

SUPREME COURT OF INDIA

Registrar, Co-operative Societies Haryana

Vs.

Israil Khan

C.A.No.3668 of 2007

(R.V. Raveendran and P. Sathasivam JJ.)

08.10.2009

ORDER

R.V.Raveendran, J.

1. These appeals raise a common issue relating to recovery of unauthorised emoluments paid to employees of co-operative societies. For convenience, we will refer to the facts in Civil Appeal No.3668/2007.

2. The respondents are employees of Ferozpur Jhirka Co-operative Credit Service Society Limited, a primary co-operative society in the State of Haryana. The service conditions of employees of such societies were governed by the *Primary Co-operative Credit Service Society Staff Service Rules, 1992* (for short 'the Rules'). The said Rules classified the Societies according to their business turnover and prescribed the corresponding staffing pattern. Rule 9 of the said Rules provided that all categories of employees were entitled to a consolidated salary with annual increments as provided therein. The same post carried different consolidated pay depending upon the size/turnover of the Society. The Registrar of co-operative societies, and not the Managing Committees of the primary co-operative societies, was empowered to effect revisions in pay.

3. Respondents and other employees of the said society submitted representations for regular pay scales, instead of consolidated pay. The Managing Committee of the said society passed a resolution extending the benefit of regular pay scale to the respondents with retrospective effect from 1.1.1996. As a consequence, instead of a consolidated salary of Rs.1200/- and Rs. 800/- respectively to which they were entitled, the first respondent and second respondent were paid salary at the rate of Rs.3050/- and Rs.2550/- per month. As no funds were sanctioned or available to pay the arrears on the basis of such higher pay, the Managing Committee diverted the funds made available by the State Government (through the controlling Bank) for disbursement of loans to farmers, to pay arrears of Rs.47891/- to first Respondent and Rs.42300/- to second respondent on 27.2.1999. When this came to the notice of the office of the Registrar of Co-operative Societies, the Deputy Registrar of Co-operative Societies, Gurgaon made an order dated 2.4.2002 rescinding the resolution dated 1.3.1999 of

the Managing Committee, in exercise of powers conferred under Section 27 of the Haryana Co-operative Societies Act (for short 'the Act') and directed the employer Society to recover back the excess payment made to the employees. The Society gave effect to the said direction by passing a resolution dated 22.3.2002 directing recovery of the excess payments from the respondents. Feeling aggrieved, the employees filed the appeals before the Registrar, Co- operative Societies, Haryana. The Registrar by a detailed order rejected the said appeals by order dated 22.8.2002.

4. The employees challenged the said order before the High Court. The High Court disposed of the said writ petition by the impugned order dated 20.1.2004 wherein it held that the resolution of the Managing Committee extending the benefit of regular scale of pay and payment of arrears was illegal. However, the High Court was not inclined to direct recovery of the excess amount illegally paid by extending the benefit of regular pay scales. The said judgment is challenged in this appeal. The connected appeals relate to similar payments to employees of other primary co-operative societies and involve the same issue.

5. The appellants contend that the resolutions of the Managing Committees directing payment of salary by extending the benefit of regular pay scales was in violation of the Rules and that such resolutions were a result of the collusion between the concerned employees and the respective Managing Committees and therefore the employees are liable to refund the same. They further contend that the High Court, having held that the employees were not entitled to the said benefit, committed an error in refusing to direct refund thereof. On the other hand, the respondents contended that having regard to the decisions of this Court in *Sahib Ram v. State of Haryana*¹ and *Shyam Babu Verma v. Union of India*², any excess payment to employees, should not be recovered from them.

6. There is no 'principle' that any excess payment to employees should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of hardship, where the following conditions were fulfilled: (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee. (b) 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.

“In *Col (Retd.) B.J. Akkara v. Govt of India*³ this Court explained the reason for extending such concession thus:

Such relief, restraining recovery back of excess payment is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he received for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will

cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

(emphasis supplied)

What is important is recovery of excess payments from employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, courts will not use their discretion to deny the right to recover the excess payment.”

7. In these cases, the Rules specifically provided that the employees should be paid a consolidated salary. Therefore without amendment to the Rules, the Managing Committees could not have passed a resolution for giving the benefit of regular pay scales that too with retrospective effect to the employees. Further, the Societies did not have the funds to make such payments and illegally diverted the funds made available for disbursement of loans to farmers, for the purpose of making such excess payment to the employees. When the resolution extending such benefit was passed and the amounts earmarked for loans for farmers was diverted for making payment to the employees, the Managing Committee as well as the employees were aware that the resolution and consequential payment was contrary of the Rules. There was no question of any wrong calculation or erroneous understanding of the legal position. Most of the employees who received similar relief have refunded or have agreed for refund the excess payment. Making any exception in the case of respondents would also lead to discrimination.

8. Therefore, the appeals are allowed, the impugned orders of the High Court holding that the illegal payments to the respondents need not be refunded to them are set aside. However, having regard to the hardship put forth by the employees, the appellants are directed to calculate and recover the excess payment in twenty four monthly installments.

¹[1995 Supp(1) SCC 18]

²[1994(2) SCC 521]

³[2006 (11) SCC 709]