

SUPREME COURT OF INDIA

State of Punjab

Vs.

Rafiq Masih (White Washer)

(H.L. Dattu, R.K. Agrawal and Arun Mishra JJ.)

08.07.2014

ORDER

1. These batch of matters are placed before us for authoritative pronouncement on the apparent difference of opinion expressed on one hand in the cases of Shyam Babu Verma and Ors. v. Union of India and Ors (1994) 2 SCC 521 and Sahib Ram Verma v. State of Haryana (1995) Supp. 1 SCC 18 and on the other hand, in Chandi Prasad Uniyal and Ors. v. State of Uttarakhand and Ors. (2012) 8 SCC 417. The order of reference made by this Court reads as under:

In View of an apparent difference of views expressed on the one hand in Shyam Babu Verma and Ors. v. Union of India and Ors. (1994) 2 SCC 521 and Sahib Ram Verma v. State of Haryana (1995) Supp. 1 SCC 18; and on the other hand in Chandi Prasad Uniyal and Ors. v. State of Uttarakhand and Ors. (2012) 8 SCC 417, we are of the view that the remaining special leave petitions should be placed before a Bench of Three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before the Hon'ble the Chief Justice of India for taking instructions for the constitution of a Bench of Three Judges, to adjudicate upon the present controversy.

2. The issue in this matter pertains to the recovery of excess money from the pensionary benefit of the Respondent-white washer, on account of a wrong fixation of pay by the Petitioner No. 4-The Executive Engineer. The Respondent approached the High Court by filing a writ petition. The question of law for consideration before the High Court was: whether the Government is entitled to recover from an employee any payment made in excess of what the employee is

otherwise entitled to, in the absence of any fraud or misrepresentation on the part of the employee. The High Court relies on a Full Bench decision, and directed not to recover the excess amount from the Respondent.

3. We have heard Shri L.N. Rao, learned Additional Solicitor General and the learned Counsel for the Respondents.

4. To answer the reference, the decisions need to be considered.

5. In Shyam Babu Vienna's case (Supra), this Court while observing that the Petitioners-therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the Petitioner, for no fault of theirs, the said amount shall not be recovered by the Respondent-Union of India. The observations made by this Court in the said case are as under:

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.

(Emphasis supplied)

6. In Sahib Ram Verma's case (Supra), this Court once again held that although the Appellant-therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay scale. This Court further observed that this was not on account of misrepresentation made by the Appellant but by a mistake committed by the Principal. In a fact situation of that nature, the Court was pleased to observe that the amount already paid to the Appellant need not be recovered. In the words of the Court:

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 the revised scale. However, it is not on account of any misrepresentation made by the Appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which Appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the Appellant.

7. In our considered view, the observations made by the Court not to recover the excess amount paid to the Appellant-therein were in exercise of its extra-ordinary powers Under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice.

8. In Chandi Prasad Uniyal's case (Supra), a specific issue was raised and canvassed. The issue was whether the Appellant-therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions of this Court had come to the conclusion that even if by mistake of the employer the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. While holding so this Court observed at paragraphs 14 and 16 as under:

14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The 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 the government officers may be due to various reason 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 the 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.

16. The Appellant 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 that excess payment made be recovered from the Appellants salary in 12 equal monthly instalments.

9. In our view, the law laid down in Chandi Prasad Uniyal's case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court Under Article 142 of the Constitution, but in the subsequent decision this Court Under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Article 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provision speak of the powers of this Court, the former vest a plenary jurisdiction in supreme court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged Under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing 'complete justice' in any cause or matter. The word 'complete justice' was fraught with uncertainty until Article 142 of the Constitution received its first interpretation in Prem Chand Garg v. Excise Commissioner, U.P. AIR (1963) SC 996 which added a rider to the exercise of wide extraordinary powers by laying down that though the powers are wide, the same is an ancillary power and can be

used when not expressly in conflict with the substantive provisions of law. This view was endorsed by a Nine-Judges Bench in *Naresh Shridhar Mirajkar v. State of Maharashtra* (1966) 3 SCR 744 reiterated by a Seven Judge Bench in *A.R. Antulay v. R.S. Nayak* (1988) 2 SCC 602 and finally settled in the Supreme Court *Bar Association v. Union of India* (1998) 4 SCC 409.

10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction and can be best described in the words of this Court in *Ramakant Rai v. Madab Rai* (2003) 12 SCC 395, "It is a residuary power, it is extraordinary in its amplitude, its limits when it chases injustice, is the sky itself". Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of *Union of India v. Karnail Singh* (1995) 2 SCC 728, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as Under Article 141 of the Constitution.

11. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice oriented approach as against the strict rigors of the law. The directions issued by the court can normally be categorized into one, in the nature of moulding of relief and the other, as the declaration of law. 'Declaration of Law' as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. This Court in the case of *Indian Bank v. ABS Marine Products (P) Ltd.* 2006 5 SCC 72, *Ram Pravesh Singh v. State of Bihar* (2006) 8 SCC 381 and in *State of U.P. v. Neeraj Awasthi* (2006) 1 SCC 667, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued Under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court

Under Article 141 of the Constitution of India. The Court have compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers Under Article 142 of the Constitution as against the law declared. The directions of the Court Under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.

12. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.

13. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for its appropriate disposal.

Ordered accordingly.