

(2010) 12 AHC CK 0192

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 37385 of 2006

Krishna Kumar

APPELLANT

Vs

State of Uttar Pradesh and
Others

RESPONDENT

Date of Decision: Dec. 20, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2011) 6 ADJ 203 : (2011) 2 UPLBEC 1386

Hon'ble Judges: S.P. Mehrotra, J; Pankaj Mithal, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. The present Writ Petition has been filed by the Petitioner under Article 226 of the Constitution of India making the following prayers:

(a) to issue a writ, order or direction in the nature of certiorari to quash the orders passed by Respondent No. 3 dated 3.7.2003 and 2.12.2003 (Annexure Nos. 4 and 10) respectively to this writ petition.

(b) to issue a writ, order or direction in the nature of mandamus commanding the Respondents to pay the withheld amount of gratuity of Rs. 30,000/- alongwith interest at the rate of 18% per annum with effect from 1.7.2000 till the date the said amount is actually paid to the Petitioner and also further be pleased to direct the Respondents to fix the pension of the Petitioner taking the last basic pay drawn at Rs. 13,250/- based upon the acceptance and approval upon the Petitioner as order by Respondent No. 2 dated 13.3.1996.

(c) to issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case.

(d) to award the cost of this petition in favour of the Petitioner.

2. It appears that the Petitioner was appointed in the Institution, namely, I.E.R.T. Allahabad, as Lecturer with effect from 10th June, 1966. The Petitioner retired from his service on 30th June, 2000. After his retirement, the pension of the Petitioner was fixed on the basis of Rs. 12,925/- as his salary. Further, the Petitioner was paid the amount of gratuity but an amount of Rs. 30,000/- was withheld from the amount of gratuity payable to the Petitioner. The Petitioner made representation raising his grievance regarding withholding of Rs. 30,000/- from the amount of gratuity payable to him.

3. The Respondent No. 3 sent a Communication dated 3rd July, 2003 (Annexure 4 to the Writ Petition) to the Respondent No. 4, inter alia, intimating that the excess payment of salary had been made to the Petitioner on account of wrong fixation of increment in respect of the Petitioner, and therefore, the amount which would be recoverable from the Petitioner in regard to excess payment of salary, be computed so that the withheld gratuity of the Petitioner could be released.

4. Again, another Communication dated 2nd December, 2003 (Annexure 10 to the Writ Petition) was sent by the Respondent No. 3 to the Respondent No. 4 requiring the Respondent No. 4 to make computation regarding excess payment of salary to the Petitioner.

The Petitioner has thereafter filed the present Writ Petition seeking the reliefs as mentioned above.

5. We have heard Shri Aditya Vardhan, holding brief for Shri Rahul Sripat, learned Counsel for the Petitioner, Shri Aditya Kumar Singh, learned Counsel for the Respondent Nos. 4 and 5 and the learned Standing Counsel appearing for the Respondent Nos. 1, 2, 3 and 6, and perused the record.

6. Shri Aditya Vardhan, holding brief for Shri Rahul Sripat learned Counsel for the Petitioner states that the Writ Petition of the Petitioner may be considered only in regard to prayer (a) and first part of prayer (b) in so-far-as it deals with the withholding of the amount of Rs. 30,000/- from the gratuity of the Petitioner, and that the Petitioner at present is not pressing the second part of prayer (b) in regard to wrong fixation of pension.

In view of the statement made above, we are considering the Writ Petition only in regard to the prayer made by the Petitioner in respect of the withholding of the amount of Rs. 30,000/- from the gratuity payable to the Petitioner.

7. It is submitted by Shri Aditya Vardhan that the fixation of revised salary was done with effect from 1.1.1986 and 1.11.1988 during the service tenure of the Petitioner, and the payment of salary was made to the Petitioner accordingly till his retirement on 30th June, 2000.

8. It is submitted that there was no misrepresentation or fraud committed by the Petitioner in the matter of fixation of his revised salary. As such, the submission

proceeds, no recovery can be made from the Petitioner after the Petitioner's retirement on 30th June, 2000 on the ground that wrong fixation of salary was done in respect of the Petitioner, while the Petitioner was in service.

Shri Aditya Vardhan has placed reliance in the following decisions:

- (1) [Shyam Babu Verma and Others Vs. Union of India \(UOI\) and Others,](#)
- (2) [Sahib Ram Vs. State of Haryana and Others,](#)
- (3) [Purshottam Lal Das and Others Vs. The State of Bihar and Others,](#)
- (4) Mohi Lal Yadav v. State of U.P. and Ors., 2010 (3) ALJ 644.

9. Shri Aditya Kumar Singh, learned Counsel for the Respondent Nos. 4 and 5 has referred to a Communication dated 2.8.2000 (Annexure 5 to the Writ Petition) and submitted that the fixation of salary of the Petitioner was correctly done during the service tenure of the Petitioner, and no excess payment of salary was made to the Petitioner.

10. Learned Standing Counsel appearing for the Respondent Nos. 1, 2, 3 and 6 submits that in view of the wrong fixation of salary made during service tenure of the Petitioner, recovery can be made from the Petitioner, and therefore, the amount of Rs. 30,000/- has been rightly withheld from the gratuity payable to the Petitioner.

11. We have considered the submissions made by the learned Counsel for the parties.

It is not in dispute that final fixation of salary of the Petitioner on the basis of the revised pay-scales was made during the service tenure of the Petitioner, and payments were made to the Petitioner on the basis of such fixation.

It is not the case of the Respondents that any fraud or misrepresentation was committed by the Petitioner in getting the fixation done in the revised pay-scales.

It is again not the case of the Respondents that fixation in respect of the Petitioner was only provisional and not final.

12. In view of the above, we are of the opinion that the Respondents are not entitled to make any recovery from the gratuity of the Petitioner after the Petitioner retired on 30th June, 2000 on the ground of wrong fixation of salary of the Petitioner in the revised pay-scales while the Petitioner was in service. The Respondents were, therefore, not justified in withholding the amount of Rs. 30,000/- from the gratuity payable to the Petitioner.

13. We may refer to the decisions cited in this regard by Shri Aditya Vardhan, learned Counsel for the Petitioner.

In [Shyam Babu Verma and Others Vs. Union of India \(UOI\) and Others,](#) their Lordships of the Supreme Court held as under (Paragraph 11 of the said SCC):

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.

(Emphasis supplied)

14. In [Sahib Ram Vs. State of Haryana and Others](#), their Lordships of the Supreme Court opined as under (paragraph 5 of the said SCC):

5. Admittedly the Appellant does not possess the required educational qualifications. Under the circumstances the Appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the Appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the Appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the Appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the Appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.

(Emphasis supplied)

15. In [Purshottam Lal Das and Others Vs. The State of Bihar and Others](#), their Lordships of the Supreme Court opined as under (paragraphs 7, 10 and 11 of the said SCC):

7. So far as the recovery is concerned, in the normal course if the promotion/appointment is void ab initio, a mere fact that the employee had worked in the post concerned for long cannot be a ground for not directing recovery. The cases relied upon by the learned Counsel for the State were rendered in a different backdrop. In those cases the Appellants were guilty of producing forged certificates or the appointments had been secured on non-permissible grounds. In that background this Court held that recovery is permissible. On the contrary, the fact situation of the present case bears some similarity to [Sahib Ram Vs. State of Haryana and Others](#), Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. and [The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others](#),

8. In Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. it was held as follows:

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.....

10. The High Court also relied on the unreported decision of the learned Single Judge in Saheed Kumar Banerjee v. Bihar SEB. We do record our concurrence with the observations of this Court in Sahib Ram case and come to a conclusion that since payments have been made without any representation or a misrepresentation, the Appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The Act or Acts on the part of the Appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances. This order however be restricted to the facts of the present writ Petitioners. It is clarified that Regulation 8 will operate on its own and the Board will be at liberty to take appropriate steps in accordance with law except however in the case or cases which has/have attained finality

10. The High Court itself noted that the Appellants deserve sympathy as for no fault of theirs, recoveries were directed when admittedly they worked in the promotional posts. But relief was denied on the ground that those who granted (sic) had committed gross irregularities.

11. While, therefore, not accepting the challenge to the orders of reversion on the peculiar circumstances noticed, we direct that no recovery shall be made from the amounts already paid in respect of the promotional posts. However, no arrears or other financial benefits shall be granted in respect of the period concerned.

(Emphasis supplied)

16. In Mohi Lal Yadav case, 2010 (3) ALJ 644 (supra), a learned Single Judge of this Court followed the decision of the Supreme Court in Shyam Babu case (supra), and held as under (paragraph 5 of the said ALJ):

5. The aforesaid fact as disclosed in the counter-affidavit indicates that it was on account of erroneous calculation made by the Respondents as admitted by them and there was no fraud or mis-representation on the part of the Petitioner. In such a situation, the deductions after 22 years from the retiral benefits of the Petitioner is unjustified as held by the Apex Court in the case of. Learned Counsel for the Petitioner has also rightly relied upon a decision in the case of Rajwant Singh v. State of U.P. and Ors. in Writ Petition No. 15405 of 2007 decided on 17.7.2008.

(Emphasis supplied)

17. In view of the above decisions, it is evident that in case, fixation of salary/ pay was finally done during the service tenure of an employee, and payments of salary/pay were made to him accordingly, and there was no fault or fraud or misrepresentation on the part of the employee in such fixation, then no recovery can be made from the employee after his retirement on the ground that erroneous fixation of salary was done in his case.

The above decisions thus support the conclusion mentioned above, namely, that the Respondents were not justified in withholding the amount of Rs. 30,000/-from the gratuity payable to the Petitioner.

18. In view of the above discussion, we are of the view that the present Writ Petition in so-far-as it pertains to the withholding of the amount of Rs. 30,000.-from the gratuity payable to the Petitioner, deserves to be allowed.

The Writ Petition in so-far-as it pertains to the withholding of the amount of Rs. 30,000/- from the gratuity payable to the Petitioner, is accordingly allowed.

The Respondents are directed to make payment of the aforesaid withheld amount of Rs. 30,000/- to the Petitioner within three months of the production of a certified copy of this Order before the Respondents by the Petitioner.

As the aforesaid amount of Rs. 30,000/- was wrongly withheld by the Respondents from the gratuity payable to the Petitioner, we direct that simple interest at the rate of 8% per annum with effect from 1st July, 2000 till the date of actual payment will also be paid by the Respondents to the Petitioner while making payment of Rs. 30,000/-, as mentioned above.

The Writ Petition is allowed to the extent mentioned above.

However, on the facts and in the circumstances of the case, there will be no order as to costs.