

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 2750/2002

% **10th April, 2015**

A.S.KAIN & ANR. Petitioners

Through: None.

versus

MANAGING DIRECTOR, NATIONAL SEEDS CORPORATION LTD.

..... Respondent

Through: Mr. Sudhir Kulshrestha, Adv. with Ms.
Sushma Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one appears for the petitioners although it is 1.05 PM. This matter is on the Regular Board of this Court since 9.3.2015. Therefore, after perusing the record and hearing the counsel for the respondent, I am proceeding to dispose of the matter.

2. By this writ petition filed under Article 226 of the Constitution of India, petitioners who are employees of respondent-National Seeds Corporation Ltd impugn the office orders dated 8.2.2002 whereby the promotions granted to the petitioners from the post of Deputy Managers to Joint Managers by the order

dated 8.12.1997 has been recalled and Rs.17632/- is sought to be recovered from petitioner no.1 and Rs.26,628/- from the petitioner no.2.

3. The facts of the case are that in view of the 5th Central Pay Commission Report, the scales of pay of Deputy Managers and Joint Managers of Rs.3000-100-3500-125-4500 and Rs.3000-100-3500-125-5000 respectively were merged into one scale of Rs.10000-325-15200 w.e.f 1.1.1996. The respondent understood this action of the 5th Central Pay Commission Report as if promotions have to be granted from the post of Deputy Managers to Joint Managers and therefore promoted the petitioners who were working as Deputy Managers to the post of Joint Managers in terms of the office order dated 8.12.1997. Audit objections were raised subsequently vide letter dated 28.2.2000 of the Senior Audit Officer that petitioners and the other officer Sh.S.C.Saxena were wrongly given promotions inasmuch as the 5th Central Pay Commission Report only merged the pay-scales and did not direct promotion of Deputy Managers to the post of Joint Managers. Accordingly, the respondent decided to re-fix the pay of the petitioners vide its order dated 8.2.2000 and conveyed the same to the petitioners. Petitioners however, contend that since they have been promoted and have worked at the higher post of Joint Managers having higher responsibility, the recoveries cannot be effected from them and they were hence rightly granted the pay increments by the original office order dated 8.12.1997.

4. The order of promotion of the petitioners dated 8.12.1997 reads as under:-

“NATIONAL SEEDS CORPORATION LIMITED
(A GOVT. OF INDIA UNDERTAKING)
BEEJ BHAVAN, PUSA COMPLEX
NEW DELHI-110012

No.8(5)/93-Pers/NSC

Dated: 8th Dec, 1997

OFFICE ORDER NO.(224)

Consequent on upgradation of the post of Deputy Manager to the post of Joint Manager, the following Deputy Managers (HQ) are hereby promoted to the post of Joint Manager in the CDA scale of pay of Rs.10,000-325-15,200:-

1. Shri S.C.Saxena
 2. Shri U.N.Mishra
 3. Shri A.S.Kain
2. Till further orders, the aforesaid officers on their promotion will continue to work at Head Office and their promotion will take effect from the date of assumption of charge.
3. On promotion, till further orders, Shri Saxena is designated as Joint Manager (Prodn), Shri Mishra as Jt. Manager (QCL) and Shri Kain as Joint Manager (Co-ordination & Welfare).
4. The aforesaid promotions are on adhoc basis and this will not confer any right for their regular promotion and the persons concerned can be reverted to their original post without assigning any reason and without any notice.
5. Necessary orders with regard to fixation of pay in respect of the officers promoted on adhoc basis will be issued by Pers. Section. Head Office.

The expenditure involved is debitable to the head-“Pay & Allowances” Head Office.

Sd/-
(DEEPIKA PADDA)
MANAGING DIRECTOR”
(underlining added)

5. The impugned orders dated 8.2.2002 reducing the pay of the petitioners inasmuch as petitioners were actually not entitled to the increment read as under:-

“NATIONAL SEEDS CORPORATION LIMITED
(A GOVERNMENT OF INDIA UNDERTAKING)
BEEJ BHAVAN, PUSA COMPLEX
NEW DELHI-110012

No.8(5)/93-Pers/NSC

Dated: 8th Feb, 2002

OFFICE ORDER NO.(24)

In supersession of this office order no. 236 dated 23.12.97 issued under the file no.4(1322)/69-Pers/NSC, the competent authority has decided to re-fix the pay of Shri A.S.Kain, Joint Manager in the CDA scale of pay of Rs.1000-325-15200.

Accordingly, the pay of Shri A.S.Kain is hereby re-fixed in the scale of pay of Rs.10000-325-15200 as under:

8.12.97	Rs.11,625/-
1.4.98	Rs.11,950/-
1.4.99	Rs. 12,275/-
1.4.2000	Rs. 12,600/-
1.4.2001	Rs. 12,925/-

His next date of increment will fall due on 1.4.2002, unless otherwise affected.

The expenditure involved is debitable to the head-“Pay & Allowances-HO.”

Sd/-
(S.R.Sharma)
Admn. Officer (Pers)

NATIONAL SEEDS CORPORATION LIMITED
(A GOVERNMENT OF INDIA UNDERTAKING)
BEEJ BHAVAN, PUSA COMPLEX
NEW DELHI-110012

No.4(354)/66-Pers/NSC

Dated: 8th Feb, 2002

OFFICE ORDER NO.(22)

In supersession of this office order no. 6 dated 8.1.98 issued under the file no.4(354)/66-Pers/NSC, the competent authority has decided to re-fix the pay of Shri U.N.Mishra, Joint Manager in the CDA scale of pay of Rs.10000-325-15200.

Accordingly, the pay of Shri U.N.Mishra is hereby re-fixed in the scale of pay of Rs.10000-325-15200 as under:

2.1.1998	Rs.12,925/-
1.4.1999	Rs.13,250/-
1.1.2000	Rs. 13,575/-
1.1.2001	Rs. 13,900/-
1.1.2002	Rs. 14,225/-

His next date of increment will fall due on 1.1.2003, unless otherwise affected.

The expenditure involved is debitable to the head-“Pay & Allowances-HO.”

Sd/-
(S.R.Sharma)
Admn. Officer (Pers)”
(underlining added)

6. On behalf of the petitioners reliance is also placed upon Fundamental Rule (FR)-22(1)(a)(1) to argue that since petitioners were appointed to a higher post of Joint Managers, petitioners were entitled to higher scale of pay and therefore, their pay could not have been reduced and at least no recoveries should be made from them.

7. In my opinion, the respondent has committed no illegality in passing the office orders dated 8.2.2002 inasmuch as the 5th Central Pay Commission Report does not talk of grant of promotion to Deputy Managers to the post of Joint Managers and the 5th Central Pay Commission Report only made the scales of pay of Deputy Managers and Joint Managers the same/uniform by merging the two pay-scales. Therefore as per the 5th Central Pay Commission Report, no promotion was to be granted to Deputy Managers for being appointed as Joint Managers, and hence the respondent had wrongly issued its earlier office order dated 8.12.1997 granting promotions to the petitioners from the post of Deputy Managers to Joint Managers.

8. In any case, petitioners cannot derive benefit of the earlier office order of promotion dated 8.12.1997, inasmuch as, this promotion order dated 8.12.1997 in para 4 specifically states that promotions are only on *ad hoc* basis. Once promotions are only on *ad hoc* basis and it is stated that the office order dated 8.12.1997 will not confer any right of regular promotion, and that petitioners could be reverted to the original post without assigning any reason and without WP(C) 2750/2002

any notice, respondent-employer could well have taken the necessary action to revert the petitioners to the post of Deputy Managers and fix their pay and increments accordingly and not give them increments taking the petitioners as appointed as Joint Managers in terms of the office order dated 8.12.1997.

9. Petitioners cannot take benefit of FR-22(1)(a)(1) inasmuch as this FR-22(1)(a)(1) only applies if there is a correct appointment to a post of a person whereas in the present case, petitioners were not correctly appointed to the post of Joint Managers, besides also the fact that even the promotion order itself states that the promotion is *ad hoc* and not a regular appointment to the post.

10. Therefore, the respondent was justified in recalling the promotions granted to the petitioners from the post of Deputy Managers to Joint Managers in terms of the office order dated 8.12.1997.

11. Now the issue arises is whether the respondent can make recovery of the aforesaid amount against the petitioners. On this aspect, the Supreme Court has recently pronounced its judgment in the case of ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.*** in Civil Appeal No. 11527/2014 decided on 18.12.2014. In para 11 of this judgment the Supreme Court has held that payments which have been wrongly made if are detected within five years, it would be open to the employer to recover the same. The relevant portion of this para reads as under:-

11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

(i). Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475, wherein this Court recorded the following observation in paragraph 58:

“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, 1995 Supp. (1) SCC 18, Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, Union of India v. M. Bhaskar, (1996) 4 SCC 416, V. Ganga Ram v. Director, (1997) 6 SCC 139, Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709, Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492, Punjab National Bank v. Manjeet Singh, (2006) 8 SCC 647 and Bihar SEB v. Bijay Bahadur, (2000) 10 SCC 99.”

(Emphasis is ours)

First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir's case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, 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. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. **Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.** In this context, reference may also be made to the decision rendered by this Court in Shyam Babu Verma v. Union of India (1994) 2 SCC 521, wherein this Court observed as under:

“11. Although we have held that the Petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the Petitioners due to the fault of the Respondents, the Petitioners being in no way responsible for the same.”

(Emphasis is ours)

It is apparent, that in Shyam Babu Verma's case (supra), the higher pay-scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. **We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.** (emphasis is mine)

12. No doubt, in para 12(iv) of this judgment the Supreme Court has held that recovery cannot be made where an employee has been wrongly required to discharge duties of higher post, however, this para would have to be read with para 11 and which states that the wrongful payments if detected within five years can always be recovered by the employer. Para 12 of this judgment reads as under:-

“12. 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.”

13. In the present case, petitioners were wrongly granted payment in 1997 and this wrong payment was detected in February, 2000 and informed to the petitioners, even as per the petitioners in January, 2001 i.e within five years. Once the detection is within five years, and recovery is claimed within five years, the respondent is entitled to make recovery against the petitioners of the amounts which the petitioners were paid without any authority of law.

14. In view of the above, there is no merit in the petition and the writ petition is dismissed. Respondent can now make recoveries against the petitioners being an amount of Rs.17,632/- qua petitioner no.1 and Rs.26,628/- qua petitioner no.2.

APRIL 10, 2015
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VALMIKI J. MEHTA, J.