

SUPREME COURT OF INDIA

Chandi Prasad Uniyal

Vs.

State of Uttarakhand

C.A.No.5899 of 2012

(K.S.Radhakrishnan and Dipak Misra,JJ.)

17.08.2012

JUDGMENT

K.S.Radhakrishnan,J.

1. Leave granted.

2. The question that arises for consideration in this appeal is whether over-payment of amount due to wrong fixation of 5th and 6th pay scale of teachers/principals based on the 5th Pay Commission Report could be recovered from the recipients who are serving as teachers. The Division Bench of the High Court rejected the writ petition filed by the appellants and took the view that since payments were effected due to a mistake committed by the District Education Officer, the same could be recovered. Aggrieved by the said judgment, this appeal has been preferred.

3. Shri Shivam Sharma, learned counsel appearing for the appellants, fairly submitted that the payments were effected due to a mistake but not due to any misrepresentation or fraud committed by the appellants and hence the decision taken to recover the amount is not legal. For establishing his contention, reliance was placed on several judgments of this Court like *Shyam Babu Verma v. Union of India*¹*Sahib Ram v. State of Haryana*²*State of Bihar v. Pandey Jagdishwar Prasad*³*and Yogeshwar Prasad and Ors v. National Institute of Education Planning and Administration and Ors*⁴ .

4. Mrs. Rachana Srivastava, learned counsel appearing for the respondent- State, took us through the counter affidavit filed by the State before this Court and submitted that the over-payment was effected due to wrong fixation of pay. Learned counsel also submitted that where the payments have been made under a bona fide mistake, the beneficiaries have no right to retain the same. Learned counsel placing reliance on the judgment of this Court in *Col. B.J. Akkara (retd.) v. Government of India and Ors*⁵submitted that the High Court has

correctly exercised its discretion in rejecting the writ petition after having found that the payments were effected due to wrong fixation of pay scale and this Court under Article 136 of the Constitution of India shall not interfere with the discretion exercised by the Hon'ble High Court. Reliance was also placed on another judgment of this Court in *Syed Abdul Qadir and Ors. v. State of Bihar and Ors*⁶ and submitted that this court granted relief in that case since many of the teachers had retired from the service while in the present case all the appellants are still in service.

5. Parties are not in conflict on facts, however reference to few essential facts are necessary for a proper disposal of this appeal. Appellants, herein, had filed the writ petition before the High Court seeking a writ of certiorari to quash, an inter-departmental communication dated 24.10.2009 followed by a letter dated 18.11.2009 issued by the District Education Officer to the Manager/Principal of few Sanskrit Colleges in Hardwar where excess payments were made due to wrong fixation of pay. The operative portion of the communication dated 24.10.2009 reads as follows:

“Through this meeting it has come to my knowledge that there is no similarity in the fixation of revised 5th pay scale throughout the State. Some of the District Education Officers have not taken into consideration the letters issued by this office and fixed pay scales as a result there is no similarity in the fixation of pay scale and therefore confusion has arisen among the different classes of teachers. For adjudication of the same and to bring similarity in the fixation of pay scale and to avoid any difficulty in the future, again you are hereby directed about the pay fixation through enclosures. If pay fixation has been done by you as per the letters of this office then it is O.K. otherwise it will be fixed later on. If it has been fixed already, then the remaining salary can only be paid after availability of the amount in this office and you are requested to send demand letter to this office for release of the remaining amount. In case of fixation of payment contrary to the letters of this office, the remaining amount be not released.”

6. Further, in the letter dated 18.11.2009, the District Education Officer had informed the Manager / Principal of the colleges as follows:

“With this letter a copy of model pay fixation form is being forwarded towards you so that you may ensure the correct fixation of 5th 6th pay scale of the teachers/principals of your schools. You are requested to kindly fix the pay scale as per model pay fixation form. You are further requested to kindly make ensure to make available the revised pay scale form and service register to the finance officer, school education Hardwar and the undersigned as early possible. Only thereafter the salary of the

concerned principals/teachers shall be issued and further deposit the challan in respect of excess payment in the treasury. The teachers whose pay has been wrongly fixed are as follows:-

1. Sh.Jagdish Prasad, Teacher (Literature),Sh.Jagdevsingh Sanskrit Mahavidhyalaya, Hardwar.
2. Sh.Markandey Prasad Semwal,Teacher,Sh.Udashin Sanskrit Mahavidhyalaya, Hardwar
- 3.Sh. Chandi Prasad Uniyal, Principal, Sh.Nirmal Sanskrit Mahavidhyalaya, Kankhal, Hardwar.”

Appellants herein are some of the teachers named in that letter; similar communications had gone to few other institutions, where appellants work.

7. We may point out indisputedly, the appellants 1 and 2 herein were not in the pay scale of Rs.4,250-6,400 as such they could not have got the revised pay scale of Rs.10,000-15,200/- w.e.f. 01.07.2001. Only if they were getting pay scale of Rs.8000-13,500/- on 01.01.1996, they would have been entitled to be placed in the pay scale of 10,000-15,200 as on 01.07.2001. Further, appellants 3 to 5 were working as Assistant Teachers and drawing in pay scale of Rs.3,600-5,350/- as on 01.01.1996 and were placed in the pay scale of Rs.5,500-9,000 as on 01.07.2001. Further, it was noticed that none of the appellants were working as principals and were never placed in the pay scale of 8,000-15,500 as on 01.01.1996 to get the benefit of the pay scale of 10,000-15,200 as on 01.07.2001. We also find only few persons like the appellants have been getting higher pay scale in the district of Haridwar w.e.f. 01.07.2001 and similarly situated persons in the rest of Uttarakhand are getting the same pay scale of Rs.10,000- 15,200 only from 11.12.2007 and it was to rectify this anomaly, the District Education Officer, Haridwar passed the order dated 24.10.2009.

8. We may also indicate that when the revised pay scale/pay fixation was fixed on the basis of the 5th Central Pay Scale, a condition was superimposed which reads as follows:

“In the condition of irregular/wrong pay fixation, the institution shall be responsible for recovery of the amount received in excess from the salary/pension.”

The appellants are further bound by that condition as well. The facts, mentioned hereinabove, would clearly demonstrate that the excess salary was paid due to irregular/wrong pay fixation by the concerned District Education Officer. The question is whether the appellants can retain the amount received on the basis of

irregular/wrong pay fixation in the absence of any misrepresentation or fraud on their part, as contended.

9. We are of the considered view, after going through various judgments cited at the bar, that this court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered.

10. Shyam Babu Verma case (supra) was a three-Judge Bench judgment, in that case the higher pay scale was erroneously paid in the year 1973, the same was sought to be recovered in the year 1984 after a period of eleven years. The court felt that the sudden deduction of the pay scale from Rs.330-560 to Rs.330-480 after several years of implementation of said pay scale had not only affected financially but even the seniority of the petitioners. Under such circumstance, this Court had taken the view that it would not be just and proper to recover any excess amount paid.

11. In Sahib Ram case (supra), a two-Judge Bench of this Court noticed that the appellants therein did not possess the required educational qualification and consequently would not be entitled to the relaxation but having granted the relaxation and having paid the salary on the revised scales, it was ordered that the excess payment should not be recovered applying the principle of equal pay for equal work. In our view, this judgment is inapplicable to the facts of this case. In Yogeshwar Prasad case (supra), a two-Judge Bench of this Court after referring to the above mentioned judgments took the view that the grant of higher pay could be recovered unless it was a case of misrepresentation or fraud. On facts, neither misrepresentation nor fraud could be attributed to appellants therein and hence, restrained the recovery of excess amount paid.

12. We may in this respect refer to the judgment of two-Judge Bench of this Court in Col. B.J. Akkara (retd.) case (supra) where this Court after referring to Shyam Babu Verma case, Sahib Ram case (supra) and few other decisions held as follows:

“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 receives 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.”

13. Later, a three-Judge Bench in Syed Abdul Qadir case (supra) after referring to Shyam Babu Verma, Col. B.J. Akkara (retd.) etc. restrained the department from recovery of excess amount paid, but held as follows:

“Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made. (emphasis added)”

14. We may point out that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid

or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

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.

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos.2 and 3 are disposed of.

Judgment Referred

¹(1994) 2 SCC 0521

²1995 Supp 1 SCC 0018

³(2009) 3 SCC 0117

⁴(2010) 14 SCC 0323

⁵(2006) 11 SCC 0709

⁶(2009) 3 SCC 0475