Court held as under : -

"18. 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 herein above, 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."

24. Recently, this Court in *Thomas Daniel v. State of Kerala*2022 SCC OnLine SC 536, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years."

10. Learned counsel for the petitioner has also drawn attention of this Court towards the judgment and order dated 16.07.2024 passed by the Division Bench of this Court in Writ-A No.3194 of 2022, **State of U.P. and Others Vs. Suresh Kumar Tripathi**, whereby the judgment of the Apex Court in re; **Sushil Kumar Singhal (supra)** has been followed dismissing the writ petition filed by the State holding that if any recovery has been

proposed or executed against the employee after his retirement or at the time of his retirement in derogation of the dictum of the Apex Court in re; **Sushil Kumar Singhal (supra)** and **State of Punjab and others v. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334**, such recovery may not be permissible. Besides, the judgment of **Rafiq Masih (supra)** has been clarified by the Apex Court in re; **High Court of Punjab and Haryana and others v. Jagdev Singh, (2016) 14 SCC 267**, wherein it has been held by the Apex Court that if at the time of making excess payment, if any, any specific and categorical undertaking is received from the employee, such amount may be recovered but in absence of such undertaking at the time of making excess payment, the benefit of the judgment in re; **Rafiq Masih (supra)** would be provided to the employee concerned.

11. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that the impugned recovery is in violation of Government Order dated 16.01.2007 (supra), which has been interpreted and affirmed by the Apex Court in re; **Sushil Kumar Singhal (supra)**. Further, such recovery has been executed in absence of any specific undertaking of the present petitioner at the time of making payment of such amount, if any, therefore, the petitioner would be entitled for the benefit of the dictum of the Apex Court in re; **Rafiq Masih (supra)**, **Jagdev Singh (supra)** and **Jagdish Prasad Singh (supra)**.

12. Accordingly, the writ petition is **allowed**.

13. The impugned order dated 04.10.2018 passed by opposite parties no.5 is hereby set aside/ quashed. The opposite parties are directed to repay/refund the amount, which has been deducted from the petitioner forthwith, preferably within a period of six weeks from the date of receipt of certified copy of this order, failing which the petitioner would be entitled for the interest on the delayed payment at the rate of 8% p.a.

14. No order as to the costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 17.9.2024

Suresh/