

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

FMA 893 of 2015

The Director of Pension, Provident & Group Insurance,
Government of West Bengal.

Vs.

Pravat Kumar Patra & Ors.

For the Appellant : **Mr. Pinaki Dhole, Advocate**
Ms. Tapati Samanta, Advocate

For the Respondent No. 1 : **Mr. Goutam Kumar Maity, Advocate**

Heard on : July 10, 2024

Judgment on : July 10, 2024

The Court:

1. The short point involved in the instant appeal is whether an excess amount paid to the respondent employee can be recovered from the retiral dues. The aforesaid point came up for consideration in many cases which reached the Apex Court and opinions have been expressed thereupon.
2. One line of cases based upon *Shyam Babu Verma Vs. Union of India* reported in **(1994) 2 SCC 521** have laid down that if the excess amount is paid to the employee voluntarily by the employer and there is no element of fraud, misrepresentation and/or wrong information at the behest of the employee, the

excess amount cannot be recovered from the retiral benefits. The said principle was subsequently reiterated in a subsequent judgment of the Apex Court rendered in ***Col. B.J. Akkara Vs. Government of India*** reported in ***(2006) 11 SCC 709*** wherein the excess amount was paid for wrong fixation of pay scale and in such backdrop it was held that a person cannot be saddled with any liability to refund the amount from retiral dues.

3. However, a strong reliance is placed by the appellant upon a Division Bench decision of the Apex Court in case of ***Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.*** reported in ***(2012) 8 SCC 417*** for the proposition that the mistake committed by the employer is not immune from being corrected and, therefore, the excess payment can be recovered from the retiral benefits. It is succinctly observed that the Government is dealing with the public money, more particularly, with the taxpayers' money which neither belongs to it nor its officers and, therefore, the burden on the public exchequer shall not be allowed to be perpetuated taking a liberal view.
4. Even in Chandi Prasad Uniyal (supra), the Apex Court has not laid down any universal application of the law that in every conceivable circumstances, recovery is permissible from the retiral benefits. Though the Two-Judges Bench of the Apex Court in Chandi Prasad Uniyal (supra) took note of earlier three-Judge Bench decision rendered in Shyam Babu Verma (supra) but held that the said judgment applies in a special facts of the said case. The Bench delivering the judgment in Chandi Prasad Uniyal (supra) was conscious that the larger coram Bench decision is binding upon a lesser coram Bench or the coordinate Bench and, therefore, categorically observed that the law laid down therein would be applicable to the situation which do not come within the incidences on which the said case of ***Syed Abdul Qadir Vs.***

State of Bihar reported in (2009) 3 SCC 475 as well as the Col. B.K. Akkara (supra) case was decided, in the following:-

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

5. It is sought to be contended by the appellant that from the very inception there was a wrong fixation of scale of pay which do not come within the purview of Syed Abdul Qadir (supra) which was in relation to grant of higher scale of pay. But we noticed from the paragraph 3 of the said report that the case of Col. B.K. Akkara was exactly on the same principle i.e. the wrong fixation of scale of pay and the recovery was sought at the fag end of the service career.
6. In view of the observations made in paragraph 15 of the Chandi Prasad Uniyal (supra) any incidences which comes within the ambit of Syed Abdul Qadir and Col. B.K. Akkara, those would be outside the purview of the said judgment.
7. Since the instant case comes within the strict folds of the facts involved in the Col. B.K. Akkara, the law laid down in Chandi Prasad Uniyal (supra) is not applicable or rather goes in favour of the respondent.
8. In such view of the matter, we do not find any illegality and/or infirmity in the impugned order.
9. The appeal being **FMA 893 of 2015** is thus **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J)

