

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.9413 OF 2009

ORDER:

The writ petition is filed by the petitioner to declare the action of the respondents in reducing the pay of the petitioner from the existing basic pay of Rs.13,300/- to Rs.13,250/- with effect from 01.11.2008 instead of enhancing the pay on his promotion, and declare the recovery proceedings dated 21.01.2009 as arbitrary, illegal and violation of Articles 14, 16 and 21 of the Constitution of India and consequently to direct the respondents to pay at Rs.13,730/- as fixed by the 3rd respondent along with all consequential benefits.

The brief facts of the case are that initially the petitioner was appointed as a Driver in the first respondent Corporation on 28.03.1976, and subsequently, on 04.10.2005, he was promoted as a Depot Clerk. Thereafter, on 01.11.2008, he was promoted as a Depot Superintendent and eventually he retired from service on 31.03.2010. While in service, the petitioner was served with the recovery proceedings dated 21.01.2001 which reads as under:

“You were promoted as Dy. Supdt(T) and assumed higher responsibilities at Medak Depot on retention with effect from 01.11.2008. You have submitted option electing the date 01.11.2008 for fixation in the promotion post.

Accordingly the GEN-23 was prepared for fixation of your pay induplicate duly fixing of pay to Rs.13,730/- w.e.f 01.11.2008 and also revised the pay from 1.4.2005 for which recovery of excess pay paid during the period from 1.4.2005 to till date should be recovered while audited.

This is for information.”

Challenging the said proceedings, the petitioner filed the present writ petition.

The main grievance of the petitioner is that he had no role to

play about any wrong fixation of the pay and it is solely the authorities who had knowledge and control to fix the pay and as such the recovery of excess amount which is sought to be made is arbitrary and illegal and violation of the principles of natural justice. It is also his grievance that no notices were issued and no explanation whatsoever was called for before issuance of the impugned proceedings.

In the counter-affidavit filed on behalf of the respondent-Corporation, it is stated that petitioner's pay while fixing the revised pay scales of 2005 with effect from 01.04.2005, basic pay as on 01.07.2004 i.e., Rs.9,145/-, was taken and fixed at Rs.12,275/- erroneously instead of Rs.11,865/- in the time scale of Rs.5,630-155-7,180-170-9560-190-10,890-195-11,865-205-13,095. This occurred only on account of the software problem and the same was detected later in the process of audit in the year 2009. As the excess amounts have been paid by the Corporation by mistake of fact, the same is sought to be recovered by issuing the impugned proceedings to the petitioner. As a matter of fact, the petitioner had accepted the reduction in pay scale with effect from 01.11.2008. A sum of Rs.21,201/- is the excess amount which is required to be collected and there is no illegality in trying to recover the said amount.

The learned counsel for the petitioner placed reliance on the judgments reported in **Syed Abdul Qadir and others vs. State of Bihar and others**^[1] and **Yogeshwar Prasad and others v. National Institute of Education Planning and Administration and others**^[2]. The purport of the judgments is to the effect that in a case of excess payment made, if there is no involvement of the employee by playing fraud or misrepresentation, the same need not be ordered to be recovered. The Supreme Court had injected the recoveries of amounts which have already been paid.

On the other hand, the learned counsel for the respondents also placed reliance on the judgment reported in **Chandi Prasad Uniyal and others vs. State of Uttarakhand and others**^[3] whereby the Apex Court had considered the two judgments referred by the learned counsel for the petitioner. In accordance with the judgment reported in **Chandi Prasad Uniyal** (3 supra), the earlier judgments need not be treated as a precedent as the same having been passed by the Supreme Court in the facts of those cases.

In the present case, the order of recovery was passed on 21.01.2009 and the petitioner retired from service on 31.03.2010 i.e., within a period of about 13 months from the date of passing of the order of recovery. Though in the judgment referred to **State of Punjab and others etc., vs. Rafiq Masih (White Washer) etc.** (SLP(C) No.11684 of 2012) in para 12 (ii) as a guidance it is indicated as one year period, the ratio of the judgment can be applied to the facts of the present case, as the period in the present case is only in excess of about 1 ½ months than the prescribed period of one year. In the facts of the present case, the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed setting aside the proceedings dated 21.01.2009 issued by the respondents. There shall be no order as to costs. Miscellaneous Petitions, if any pending in this writ petition shall stand dismissed.

CHALLA KODANDA RAM,J

Date:31.12.2014.
Gk.

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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Date:31.12.2014.

- [1] (2009) 3 Supreme Court Cases 475
- [2] (2010) 14 Supreme court Cases 323
- [3] (2012) 8 SCC 417