

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP (T) No. 7701 of 2008.

Decided on: 30.4.2009.

Rakesh Gupta and others. ... Petitioners.

Versus

The State of Himachal Pradesh and others..... Respondents.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner : Mr. Ashwani Pathak, Advocate.

For the Respondents : Mr. R.K. Sharma, Sr. Addl. A.G. with Mr. Rajinder Dogra, Addl. A.G. and Mr. Vikas Rathore, Dy.A.G.

Rajiv Sharma, Judge (Oral).

The petitioners were granted dearness allowance at the rate of 32 per cent. It was subsequently increased to 37 per cent. However, vide letter Annexure-A/1 dated 10.11.2000, the same was withdrawn.

Mr. Ashwani Pathak, Advocate has strenuously argued that no notice was issued before issuance of letter dated 10.11.2000. This position is not disputed by the learned Senior Additional Advocate General.

Their Lordships of the Hon'ble Supreme Court in ***Syed Abdul Qadir and others versus State of Bihar and others***, (2009) 3 SCC 475 have culled out the following principles

¹ Whether reporters of the local papers may be allowed to see the judgment? Yes.

governing the circumstances in which the excess amount cannot be recovered by the employer:

“55. That apart, it also appears from the record produced before us that while the Finance Department of the Government of Bihar was in favour of making the amended provisions of FR. 22-C applicable to the appellants-teachers after having come to know that the said rule did not exist and had been substituted, the Department of Human Resource Development, Government of Bihar, wanted to apply the unamended provision to the appellants-teachers so as to make available the benefit of additional increment provided for under FR.22-C to its teachers, unaware of the fact that even under FR.22-C they were not entitled to the additional increment as they were not discharging duties and responsibilities of greater importance on the promoted post.

56. This further goes on to show that the authorities in the State of Bihar were not even aware of the basic requirement for grant of additional increment and the decision appears to have been taken without proper application of mind. Otherwise, there was no reason for the Finance Department to state in the counter affidavit filed before the High Court that any affidavit filed on behalf of the Education Department may be ignored as Finance Department was the competent authority. In this very affidavit, the Finance Department while admitting that the pay fixation by the Education Department was wrong, stated as under:-

"...the fixation of pay under Fundamental Rule 22-C has wrongly been made as it was not in existence. Pay fixation on the basis of a nonexistent rule is a bona fide mistake."

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud

on the part of the employee and (b) if 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.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram vs. State of Haryana*, 1995 Supp. (1) SCC 18, *Shyam Babu Verma vs. Union of India*, [1994] 2 SCC 521; *Union of India vs. M. Bhaskar*, [1996] 4 SCC 416; *V. Ganga Ram vs. Regional Jt., Director*, [1997] 6 SCC 139; *Col. B.J. Akkara [Retd.] vs. Government of India & Ors.* (2006) 11 SCC 709; *Purshottam Lal Das & Ors., vs. State of Bihar*, [2006] 11 SCC 492; *Punjab National Bank & Ors. Vs. Manjeet Singh & Anr.*, [2006] 8 SCC 647; and *Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr.*, [2000] 10 SCC 99.

59. 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.

60. Learned counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some installments/amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant- teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.”

The petitioners have neither mislead nor misrepresented the State Government at the time of releasing them their salaries with dearness allowance at the rate of 32 per cent and 37 per cent respectively. In these circumstances, it will cause immense hardship to the petitioners, in case the recoveries are to be effected from them.

Their Lordships of the Hon’ble Supreme Court have held in ***Rajesh Kumar and others versus Dy. CIT and others***, 2007 (2) SCC 181 that when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural

justice are required to be followed. Their Lordships have held as under:

“26. Effect of civil consequences arising out of determination of lis under a statute is stated in State of Orissa v. Dr. (Miss) Binapani Dei and Ors. (1967 (2) SCR 625). It is an authority for the proposition when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed. In such an event, although no express provision is laid down in this behalf compliance of principles of natural justice would be implicit. In case of denial of principles of natural justice in a statute, the same may also be held ultra vires Article 14 of the Constitution.”

In the present case the petitioner has already been granted dearness allowance at the rate of 32 per cent and 37 per cent and the same could not be withdrawn without affording a reasonable opportunity to the petitioners. The petitioners have already utilized the amount which was granted to them as dearness allowance. The petitioners have neither mis-represented/mis-led nor played any fraud at the time of grant of dearness allowance at the rate of 32 per cent and 37 per cent.

Accordingly, the writ petition is allowed. Annexure A/1 dated 10.11.2000 is quashed and set aside qua the petitioners. The respondents are restrained from effecting the recoveries from the petitioners in view of the definitive law laid down by the Hon'ble Supreme Court as quoted hereinabove. There will, however, be no order as to costs.

(Rajiv Sharma), J.

April 30, 2009.
(cr)

