

(2024) 07 BOM CK 0044

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 1509 Of 2020

Smt. Jyoti w/o Gendraj Thamke

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: July 19, 2024

Hon'ble Judges: Nitin W. Sambre, J; Abhay J. Mantri, J

Bench: Division Bench

Advocate: K. J. Khanorkar, A.S.Athalye, Akash Joshi

Final Decision: Allowed

Judgement

N. W. Sambre, J

1. The petitioner as Junior Hindi Stenographer was in the employment with the Madhya Pradesh Government for the period from 23.04.1977 to 20.11.1985. Subsequent thereto, the petitioner was granted employment with the respondent employer on 22.11.1985. Consequential to her earlier service for a period of seven years with the Madhya Pradesh Government, at the time of inception in the service with the respondent no.3 five advance increments were granted to the petitioner.

2. As a sequel of above, in the beginning the salary to which the petitioner was entitled was calculated considering her five advance increments which were conferred on her. Subsequent thereto, the petitioner stood superannuated on 30.06.2012.

3. At the time of superannuation her pay fixation was carried out and it was discovered that the five advance increments as were conferred on the petitioner in 1991 with effect from 1985 i.e. date of her appointment, were by mistake, and as such re-calculation was carried out and deduction was sought.

4. The petitioner after receipt of the same, approached before the Central Administrative Tribunal questioning not only the adjustment/deduction but also the reduction in pension because of re-fixation of her salary.

5. The Tribunal vide order impugned dated 26.07.2019, partly allowed the claim of the petitioner thereby restraining the respondents from carrying out any recovery in the light of the law laid down by the Apex Court in the matter of **State of Punjab and others vs. Rafiq Masih (White Washer) [(2015) 4 SCC 334]**. The Tribunal, however, refused to grant relief to the petitioner with regard to restoration of her last pay drawn which has affected her pension adversely.

6. It is the contention of Mr. Khanorkar, counsel appearing for the petitioner that five advance increments were conferred on the petitioner in view of her past service for a period from 23.04.1977 to 20.11.1985 with the Madhya Pradesh Government in the capacity of Junior Hindi Stenographer. Such increments were conferred on the petitioner by virtue of the order dated 15.11.1991 with effect from joining in service with the respondent no.3 on 22.11.1985.

7. The petitioner stood superannuated on 30.06.2012 after having completed 58 years of age. The respondents accordingly calculated the pension to which the petitioner was entitled at Rs.9,755/- as is informed by the respondent no.2 to the respondent no.3 vide communication dated 28.08.2012.

8. It appears that it was decided thereafter to withdraw the five additional increments given to the petitioner and such deduction was sought right from 1985 i.e. from the date of her appointment with the respondent employer till the date of her superannuation i.e. 30.06.2012. Accordingly, a communication to that effect was issued to the petitioner on 22.10.2012 which has prompted the petitioner to approach the Central Administrative Tribunal. After adjusting the five additional increments, pension order was sent on 15.01.2013 to the petitioner by the respondent no.2 and her pension was reduced to Rs.9,395/- as against Rs.9,755/- and which has adverse impact on gratuity, commutation of pension, leave encashment, etc.

9. The pension of the petitioner was withheld for recovery of all the benefits arising out of five additional increments granted to the petitioner. It appears that the Central Administrative Tribunal, before whom the petitioner has questioned the order impugned of not only withdrawal of five increments but also revision of her pension, has partly allowed her Original Application (OA) thereby directing that the recovery be not effected.

10. In the aforesaid background, the counsel appearing for the petitioner has restricted the challenge in the petition to the extent of payment of pension based on last salary drawn without adjusting/reducing the five increments i.e. calculated at Rs.9,755/- as

against offered amount of Rs.9,395. The counsel for the petitioner claimed that the five advance increments which were conferred on the petitioner were by virtue of the past service from 1977 to 1985 with the Madhya Pradesh Government. The fact remains that the past service with the State of Madhya Pradesh was never suppressed by the petitioner from the respondent employer. It is in recognition of the past service experience of the petitioner with State Government, the respondents conferred five advance increments on the petitioner. Such five advance increments were conferred on the petitioner vide letter dated 15.11.1991. It is pointed out by the counsel for the petitioner that as the petitioner has neither suppressed any material fact about past service from the respondents nor made any misrepresentation, the action of the respondents is against the principle of equity as respondents are trying to penalise the petitioner in absence of any mistake on her part.

11. The benefits of five advance increments conferred on the petitioner were continued till the date of superannuation of the petitioner i.e. 30.06.2012. As such, this benefit of five advance increments was continued with effect from the date of its conferment which is also her date of appointment till her superannuation. The fact remains that these five increments were conferred on the petitioner from the date of her entry in the service i.e. 22.11.1985. The sequel of above is that such benefits were continued to be drawn by the petitioner for a period of 27 years. Post superannuation, the respondent employer re-visited the salary which was paid to the petitioner for all these years and it was realized that the petitioner was not entitled for such benefit.

12. It appears that based on the increments which were conferred on the petitioner, the pension was assessed at Rs.9,755/- and it is after 27 years her last pay drawn is reduced, that too without there being any fault on the part of the petitioner.

13. In such an eventuality rightly so claimed by the petitioner that after 27 years such benefit ought not to have been withdrawn thereby reducing the last pay drawn on the date of her superannuation, which has not only adversely affected her pensionary benefits but also other terminal benefits to which she is statutorily entitled.

14. In support of aforesaid observations, reliance can be placed on the decision of the Apex Court in the matter of **Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department and others [2014(5) SCALE 431]**. Paragraphs 6 and 7 of the said judgment read thus:

“6. It has 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 aforestated 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.”

15. In this backdrop, invoking the principle of equity the Apex Court has ruled that the benefits which were extended to the employee like the petitioner for a considerable period of more than two decades cannot be abruptly withdrawn, just because after 27 years the respondent employer has realized their mistake of conferring five advance increments. Even it is not the case of the respondents that the petitioner by misrepresentation or fraud gained such benefits of advance increments.

16. The conferment of five advance increments on the petitioner were only upon satisfaction by the respondent-employer about her past experience with the Madhya Pradesh State Government, which can also be said to be beneficial to the respondent as such experience adds to the output, clarity and perfection.

17. The common law principle of equity is adhered to in such an eventuality so as to infer that in absence of violation of the statutory provisions, it cannot be said that after 27 years of such benefit which were tendered to the petitioner, same can be withdrawn thereby adversely affecting the prospect of receiving appropriate pension. It is a settled principle of law based on principle of equity that a person cannot be penalised for no fault of his/her.

18. Apart from above, the Apex Court in the matter of **Committee-GFIL Vs. Libra Buildtech Private Limited and others**, [(2015) 16 SCC 31], has observed in paragraph 30, “...the interpretation, which advances the cause of justice and is based on the principle of equity, should be preferred”.

19. Apart from above, in detail the Apex Court has dealt with the concept of “justice, equity and good conscience” from paragraph 1000 onwards of the said judgment in the matter of **M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) Vs. Mahant Suresh Das and others** [(2020) 1 SCC 1]. Para 1004 of the said judgment reads thus:

“1004. In all three senses noted above, equity offered Judges the discretion to marry general principles of law and the particular circumstances before them to arrive at a just decision. However, this discretion was not unbridled. Derrett rightly notes:

“What did this jurisdiction amount to? Did it mean that the Judge followed his nose, and gave judgment according to his fancy? No... It is emphasised again and again that the Judge consults analogous provisions of law; juridical maxims, in particular those contained in the Corpus juris, even though they have not in fact been applied to such a case in the written sources of law or equity; and the writings of jurists steeped in legal thinking.

....The first step will be to see whether the other provisions of the code throw any general light on the problem. This implies an interpretation of ius scriptum... Thus equity in very many cases involves consultation of law...

In this sense, positive law and the general principles furnished by positive law serve as a useful guide in ensuring that equity is not a method of giving effect merely to the individual worldview of Judges. Where positive law is silent and equity steps in to furnish a source of law, its content is informed by analogous provisions of the law that furnish a useful guide. This ensures that equity operates within a larger legal framework informed by the values which underline the legitimacy of the legal system as a whole”.

20. The Apex Court while concluding the views of the said principles of equity, justice and good conscience in para 1022 has concluded thus:

“1022. The common underlying thread is that justice, good conscience and equity plays a supplementary role in enabling courts to mould the relief to suit the circumstances that present themselves before courts with the principal purpose of ensuring a just outcome. Where the existing statutory framework is inadequate for courts to adjudicate upon the dispute before them, or no settled judicial doctrine or custom can be availed of, courts may legitimately take recourse to the principles of justice, equity and good conscience to effectively and fairly dispose of the case. A court cannot abdicate its responsibility to decide a dispute over legal rights merely because the facts of a case do not readily submit themselves to the application of the letter of the existing law. Courts in India have long availed of the principles of justice, good conscience and equity to supplement the incompleteness or inapplicability of the letter of the law with the ground realities of legal disputes to do justice between the parties. Equity, as an essential component of justice, formed the final step in the just adjudication of disputes. After taking recourse to legal principles from varied legal systems, scholarly written work on the subject, and the experience of the Bar and Bench, if

no decisive or just outcome could be reached, a Judge may apply the principles of equity between the parties to ensure that justice is done. This has often found form in the power of the court to craft reliefs that are both legally sustainable and just”.

21. The counsel appearing for the petitioner has rightly pointed out that the Tribunal has lost sight of the principle of equity which should have been considered in favour of the petitioner particularly when the benefits were conferred by the respondent-employer for a period of 27 years uninterruptedly. The Tribunal has not dealt with the said issue in detail as to how the petitioner could be said to be not entitled to a pension based on the last salary drawn particularly when the increments were enjoyed for a period of 27 years.

22. That being so, the decision of the respondents to that extent thereby withdrawing five advance increments which were conferred on the petitioner is hereby quashed and set aside. We direct the restoration of the pension of the petitioner to that of Rs.9,755/- from Rs.9,395/-.

23. Apart from above, we further direct that all the consequential benefits, such as gratuity, commutation of pension and leave encashment shall be re-calculated and released in favour of the petitioner.

24. Needless to clarify that delayed gratuity paid to the petitioner even earlier count, so also after the order of this Court shall carry interest @7% per annum. The respondent no.2 shall re-calculate the entire benefits payable to the petitioner and release the same, in any case, by the end of 30.09.2024.

25. The writ petition stands allowed in aforesaid terms. Rule accordingly. No order as to costs.