

(2011) 11 AHC CK 0377**Allahabad High Court****Case No:** Writ A No. 4231 of 2008

Kushi Ram Retd. Senior Station
Incharge

APPELLANT**Vs**

U.P. State Road Transport
Corporation and Others

RESPONDENT**Date of Decision:** Nov. 22, 2011**Hon'ble Judges:** Satyendra Singh Chauhan, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

Hon"ble Satyendra Singh Chauhan, J.

Heard learned counsel for the petitioner and Sri Anurag Sharma, learned counsel appearing for the opposite parties.

2. Short question involved in this petition is whether recovery of excess amount paid to the petitioner which was wrongly awarded to him by the department can be recovered at subsequent point of time by issuing a notice and thereby ordering for recovery of the amount in respect of wrong fixation.

3. The pay-scale of the petitioner was fixed on 21.02.1991 giving thereby pay-scale to the petitioner w.e.f. 01.01.1986. The petitioner received the said amount in pursuance to the fixation made by the department along with other 48 persons. The department at a later point of time amended the fixation of pay of the petitioner, and therefore, a show cause notice was issued to the petitioner on 13.07.20 06. The petitioner submitted the reply to the aforesaid notice and in the meantime the petitioner retired on 31.05.2007. As and when petitioner retired from service the excess amount determined by the opposite parties was deducted from the outstanding dues of the petitioner by means of the order dated 13.07.2006, hence this petition.

4. Submission of learned counsel for the petitioner is that the petitioner was neither instrumental nor played any role in the fixation of the pay-scale and in fact the fixation of pay of the petitioner along with other 48 persons was made by the department. His further submission is that once the petitioner is not instrumental in the fixation of pay, the aforesaid recovery is bad in law in view of the law settled by the Apex Court. It is also submitted that it is not made clear as to whether recovery has been made from all the 48 persons or only from the petitioner.

5. Counter-affidavit has been filed on behalf of the opposite parties is altogether silent in this regard. Learned counsel for the opposite parties, on the other hand has submitted that there is no legal infirmity in the order passed by the authority concerned. In fact the pay-scale was wrongly fixed in favour of the petitioner and, therefore, recovery has been made in accordance with law after giving show cause notice to the petitioner.

6. I have heard counsel for the parties and perused the record.

7. The law in regard to the recovery of excess amount has been settled by the Apex Court. From the counter-affidavit it is evident that the petitioner did not play any fraud nor he was instrumental in the fixation of pay-scale. Once it is apparent and clear that the petitioner was not responsible for fixation of the pay-scale, the recovery sought to be made from the petitioner is wholly illegal. The Apex Court while construing the aforesaid position laid down in the case of [Purshottam Lal Das and Others Vs. The State of Bihar and Others](#), as under:-

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 concerned period. The appeals are accordingly disposed of. No costs.

and in the case of Syed Abdul Qadir vs. State of Bihar cited in 2008 TLPRE 0 2097 has held as under:

In the result, the appeals are allowed in part, the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellants-teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench that the amended provisions of FR.22-C would apply to the appellants-teachers is upheld. We direct that no recovery of the excess amount, that has been paid to the teachers of secondary Schools, be made, irrespective of the fact whether they have moved this court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of copy of this judgment.

8. The Court find that the law propounded by the Apex Court is fully applicable in the case of the petitioner as well and the recovery sought to be made from the retiral dues of the petitioner is without authority of law.

9. The writ petition is accordingly allowed and the order dated 13.7.2006 is hereby set aside. The opposite parties are directed to release the amount of the petitioner which has been withheld from the retiral dues of the petitioner within a period of one month.