

(2011) 05 AHC CK 0211

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No.292 (S/B) of 2008

Krishna Kishore Khanna

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision: May 26, 2011

Hon'ble Judges: Devi Prasad Singh, J and S.C.Chaurasia, J

Final Decision: Allowed

Judgement

1. Heard Shri Anurag Vikram Singh, holding brief for Shri Deepak Seth, learned counsel for the petitioner and Shri Q.H. Rizvi, learned Standing Counsel for the opposite parties. With the consent of the parties, we proceed to decide the writ petition at the admission stage.

2. The petitioner was appointed as Junior Lecturer on 5.10.1966. The post was redesignated as Lecturer from 1.1.1975 in Chemistry subject at Government Polytechnic, Moradabad. The petitioner had taken plea that the appointment order was issued on 5.10.1966 but he was performing his duty as Junior Lecturer since 8.8.1966 having satisfactory service record. The petitioner was promoted on the post of Principal, Government Polytechnic, Fatehgarh on 18.7.2003 and was granted pay scale of Rs. 12,000/16,500/ and was drawing a basic pay of Rs. 14,625/.

3. It has been submitted by the petitioner's counsel that because of bad health, the petitioner sought voluntary retirement which was approved by order dated 2.9.2004 and in consequence thereof, the petitioner was retired on 31.10.2004, though the petitioner's age of superannuation was 31.5.2005. It is stated that before the date of retirement, the petitioner had completed all necessary formalities with regard to pension, gratuity, GPF and for all post retiral benefits. The record was forwarded by the Joint Director, Technical Education, U.P. in September, 2004 to the Directorate of Pension. However, the Director, Directorate of Pensions vide his letter dated 8.11.2004 sought certain clarification with regard to unfilled column. In pursuance thereof, the petitioner immediately furnished all the details as sought for by means of letter dated 8.11.2004. According to the petitioner, in the meantime, the

petitioner was paid all his GPF, sale of earned leave as well as Group Insurance by his department i.e. Directorate of Technical Education, U.P. The Accountant General., U.P. Allahabad has authorized the department of petitioner to make payment of GPF amount to the petitioner after finding the basic pay fixed as Rs. 3100/ w.e.f. 30.10.1986 as correct.

4. The Joint Director, Technical Education, U.P. confirmed that the pay of the petitioner was rightly fixed as Rs. 3100/ since 30.10.1986 and made a request to opposite party no. 4 to release the withheld amount of Rs. 65,000/ towards gratuity in favour of the petitioner. Learned counsel for the petitioner submitted that in spite of letter issued by Joint Director, Gratuity of Rs. 65,000/ has been withheld without affording any opportunity of hearing. The petitioner preferred an application dated 4.3.2006 before opposite party no. 4 clarifying the position that on 1.10.1986 he was getting the pay of Rs. 3000/ under the pay scale of Rs. 22004000 and by means of G.O. Dated 20.11.1993, the petitioner was given Selection Grade with effect from 30.10.1986 in the pay scale of Rs. 30004500/. Opposite party no. 3 directed the opposite party no. 4 to deduct the amount the amount of Rs. 64232/ from the gratuity amount of the petitioner.

5. While assailing the impugned order, learned counsel for the petitioner relied upon the cases reported in 2004 (1)ESC (All) 455, Union of India and others v. Rakesh Chandra Sharma and others, 1995 Supp (1) Supreme Court Cases 18, Sahib Ram v. State of Haryana and others, 2008 (26) LCD 1343, Sahab Saran v. State of U.P. and others and 2009 (1) Supreme Court (sic), Syed Abdul Qadir and others v. State of Bihar and others.

6. On the other hand, learned counsel for the opposite parties defended the impugned order with the submission that the Government has right to recover the amount from the salary fixed of its employee, even if retired from service.

7. In the case of Sahib Ram (supra) Hon"ble Supreme Court held that upgraded pay scale given due to wrong construction by the authority concerned, without any misrepresentation by the employee is not recoverable. Hon"ble Supreme Court held that in case upgraded pay scale is paid to any government employee, without fault or collusive act on his or her part, in such circumstances it shall not be open for the department to recover the same. In the case of Rakesh Chandra Sharma (supra), the Division Bench of this Court after considering the various judgments of the Supreme Court held that the department will have got no right to recover the dues which has been paid because of some irregularity committed by the employees. Relevant portion of the judgment of Rakesh Chandra Sharma is reproduced as under:

Para 15:In view of the above, it can be held that there is no law of universal application restraining the employer to recover the extra amount paid to the employee beyond his entitlement. Rectification of a mistake is not only permissible but desirable otherwise the system/requirement of auditing of accounts would be

rendered nugatory. It would result in a windfall gains to the employees and would amount to unjust enrichment. The situation may become conducive for committing fraud by an employee, in collusion with the high up, and it may not be possible to prove the same by the employer.

Para 16: Whenever, the Court has passed the restrain order, not permitting the employer to make recovery of extra amount, it seems to have been passed to do substantial justice, Each case requires to be decided on its own fact. In case the Court feels that there has been no misrepresentation/fraud on the part of the employer and excess amount had been paid to him without any fault of him, which he might have spent considering his own money, and recovery, if permitted would cause great hardship to him and his family, it may restrain the employer to recover the same or direct to recover in phased manner.◆

8. In the case of Sahab Saran (supra) after considering earlier judgments decided by one of us (Hon"ble Devi Prasad Singh, J.) aforesaid proposition of law has been reiterated and recovery order has been set aside. Para 6 of the judgment is reproduced as under:

◆In view of above pleading contained in paragraph 5 and 11 of the counter affidavit, it appears that impugned order has been passed without application of mind on unfounded grounds. Moreover, it is also settled proposition of law that in case the higher pay scale is paid to the government employee on no fault on his part, the Government shall not be entitled to recover the amount paid to the employee vide 2002 SLR 359 (SC) P.H. Raddey v. N.T.R.D. and others, 1995 Supp. (1) SCC 18: Sahib Ram v. State of Haryana and others and 1996 (4) UPLBEC 2634: Bindeshwari Sahai Srivastava v. The Chief Engineer, Irrigation Department, U.P. and others.

9. The case of Syed Abdul Qadir (supra) relates to recovery of excess amount paid in similar circumstances. Hon"ble Supreme Court ruled that in case excess amount was not paid on account of any misrepresentation or fraud on the part of employee or in case such excess payment was made by the employer by applying 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, then in such circumstances no recovery may be made from the salary of the employee. For convenience Para 27 is reproduced as under:

Para 27: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. 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 v. State of Haryana*, 1995 Supp. (1) SCC 18, *Shyam Babu Verma v. Union of India*, [1994] 2 SCC 521; *Union of India v. M. Bhaskar*, [1996] 4 SCC 416; *V. Ganga Ram v. Regional Jt., Director*, [1997] 6 SCC 139; *Col. B.J. Akkara [Retd.] v. Government of India & Ors.* (2006) 11 SCC 709; *Purshottam Lal Das & Ors., v. State of Bihar*, [2006] 11 SCC 492; *Punjab National Bank & Ors. v. Manjeet Singh & Anr.*, [2006] 8 SCC 647; and *Bihar State Electricity Board & Anr. v. Bijay Bahadur & Anr.*, [2000] 10 SCC 99.

10. In view of settled proposition of law, impugned order seems to be suffered with substantial illegality and the respondents have got no right to recover the amount already paid to the petitioner.

11. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 11.1.2005 passed by opposite party no. 4 and the consequential order dated 19.4.2008 and the order dated 3.6.2008 passed by opposite party no. 3 contained in Annexure nos. 9 and 10 to the writ petition with consequential benefits. A writ in the nature of mandamus is issued commanding the opposite parties to pay the entire gratuity to the petitioner expeditiously, say within a period of one month from the date of production of certified copy of this order.