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(2013) 07 AHC CK 0251

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 44884 of 2008

Krishna Kishor Bajpai	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision: July 11, 2013

Citation: (2013) 7 ADJ 124 : (2014) 3 AWC 2321

Hon'ble Judges: Vipin Sinha, J

Bench: Single Bench

Advocate: S.N. Dubey, for the Appellant;

Final Decision: Allowed

Judgement

Vipin Sinha, J.
Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondent. The petitioner was appointed on the post of Constable in Civil Police on 19.9.1963. He retired from service on 30.1.2005. Being aggrieved against the orders dated 28.4.2005, 7.9.2005 and 31.1.2006 passed by respondent No. 2, the petitioner has filed the present writ petition, copies of which have been filed as Annexures 1, 2 and 3 to the writ petition.

2. The grievance of the petitioner is to the effect that after his retirement, he was given provisional pension in the year 2005 and it was continued to be paid till February, 2006 @ Rs. 4,991/- per month. Thereafter for a certain period, the pension of the petitioner was stopped and then it was continued. However, it was reduced to Rs. 3,357/- per month.

3. On inquiries being made, the petitioner was informed that on account of wrong fixation of salary, the amount of pension, paid to him, was excess and, accordingly, the excess amount is being sought to be recovered.

4. The contention of learned counsel for the petitioner is that the amount sought to be recovered is being recovered without giving him any opportunity of hearing or any

show-cause notice. It has further been contended that as far as question of fixation of salary is concerned, the petitioner has no role to play nor any fraud or misrepresentation has been done on the part of the petitioner.

5. In the Counter-affidavit filed on behalf of the State, it has been clearly mentioned in paragraph Nos. 4 and 6 in which it has been admitted in so many words that neither any opportunity of hearing was given to the petitioner nor any show-cause was given to him with regard to the recovery being made from pension amount. The contention as made in the counter-affidavit filed on behalf of the State also shows that there is no allegation in the counter-affidavit that there has been any misrepresentation or fraud on the part of the petitioner. Thus, there is no material on record to show that the petitioner has made any misrepresentation or fraud in his pay fixation.

6. The petitioner retired as a police constable and if recovery is permitted it will cause extreme hardship to the petitioner, because as it is he is getting a meagre amount of pension, in this view of the matter also the petitioner is entitled to the protection of no recovery being made from his pension.

7. It has been consistent view of the Hon"ble Apex Court that if some amount towards salary or pension is paid in excess of the amount due on account of wrong fixation of salary without there being any misrepresentation or fraud on the part of the employee, the same cannot be recovered after his retirement. In this regard reference may be made to the judgment of Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, . The relevant portion of the judgment reads as under;

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.....

8. This Court also in the case of Ram Briksha Ram v. State of U.P. and others, in Writ Petition No. 61045 of 2005 held as under:

After a long lapse of time, the recovery of excess amount, when there is no allegation of misrepresentation or fraud against the employee, is not justified. The Division Bench has considered the several judgments of Supreme Court on this issue. The similar view has been taken by this Court in the case of Sita Ram v. State of U.P. in Writ Petition No. 41775 of 2008.

9. Reference may also be made to the judgment rendered in the case of Dr. Gopalji Mishra Vs. State of U.P. and Others, , in which it has been reiterated that;

So far as the payment of excess amount, which the petitioner was not entitled is concerned, as there has been no misrepresentation or fraud on the part of the petitioner, he cannot be asked to refund the same. More so, petitioner might have spent the same considering his own money. Recovery thereof would cause great financial hardship to the petitioner. In such circumstances, recovery should not be permitted. [Vide Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ; Sahib Ram Vs. State of Haryana and Others, ; and V. Gangaram Vs. Regional Joint Director and others,].

10. In view of the aforesaid facts and circumstances of the case, the writ petition is allowed. The orders impugned are hereby quashed and set aside. The amount already recovered towards excess payment of pension shall be refunded to the petitioner within a period of three months from the date of production of a certified copy of this order.

11. However, it is provided that as far as the question of fixation of salary is concerned, the issue may be decided afresh by the appropriate authority after giving opportunity of hearing to the petitioner. The said exercise may be completed within a period of three months as mentioned aforesaid and the amount of pension thereafter be fixed accordingly. In case, the petitioner has any grievance with regard to such fixation of his salary, he may raise his grievance before the appropriate authority in accordance with law.

12. The writ petition stands allowed to the extent mentioned aforesaid. No other as to costs.