

(2016) 06 SHI CK 0071

High Court of Himachal Pradesh

Case No: LPA No. 92 of 2016.

Himachal Road Transport
Corporation and Others -
Appellants @HASH Shri Siri Ram

APPELLANT

Vs

RESPONDENT

Date of Decision: June 22, 2016

Citation: (2016) ILRHP 2116

Hon'ble Judges: Mansoor Ahmad Mir, C.J. and Sandeep Sharma, J.

Bench: Division Bench

Advocate: Mr. B.N. Sharma, Advocate, for the Appellants; Mr. S.P. Chattey, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

Mr. Mansoor Ahmad Mir, C.J.(Oral) - This Letters Patent Appeal is directed against the judgment dated 25.6.2015, made by the learned Single Judge of this Court in CWP No. 9550 of 2013, titled Siri Ram v. Himachal Road Transport Corporation and others, whereby the writ petition filed by the petitioner came to be allowed, for short "the impugned judgment", on the grounds taken in the memo of appeal.

2. It appears that the dispute arose between the employer and the employee after the employee reached the age of superannuation and it was found that inadvertently his pay was fixed at a higher rate and after fixation of pay, Rs. 59,845/- were recovered from the petitioner, constraining him to file the writ petition.

3. It is not the case of the appellants/writ respondents herein that the writ petitioner has played any role while fixing his pay.

4. The question is-whether the recovery can be effected from the writ petitioner/respondent herein, after attaining the age of superannuation? The answer is in negative for the following reasons.

5. The apex Court in **State of Punjab and others etc. v. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501** has laid down the same principles of law. It is apt to reproduce paras 6, 7, 9,10 and 11 of the said judgment herein.

"6. In view of the conclusions extracted herein above, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimising monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate

wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

11.....Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir's case, that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation....."

6. Applying the test, no recovery can be effected from the writ petitioner/respondent herein.

7. There is no illegality in the impugned judgment, the same is accordingly upheld. However, we deem it proper to waive the interest. Ordered accordingly.

8. The appellants/writ respondents are directed to release Rs. 59,845/- in favour of the writ petitioner/respondent herein, within eight weeks from today.
9. Viewed thus, the LPA is disposed of, along with pending applications, if any.