

SUPREME COURT OF INDIA

B.Radhakrishnan

Vs.

State of Tamil Nadu & Ors.

C.A.No.13407 of 2015

(J.Chelameswar and Abhay Manohar Sapre,JJ.,)

17.11.2015

JUDGMENT

Abhay Manohar Sapre,J.,

1. Leave granted.

2. These appeals are filed against the common final judgment and order dated 02.07.2013 of the High Court of Judicature at Madras in W.A. Nos.398 and 399 of 2013 whereby the High Court allowed the appeals filed by the respondents herein and set aside the common order dated 13.09.2010 of the learned Single Judge in W.P. Nos. 9527 and 9528 of 2006 by which the appellants writ petitions were allowed.

3. In order to appreciate the issue involved in these appeals, which lie in a narrow compass, few relevant facts need mention infra.

4. Mr. B. Radhakrishnan and Mr. K. Padmaraj, - appellants herein were enlisted in the Police Department of the Coimbatore City Police Unit in the year 1976 and 1977 respectively as Grade-II Police Constables. One Eswaran and others were recruited between 1979 and 1982 in the Tamil Nadu Special Police Battalion as Grade-II Police Constables, Category III. These persons were promoted to the post of Naik in the year 1985 and subsequently in the year 1987 to the post of Havaldar. At that time these persons were drawing higher pay than the appellants.

5. In the year 1993, Eswaran and others exercised their option as provided in the Tamil Nadu Special Police Subordinate Service Rules 1978 and sought their transfer to the Armed Reserve, Coimbatore City Division. It was allowed.

6. After their transfer, it was found that in the transferred post, they have to receive lower pay and accordingly instructions were issued by the office of the Director General vide memo dated 27.07.1982 for protection of their pay and hence their pay was regularized in the scale of pay of Rs.825- 15-900-20-1200 on the basis of the pay last drawn by them in the time

scale of pay of Rs.1200-30-1560-40-2040. Subsequently, they got promotion as Grade I Police Constable and Head Constable in the Taluk Police at Coimbatore and consequently their pay was fixed under Fundamental Rule 22B.

7. With regard to their pay protection, the Accountant General of Tamil Nadu raised objection, therefore, the Government ordered recovery of excess pay and allowances from them.

8. Aggrieved by the orders of recovery, Eswaran and others filed applications being O.A. No. 10317 of 1997 etc. etc. before the Tamil Nadu Administrative Tribunal, Chennai. By order dated 06.04.2004, the Tribunal allowed the applications and set aside the orders of recovery.

9. The appellants herein, therefore, gave a representation to the Commissioner of Police, Coimbatore to fix their pay at par with their juniors, namely, Eswaran and others. By order dated 17.09.2005, their representation was rejected on the ground that the conditions in Fundamental Rule 22B Ruling (2) are not fulfilled.

10. Aggrieved by the refusal to step up their basic pay at par with Eswaran and others, the appellants herein preferred writ petitions being W.P. Nos. 9527 & 9528 of 2006 before the High Court. By order dated 13.09.2010, the learned Single Judge of the High Court allowed the writ petitions and directed stepping up of basic pay of the appellants herein at par with Eswaran and others. This order was implemented by the respondents by issuing the order dated 08.10.2011 and accordingly the basic pay of the appellants was stepped up.

11. Aggrieved by the order of the learned Single Judge, the respondents (State) filed appeals being Writ Appeal Nos. 398 and 399 of 2013 before the Division Bench of the High Court. By common impugned judgment, the Division Bench allowed the appeals, set aside the order of the learned Single Judge and dismissed the appellants' writ petitions. It was held that the case of the appellants could not be compared with that of the other set of employees - namely Eswaran and others to claim parity in pay in terms of Ruling 2 of Fundamental Rule 22B and Ruling 2 of Fundamental Rule 27 for the reason that in order to claim parity in pay, firstly, both junior and senior officers should belong to the same Cadre/Post in which they have been promoted/appointed. Secondly, there should be parity in pay in lower and higher pay. Thirdly, Eswaran and others became Armed Reserve Grade-II Police Constables on their own reasons and apart from that they were promoted as 'Naik' and 'Havaldar' and were, therefore, in receipt of higher emoluments after transfer. Fourthly, their emoluments were lower than the amount received by them as members of Tamil Nadu Special Police Battalion. This view was taken by the Division Bench by placing reliance on the decision of this Court in Union of India & Ors. vs. O.P. Saxena [1997 (6) SCC 360], wherein it was held inter alia that when the feeder post of employee concerned is different, the principle of stepping up of pay would not apply.

12. Aggrieved by the aforesaid judgment, the appellants have preferred these appeals by way of special leave petitions before this Court.

13. Mr. R. Basant, learned senior counsel appearing for the appellants, argued only one point. It was his submission that the appellants had been getting the benefit of the order dated 13.09.2010 passed by the learned Single Judge during the pendency of the petitions because the respondents had implemented the said order by stepping up their pay. It was pointed out that consequent upon the passing of the impugned order, which resulted in setting aside of the order of the learned Single Judge and in consequence resulted in dismissal of appellants' writ petition, the respondents are now contemplating an action to recover the excess amount paid to the appellants during the interregnum period on the strength of the impugned order. Learned counsel, by placing reliance on the principles laid down by this Court in *Shyam Babu Verma & Ors. vs. Union of India & Ors.*, (1994) 2 SCC 521, urged that the respondents can be restrained from making recovery of excess amount from the appellants because the appellants neither misrepresented any fact nor committed any fault and nor indulged in any kind of illegality in securing the benefit. Learned Counsel, however, did not challenge the action of the respondents on merits.

14. In contra, Mr. S. Prasad, learned senior counsel for the respondents supported the impugned order.

15. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submission of the learned counsel for the appellants.

16. In somewhat similar facts, a Bench of three Judges of this Court in *Shyam Babu Verma's* case (supra) had issued a direction against the Government not to make recovery of any excess payment in relation to the money which was already paid to the employees concerned because it was noticed that the excess payments were not made to the employees concerned on account of any fault on their part. This is what was held in para 11 in *Shyam Babu's* case,

“11. 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. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

17. Applying the same principle to the facts of the case in hand, we notice that firstly, the respondents issued an order sanctioning stepping up of the pay scale of the appellants on the strength of the order of High Court. Secondly, while claiming this relief, the appellants neither committed any fault nor made any incorrect/false statement to secure the benefits

because it was being claimed only on the basis of parity and lastly, the appellants rendered their services for the period in question.

18. In the light of these reasons and further keeping in view the short controversy involved in the case which is somewhat akin to the case of Shaym Babu (*supra*), we are of the view that similar directions, which were given in the case of Shaym Babu, can also be given in these appeals against the respondents. In other words, it shall only be just and proper not to recover any excess amount from the appellants, which has been paid to them on the basis of stepping up of their pay scale. It is much more so when as mentioned above, the appellants have given up their challenge to the respondent's main action taken against the appellants objecting for the grant of benefit of stepping up of their pay and confined their attack to the issue of recovery of excess amount from them.

19. In view of foregoing discussion, the appeals succeed and are hereby allowed in part. The impugned order is modified only to the extent of directing the respondents not to make recovery of any excess amount from the appellants in relation to the payment made to them towards stepping up of their pay scale.