William Kujur Vs The State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: July 17, 2012

Acts Referred: Constitution of India, 1950 â€" Article 12

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Advocate: Awnish Shanker, for the Appellant;

Final Decision: Allowed

Judgement

D.N. Patel

1. Learned Counsel for the petitioner submitted that the petitioner is challenging the order passed by respondent no. 3 dated 29th August, 2009,

which is at Annexure-2 to the memo of the petition, whereby, benefit of first Assured Career Progression scheme, which was given in the year

1999, has been withdrawn as well as benefit of second Assured Career Progression scheme, which was given on 9th April, 2003, has also been

withdrawn and that too without giving any notice and without giving any opportunity of being heard to the petitioner. Thus, there is violation of

principles of natural justice. Learned Counsel for the petitioner further submitted that it has been stated in paragraphs 7 and 14 of the memo of the

petition that without giving any notice and without giving any opportunity of being heard to the petitioner, impugned order has been passed. These

allegations have not been denied, though the counter affidavit has been filed by the respondents. It is further submitted by Learned Counsel for the

petitioner that reasons, which are given in the impugned order are not tenable at law. Had an opportunity been given to the petitioner, he would

have pointed out that the reasons, which are given in the impugned order, are totally baseless reasons. The benefits, which were given in the year

1999 and 2003, were also approved by the superior officers and after due verification, benefits were given to the petitioner, which cannot be taken

away abruptly and that too putting allegation against the petitioner and without giving any notice, ex-parte decision has been taken by the

respondents at Annexure-2 and, therefore, the same deserves to be quashed and set aside. Learned Counsel for the respondents submitted that a

detailed order has been passed at Annexure-2 by respondent no. 3 and the petitioner is neither entitled to first Assured Career Progression benefit

nor to second Assured Career Progression benefit and, therefore, the benefits which were given to the petitioner, have been withdrawn by the

impugned order. A detailed counter affidavit has been filed by the respondents.

2. Having heard Learned Counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order

passed by respondent no. 3 dated 29th August, 2009 at Annexure-2 to the memo of the petition mainly for the following facts and reasons:

(i) The present petitioner was appointed as a Clerk with the respondents on 9th April, 1979, thereafter, he has served honestly, sincerely, diligently

and to the satisfaction of the respondents, for several years.

(ii) It appears from the facts of the case that after rendering approximately two decades long service, the petitioner was given benefit of first

Assured Career Progression scheme on 9th August, 1999. The benefit given to the petitioner was approved by the high ranking officer. There was

no misrepresentation by the petitioner nor any fraud was played by the petitioner upon the State in getting benefit of first Assured Career

Progression scheme. Similarly, the petitioner was given benefit of second Assured Career Progression scheme on 9th April, 2003. This benefit was

also given to the petitioner after due verification of his service by the high ranking officer of the State. There was no misrepresentation or any fraud

played by the petitioner, even on this second occasion, (iii) It also appears that the averments and allegations made in paragraphs 7 and 14 of the

memo of the petition have not been denied in the counter affidavit, filed by the respondent-State.

(iv) After grant of these benefits firstly in the year 1999 and secondly in the year 2003, the petitioner worked for several years and abruptly by the

impugned order dated 29th August, 2009, respondent no. 3 has withdrawn both the benefits without giving any notice and without giving any

opportunity of being heard to the petitioner. The order at Annexure-2 is an ex-parte order and the same has been passed in gross violation of

principles of natural justice. By the impugned order, not only the benefits, which were granted have been withdrawn, but, also an order of recovery

of the amount has been passed. It ought to be kept in mind by the respondent-State authorities that if salary is given to its employee and if there is

no misrepresentation or fraud played by the employee, then such type of amount cannot be ordered to be recovered by the State.

(v) It has been held by the Hon''ble Supreme Court in case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , especially

at paragraph no. 11, as under:

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)

(vi) Moreover, it has been held by the Hon''ble Supreme Court in the case of Sahib Ram Vs. State of Haryana and Others, , especially in

paragraph 5, which reads as under:

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.....

(Emphasis supplied)

(vii) It has been held by the Hon''ble Supreme Court in case of Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. , especially in

paragraph nos. 7, 8, 9, 10 and 11, which read as under:

7. Admittedly, the writ petitioners have been allowed annual increments even without passing the Hindi Noting and Drafting Examination which

according to Mr Pramod Swamp, learned advocate appearing for the appellant Board has become a condition precedent and part of their service

conditions and question of there being any entitlement dehors the same does not and cannot arise. Mr Swarup contended that Regulation 8 is

rather categorical on this score as to the date of entitlement and since its deemed effect as a part of the condition of service, the appellant Board is

within its authority and jurisdiction to deduct the amounts paid. In short, the submission of Shri Swarup on behalf of the appellant Board is that

since the writ petitioners are not entitled to receive any increment, question of retention of the amounts paid whether by mistake of fact or

otherwise does not and cannot arise. We, however, are not in a position to lend any credence to the same by reason of the fact that while the

increments granted have been sought to be recovered but promotions given have not been withdrawn or cancelled, the Board being the

governmental agency and fairness being the only accepted methodology cannot maintain a dual standard on the basis of the selfsame Regulation.

Regulation 7 of the Regulation itself provides that there shall not be any increment or any promotion nor would the employees be allowed to cross

the efficiency bar. The petitioners have been given due promotions and as a matter of fact the petitioner in CWJC No. 4576 of 1997 is posted as

an Accountant in the Electricity Supply Sub-Division at Sheohar Town in District Sheohar on promotion. Of the dual benefits conferred the Board

however thus withdrew only one part of the benefit under the resolution whereas it lent a blind eye as regards the other part of the benefit flowing

from the resolution. This, in our view is not permissible since dual standards are not only non-acceptable but ought to be avoided more so by

reason of the factum of the appellant being an authority within the meaning of Article 12 of the Constitution.

8. The contention in support of the appeal as regards the deemed incorporation in the terms and conditions of service cannot also find any support

by reason of the fact that unilateral change of terms need not be had. There is no documentary evidence available on the record of this matter

through which even an intimation to the staff can be said to have been effected and in the absence of which question of affording any credence to

the submission of Mr Swarup on this score does not arise.

9. Further, an analysis of the factual score at this juncture goes to show that the respondents appointed in the year 1966 were allowed to have due

increments in terms of the service conditions and salary structure and were also granted promotions in due course of service and have been asked

after an expiry of about 14-15 years to replenish the Board exchequer from out of the employees'' salaries which were paid to them since the year

1979. It is on this score the High Court observed that as both the petitioners have passed the examination though in the year 1993, their entitlement

for relief cannot be doubted in any way.

10. The High Court also relied on the unreported decision of the learned Single Judge in the case of 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.

11. While we record our concurrence as noted above, in regard to the decision of the matter in issue and in particular reference to the factual

aspect we do not feel inclined to accept the observations of the High Court pertaining to Regulation 8 of the Regulation. Be it noted that the High

Court in para 13 of the judgment observed that the Board shall not be allowed to pass an order for recovery of the said amount as the said amount

has already become due to them. This observation sounds contrary to Regulation 8 of the Regulations which records that no arrears of the stopped

increments shall be payable even though the person would pass the examination later on. We. therefore, record our disapproval to this observation

of the High Court.

(Emphasis supplied)

(viii) It has been held by this Court in the case of Balkeshwar v. M/s Central Coalfields Ltd. and another, as reported in 2001 (1) JCR 175

especially in paragraphs 4 and 10, which read as under:

4. The respondents in their counter affidavit have accepted that the petitioner retired under V.R. Scheme w.e.f. 20th August, 1999. However, plea

has been taken that the date of birth was recorded as 26th October, 1941 and the date of appointment was 23rd November, 1958. On the basis

of date of appointment, the petitioner having found to have worked for 42 years 11 months and 3 days and as no person can work more than 42

years, the excess payment made has been adjusted from the retiral benefits.

10. In the circumstances, the respondents cannot deduct any amount or adjust from the salary of the petitioner on the ground that he has worked

for more than 11 (eleven) months beyond the period of retirement.

(Emphasis supplied)

(ix) It has been held by the Hon''ble Patna High Court in the case of Most. Kanti Devi and Others Vs. The State of Bihar and Others, especially in

paragraphs 4 and 5, which read as under:

4. Rightly or wrongly, the petitioner Sridhar Pandey was permitted to work and draw his salary. The period of which he worked he will be entitled

to the emoluments. If he was given work as a result of any collusion between the officials it is upto the State Government to take action against the

officer concerned, who permitted this extension of service beyond retirement. On record, there is nothing against the petitioner that he may have

committed any misrepresentation or fraud so as to extract from the period of retirement.

5. In the circumstances, there is no occasion for the recovery of the amount which was paid to the petitioner for having worked but after the period

of retirement. In so far as the pension is concerned, the heirs of Sridhar Pandey will be entitled to any arrears of pension and consequential family

pension.

(Emphasis supplied)

(x) It has been held by the Hon''ble Supreme Court in case of Purshottam Lal Das and Others Vs. The State of Bihar and Others, , especially in

paragraph nos. 7, 10 and 11, which read as under:-

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 v. State of Haryana, Bihar SEB v. Bijay Bhadur and State of Karnataka v. Mangalore University

Non-Teaching Employees'' Assn.

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 wound 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)

(xi) It has been held by the Hon''ble Supreme Court in case of Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, especially in

paragraph nos. 27, 28, 29, 30, which read as under:

27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the

wrong interpretation/understanding of the circular dated 7-6-1999. this Court has consistently granted relief against recovery of excess wrong

payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana. Shyam Babu

Verma v. Union of India, Union of India v. M. Bhaskar and V. Gangaram v. Regional Jt. Director):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in

exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant,

particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess

payment for a long period, he would spend it. genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment

will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess

of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief

against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to

grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more

disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to

them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment NPA was added to minimum pay, for

purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall

not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated

11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the

excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier

made.

30. A faint attempt was made by the learned Additional Solicitor General appearing for the respondents to contend that all such wrong payments

could be recovered and at best the pensioners may be entitled to time or installments to avoid hardship. No doubt in Union of India v. Sujatha

Vedachalam this Court did not bar the recovery of excess pay, but directed recovery in easy installments. The said decision does not lay down a

principle that relief from recovery should not be granted in regard to emoluments wrongly paid in excess, or that only relief in such cases is grant of

installments. A direction to recover the excess payment in installments or a direction not to recover excess payment, is made as a consequential

direction, after the main issue relating to the validity of the order refixing or reducing the pay/allowance/pension is decided. In some cases, the

petitioners may merely seek quashing of the order refixing the pay and may not seek any consequential relief. In some cases, the petitioners may

make a supplementary prayer seeking installments in regard to refund of the excess payment if the validity of the order refixing the pay is upheld. In

some other cases, the petitioners may pray that such excess payments should not be recovered. The grant of consequential relief would, therefore,

depend upon the consequential prayer made. If the consequential prayer was not for waiving the excess payment but only for installments, the

court would obviously consider only the prayer for installments. If any decision which upholds the relaxation of pay/pension does not contain any

consequential direction not to recover the excess payment already made or contains a consequential direction to recover the excess payment in

installments, it is not thereby laving down any proposition of law but is merely issuing consequential direction in exercise of judicial discretion,

depending upon the prayer for consequential relief or absence of prayer for consequential relief as the case may be. and the facts and

circumstances of the case. Many a time the prayer for installments or waiver of recovery of excess is made not in the pleadings but during

arguments or when the order is dictated upholding the order revising or refixating the pay/pension. Therefore, the decision in Sujatha Vedachalam

will not come in the way of relief being granted to the pensioners in regard to the recovery of excess payments.

(Emphasis supplied)

(xii) It has been held by this Court in the case of Laxman Prasad Gupta v. The State of Jharkhand & ors., as reported in 2008(3) JCR 655 (FB),

at paragraph no. 20, as under:

20. In view of the above discussion, we come to the following conclusion. To sum up:

In the light of the absence of any material to show that the excess amount was received by the petitioner on misrepresentation, collusion, fraud or

negligence. the said excess amount cannot be recovered out of the retiral dues, after retirement, without following the procedure contemplated

under Rule 43(b) of the. Bihar Pension Rules. In this case the said procedure, which is mandatory, has not been followed. Therefore, the action of

the respondents for recovery of the amount from the retiral dues is not valid in law.

(Emphasis supplied)

(xiii) It has further been held by this Court in the case of Janardan Prasad Saha & Anr. v. State of Jharkhand & Ors., as reported in 2008 (4) JCR

142, at paragraphs 2 and 4, as under:

2. Learned Counsel for the petitioners submitted that the order for revision of the petitioners'' pay was issued by the respondents-Bank and there

was no representation/misrepresentation or fraud played by the petitioners for obtaining the said revised scale. The said amount, which was paid to

the petitioners by the Bank towards the arrears of salary on the basis of the revision of the pay scale, cannot be recovered/adjusted from the retiral

benefits of the petitioners. There is complete bar for such adjustments. The petitioners are not liable to refund the aid amount, even if subsequently

the order of revision of pay was cancelled. Learned Counsel placed reliance on a decision of the Supreme Court rendered in Sahib Ram v. The

State of Haryana and others, 1994 (5) SLR 753 and a Full Bench decision of this Court in Laxman Prasad Gupta v. The State of Jharkhand and

others W.P. (S) No. 3793/2004 reported in 2008 (3) JCR 655 (FB): JLJR 2007 (4) 459.

4. I have heard Learned Counsel for the parties and considered the facts and materials on record as also the judicial pronouncements. In Sahib

Ram case (supra), the Supreme Court has specifically held that any amount paid to an employee without his misrepresentation cannot be

recovered. In Laxman Prasad Gupta case (supra), a Full Bench of this Court has held that after retirement, there is no relationship of employer and

employee between the parties and the recovery out of the retiral dues cannot be made, except by following the due procedure established by law.

No contrary rule or decision has been produced on behalf of the respondents.

(Emphasis supplied)

(xiv) It has been held by the Hon''ble Supreme Court in case of State of Bihar and Others Vs. Pandey Jagdishwar Prasad, , especially in

paragraph nos. 16, 19, 23 and 24, which read as under:

16. Moreover, for the sake of argument, even if we consider that the respondent had fraudulently entered another date of birth in his service book,

as had been alleged, it should have come to the notice of the authorities during his course of service, and not after he had attained the age of

superannuation after the expiry of the date mentioned in the service book which was based on the affidavit of the respondent. To the contrary,

none of the officials responsible had noticed this during his service period, even during his time of promotions when the service book was required

to be inspected by the officials. Therefore, it clearly points out to the gross negligence and lapses on the part of the authorities concerned and in our

view, the respondent cannot be held responsible to work beyond his date of birth as mentioned in the matriculation certificate when admittedly in

the service book after the affidavit, some other date of birth was also evident.

19. It is not needed for this Court to verify the veracity of the statements made by the parties. If at all the respondent entered the second date of

birth at a subsequent period of time, the authorities concerned should have detected it and there should have been a detailed enquiry to determine

whether the respondent was responsible for the same. It has been held in a catena of judicial pronouncements that even if by mistake, higher pay

scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary

benefit available to the employee.

23. Without going into the question whether the appellant was justified after completion of two years from the actual date of retirement to deduct

two years" salary and other emoluments paid to the respondent we may say that since the respondent had worked during that period without

raising any objection from the side of the appellant and the appellant had got works done by the respondent, we do not think that it was proper at

this stage to allow deduction from his retiral benefits, the amount received by him as salary, after his actual date of retirement.

24. Considering the fact that there was no allegation of misrepresentation or fraud, which could be attributed to the respondent and considering the

fact that the appellant had allowed the respondent to work and got works done by him and paid salary, it would be unfair at this stage to deduct

the said amount of salary paid to him. Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to

work and was paid salary for his work during the period of two years after his actual date of retirement without raising any objection whatsoever,

no deduction could be made for that period from the retiral dues of the respondent.

(Emphasis supplied)

(xv) this Court in the case of Ramchandra Singh v. State of Jharkhand & ors., as reported in 2009 (3) JCR 455 has also taken into consideration

the ratio laid down in the case of Laxman Prasad Gupta (supra).

(xvi) It has been held by the Hon''ble Supreme Court in case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, , especially in

paragraph nos. 57, 58, 59, 60 and 61, which read 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.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part

and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be

out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The

excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held

responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of

Bihar. Learned Counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the

verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of

the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.

60. Learned Counsel also submitted that prior to the interim order passed by this Court on 7-4-2003 in the special leave petitions, whereby the

order of recovery passed by the Division Bench of the High Court was stayed, some installments/amount had already been recovered from some

of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant teachers and in order to maintain parity,

it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.

61. 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 appellant 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 appellant 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.

(Emphasis supplied)

(xvii) It has been held by the Hon''ble Supreme Court in case of Paras Nath Singh Vs. State of Bihar and Others, , especially in paragraph nos. 4

& 5, which read as under:-

4. Having heard the Learned Counsel for the parties and considering the fact that the State authorities had allowed the appellant to work for about

10 years and paid the salary at the enhanced rate, in which the appellant had no role to play except that he had given an undertaking to the

authorities that in the event his first time-bound promotion was cancelled, in that case, he would be bound to refund the same.

5. Having considered the fact that the appellant was only a Class IV employee in the State of Bihar and almost an illiterate person and did not

know the implications of giving such undertaking and in the absence of any fraud and misrepresentation attributed to the appellant and the amount

being not so excessive, in particular Rs 1,01,529.50. out of which certain amount has already been recovered from the salary of the appellant by

the State authorities, we are of the view that a lenient view should be taken and the amount already paid by the State authorities to the appellant

shall not be recovered. However, whatever amount that has already been recovered, shall not be paid back to the appellant.

(Emphasis supplied)

In view of the aforesaid decisions also, there is no fraud played by the petitioner and if there is no misrepresentation by the petitioner for getting

higher salary, then even if the salary is given by mistake, the amount cannot be recovered by the State authority.

(xviii) Before passing impugned order at Annexure-2 dated 29th August, 2009, no notice was given. It is submitted by Learned Counsel for the

petitioner that had a notice been given to the petitioner, he would have pointed out that the reasons for withdrawal of these benefits are patently

illegal. The State should keep in mind if they are reducing the salary of any employee, which is given to the employee since several years, then at

least notice should be given. Amount of salary cannot be reduced, without giving any notice.

3. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the order passed by respondent

no. 3 dated 29th August, 2009 at Annexure-2 to the memo of the petition. Liberty is reserved with the respondent-State to take action against the

petitioner, if they are so choosing, but, at least after following the principles of natural justice and after giving an adequate opportunity of being

heard to the petitioner. Accordingly, this writ petition is allowed with a cost of Rs. 5,000/-(Rupees five thousand only), which will be given by the

respondent-State to the petitioner within a period of four weeks from the date of receipt of a copy of the order of this Court.