

# **SUPREME COURT OF INDIA**

Sushil Kumar Singhal

Vs.

Pramukh Sachiv Irrigation Department

C.A.No.5262 of 2008

(Anil R.Dave and Vikramajit Sen JJ.)

17.04.2014

## **JUDGMENT**

**ANIL R. DAVE, J.**

1. Being aggrieved by the judgment delivered in Writ Petition No.95 of 2005 by the High Court of Uttarakhand at Nainital on 14th November, 2006, this appeal has been filed by the appellant-employee, from whom excess amount of salary, which had been paid by mistake is sought to be recovered and whose pension is also sought to be reduced.

2. The appellant retired on 31st December, 2003 as an Assistant Engineer and on the basis of his last salary drawn, his pension had been fixed. At the time of his retirement, his salary was Rs.11,625/- and on the basis of the said salary, his pension had been fixed.

3. After a few years of his retirement, it was found by the respondent- employer that salary of the appellant had been wrongly fixed in 1986 and therefore, his salary had been re-fixed by an order dated 23.03.2005. On the basis of the re-fixed salary a sum of Rs.99,522/- was sought to be recovered and for that purpose a notice had been issued to the appellant on 23.04.2005. In pursuance of the incorrect fixation of his salary in 1986, his salary at the time of his retirement had also been reduced from Rs.11625/- to Rs.10,975/- and therefore, his pension had also been reduced.

4. The aforesaid action of the respondent-employer had been challenged by the appellant by filing the aforesaid Writ Petition before the High Court. The High Court was pleased to reject the petition as it had come to the conclusion that the pay of the appellant had been wrongly fixed and therefore, the impugned action of the respondent-employer with regard to recovery of the excess salary paid and reduction in the pension was justified.

5. It had been submitted by the learned counsel appearing for the appellant employee that the impugned judgment delivered by the High Court is incorrect for the reason that the High Court did not consider the G.O. dated 16.1.2007 bearing No.S-3-35/10-07- 101(6)/2005 which reads as under:

[1]. Pension Fixation Authority shall inquire into emoluments of only last 10 months prior to retirement and for that examine the records of only two years prior thereto i.e. only the records of 34 months would be examined for the purpose of grant of pension, as has been provided in the aforesaid Government order dated 13.12.1977.

[2]. Pension Allowing Authority shall not be entitled to correct the mistake in determining the pay during service tenure beyond the period prescribed in para (1) above. Mistakes in pay determination of an employee can be effectively removed through the process of general inquiry/audit only when the employee is still in service.

6. It had been submitted by the learned counsel that the appellant had retired on 31st December, 2003 and somewhere in the month of March, 2005 it was revealed that a mistake had been committed while fixing pay of the appellant in 1986. It had been further submitted that by virtue of the aforesaid G.O. dated 16th January, 2007, the mistake committed in pay fixation beyond period of 34 months prior to retirement of the appellant could not have been taken into account by the respondent employer and therefore, neither any recovery could have been sought by the respondents nor there could have been any reduction in the pension on the basis of reduction of salary.

7. Upon perusal of the aforesaid G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on

31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.

8. The learned counsel appearing for the respondent employer could not deny any of the facts stated hereinabove.

9. In the aforestated circumstances, the High Court was not correct while permitting the respondent authorities to reduce the pension payable to the appellant by not setting aside the order whereby excess amount of salary paid to the appellant was sought to be recovered.

10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant.

11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant.

12. For the reasons recorded hereinabove, we quash and set aside the impugned judgment as well as the order dated 23.03.2005 whereby salary of the appellant was

re-fixed and order dated 23.04.2005 whereby recovery of excess amount of Rs.99,522/- was ordered to be recovered from the appellant. The appellant shall be paid pension which had been determined at the time of his retirement, i.e. immediately after 31st December, 2003. The appeal is disposed of as allowed with no order as to costs.