

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.12352 OF 2009

ORDER:

The petitioner prays for Mandamus declaring Lr.RC No.Admn.IA-2/1292/2008 dated 04.02.2009 of 1st respondent as illegal, arbitrary, unconstitutional and consequently prays for releasing Rs.77,700/- withheld by the 1st respondent from pensionary benefits.

The circumstances relevant for disposing of the writ petition are as follows:

On 26.06.1982, the petitioner was appointed as Junior Lecturer in Telugu in Junior College, Velgodu, Kurnool District. The petitioner was absorbed to grant-in-aid in 1985. The petitioner claims to have acquired M.Phil and Ph.D qualifications while in service. According to petitioner, by virtue of the policy of Government as set out in G.O.Ms.No.182 dated 17.07.1987, he is entitled to sanction of two advance increments at Rs.350/- each. The 1st respondent sanctioned advance increments vide proceedings Rc.No.3688/B5/2001 dated 17.08.2001. The monetary benefit was given w.e.f., 01.09.1999. The proceedings dated 17.08.2001 read as follows:

“Based on the proposals submitted by the Correspondent Private (Aided) Junior College, Velugodu, Kurnool District in the reference 1st cited and in pursuance of the orders issued in the G.O's in the references cited the Regional Joint Director of Intermediate Education, Cuddapah is pleased to sanction two advance increments at Rs.350/- each in the scale of pay of Rs.6950-200-7150-250-8400-300-9900-350-11650-450-13900-525-14425 w.e.f. 18.2.1999 with monetary benefit from 1.9.1999 (from the date of awarded of Phd.D) to Dr.Y.Krishna Reddy J.L in Telugu, private (Aided) Junior College, Velgodu, Kurnool District for

possessing higher qualification of Ph.D.

The two advance increments now sanctioned above should be treated as personal pay and also meant account for the calculation of D.A and H.R.A etc.

Further the individual is informed that the sanction of advance increments now sanctioned found to be erroneous at a latter date the excess payment paid to him will be recovered in one lumpsum as and when it comes to light”.

The Government issued Memo No.35784/481/A2/PC.1/2001 F & P dated 07.11.2001 informing the Director of Treasuries and Accounts that the Pay Revision Commission (PRC), 1999 recommended for prospective discontinuance of the scheme of family planning incentive increments and sanction of advance increments for possessing higher qualifications. The petitioner filed W.P.No.24334 of 2003 praying for sanction of advance increments *de hors* the Memo dated 07.11.2001. On 17.12.2008, the petitioner has not pressed the writ prayer and accordingly the writ petition was dismissed as withdrawn. During the pendency of W.P.No.24334 of 2003, interim direction granted in favour of petitioner was made absolute and appeal filed by the respondent herein was dismissed as withdrawn.

While matters stood thus, the 1st respondent issued the impugned letter dated 04.02.2009 for settling pensionary benefits of petitioner subject to realizing the amount paid by way of advance increments to petitioner for acquiring additional qualifications.

The letter dated 04.02.2009 reads thus:

“From	To
Lav Agarwal, I.A.S.,	The Accountant General
(A&E),	
Director, Intermediate Education	Andhra Pradesh,
Andhra Pradesh,	<u>HYDERABAD</u>
<u>HYDERABAD</u>	

Lr.Rc.No.Admn.IA-2/1292/2008 dated 04.02.2009

Sir,

Sub: Private aided junior Colleges – Sri Y.Krishna Reddy, J.L. in Telugu, Velgode Junior College, Kurnool District – Forwarding of pension proposals – Regarding.

Ref: 1) Lr.Rc.No.2933/B4/2008, dated 22.09.2008, from the Regional Joint Director of Intermediate Education, Kadapa district.

I forward herewith pension proposals in (2) two sets along with Service Register in 02 volumes with Grant-In-Aid certificate and Part II B forms duly counter signed by the competent authority in respect of Sri Y.Krishna Reddy, J.L in Telugu, Velgode Junior College, Kurnool District who retired on 30.06.2008 on superannuation.

I wish to inform that there is an amount of Rs.77,700/- (Rupees seventy seven thousand seven hundred only) is pending recovery against the above retired employee for the year 01.04.1999 to 30.06.2008 and the same has to be recovered from his pensionary benefits by remitting to the following Head of Account:

2202	-	General Education
103	-	University and Higher Education
SH(81)	-	Other receipts.

I request you to verify and release the pension and other pensionary benefits as per A.P.R.P Rules, 1980 to the retired employee duly considering aided service only as per rules at an early date under intimation to this office.

Yours faithfully,

SD/LAV AGARWAL
DIRECTOR, INTERMEDIATE

EDUCATION ”.

Hence, the writ petition.

On 25.06.2009, interim direction suspending the proceedings dated 04.02.2009 was granted. The respondents filed petition to vacate the said interim order. In the counter affidavit filed by the

1st respondent it is stated that the PRC, 1999 recommended for discontinuance of advance increments prospectively. As a matter of fact, the two advance increments sanctioned to petitioner were disallowed in the salary statement prepared for the year 2002-03. Separate proceedings need not be issued for withdrawing what is otherwise impermissible. The filing of writ petition etc., by the petitioner is admitted. According to 1st respondent, the Government Memo dated 07.11.2001 disentitles grant of advance increments for acquiring additional qualifications. If the incentive had been sanctioned prior to 01.07.1998, such sanction remains unaffected. On the other hand, if the incentive is sanctioned on or after 01.07.1998, the recommendation of PRC, 1999 comes in the way of such beneficiary. The Government Memo dated 03.03.2006 further clarified the position that post PRC, 1999 the sanction of advance increments is impermissible. Therefore, through the impugned communication, the 1st respondent requested the Accountant General to withhold a sum of Rs.77,700/- from pensionary benefits, pending recovery of arrears for the period 01.04.1999 to 30.06.2008. According to respondents, the payment of advance increments is unauthorized. The proceedings through which the advance increments are sanctioned provide for recovery if the sanction of the amount is found to be unsustainable. Further, as the recovery is on account of excess drawl by the individual, the excess amount paid is adjusted from out of the monies payable to the petitioner. No exception can be taken to such adjustment and prays for dismissal of the writ petition.

M.D.Linga Rao for petitioner contends that the recovery contemplated through the impugned letter is illegal and unsustainable, for according to him, as on the date of addressing the impugned letter, there is no jural relationship of employer and employee between the petitioner and the respondent. Even assuming for argument sake that

the advance increment was paid erroneously, according to him, after the retirement, the same cannot be either withdrawn or recovered from the arrears of salary etc., of the petitioner. The counsel submits that the petitioner is not also keeping good health and prays this Court to restrain the respondent from recovering Rs.77,700/-. He places strong reliance upon **M/S ROHTAS INDUSTRIES LIMITED v. RAMLAKHAN SINGH AND OTHERS**^[1], **SHYAM BABU VERMA AND OTHERS v. UNION OF INDIA AND OTHERS**^[2] and **SAHIB RAM v. STATE OF HARYANA AND OTHERS**^[3] for the proposition that the Court in exercise of its jurisdiction under Article 226 of the Constitution of India can direct the respondents not to recover the amount.

The Assistant Government Pleader contends that the sanction of advance increments is contrary to the recommendations of PRC, 1999. The recommendation of PRC, 1999 prohibits grant of advance increments but does not effect the increments already sanctioned by 30.06.1998. The petitioner was sanctioned advance increments through proceedings dated 17.08.2001 and the very proceeding has provided for recovery if the sanction is found to be erroneous. He placed strong reliance upon the following paragraph:

“Further the individual is informed that the sanction of advance increments now sanctioned found to be erroneous at a latter date the excess payment paid to him will be recovered in one lumpsum as and when it comes to light”.

According to him, the citations relied upon by the petitioner have no application to the facts and circumstances of the case as the Hon’ble Apex Court having regard to the fact situation of the reported cases exercised its discretion and even after the prayer of employee was found to be not available restrained the Government from recovering the arrears. The said decisions cannot be treated as authoritative pronouncements in mattes involving recoveries of

unauthorized and excess amounts paid by the Government to its employee. If the said argument is accepted, the treasury will have additional burden and individual takes more than what he is entitled. He prays for dismissal of the writ petition.

Now, the point for consideration is – whether letter dated 04.02.2009 is illegal and unsustainable against the petitioner?

The petitioner, in fact, prayed for enforcement of advance increments granted vide proceedings dated 17.08.2001 *de hors* clarification vide Memo dated 07.11.2001. Had the petitioner pursued the prayer in W.P.No.24334 of 2003 and was successful in his challenge, the decision intra parties is binding and the advance increments ought to have been continued or amount paid to petitioner could be recovered. In the case on hand, the petitioner has withdrawn the writ prayer and the writ petition was dismissed as withdrawn. Thus, the benefit, if any, was given to petitioner pursuant to interim order of this Court could not be taken advantage to challenge the letter dated 04.02.2009. It is also not in dispute that the increments granted to petitioner firstly are against PRC, 1999 and secondly after the cut off date i.e., 01.07.1998. The sanction of advance increments could at best be treated as tentative and does not give a right in terms of service regulations if the recommendations of PRC, 1999 are otherwise. Further, the writ petition filed by the petitioner was dismissed as withdrawn. The impugned letter is a mere consequence of what is unsuccessfully challenged in earlier writ petition. Once the effect of Memo dated 07.11.2001 remains, the issuance of letter by 1st respondent cannot and could not be faulted. The grounds urged by the petitioner are not factually tenable and much less could persuade this Court for grant of any relief to petitioner.

The operative portion in ***M/s Rohtas Industries Limited's*** case (1 *supra*) reads as follows:

“Before we part with this case, we would like to put on record that Mr. A. B. N. Sinha appearing for the appellant management assured us that whatever money has been paid to the respondent in lieu of wages so far pursuant to the interim order of the High Court or of this Court will not be claimed back from him. We think that the amount so paid should furnish a sufficient compensation to the respondent for losing his service”.

From the above, it is clear that basing upon the concession given by the counsel appearing for the management, the observations referred to above were recorded.

In ***Shyam Babu Verma's*** case (3 *supra*), the Apex Court, having regard to the peculiar fact situation of payment and continuation of pay fixed to petitioners in the said case, held as follows:

“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”.

Similarly, in ***Sahib Ram's*** case (2 *supra*), in para 5, the Apex Court held as follows:

“Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the

relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any mis-representation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The Principle of equal pay for equal work would not apply to the scale prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs”.

These three decisions are relied upon by the petitioner for the proposition of law that in case of erroneous payment to employees, the Government is not entitled to recover the same but this Court, after considering the fact situation and each one of the reported decisions, is of the view that these decisions are inapplicable to the circumstances of this case. For that matter, provision to recover is retained by the respondent through the very proceedings which sanctioned advance increments to petitioner. Having accepted advance increments with such condition, the petitioner cannot now contend that recovery of unauthorized advance increments is illegal and unconstitutional. The submissions or the contentions urged by the petitioner fail and are rejected.

The writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

Date:14.06.2016

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[\[1\]](#) AIR 1978 SC 849

[\[2\]](#) (1994)2 SCC 521

[\[3\]](#) 1995 Supp (1) SCC 18