(2016) 08 JH CK 0022

JHARKHAND HIGH COURT

Case No: L.P.A. No.198 of 2015 with I.A. No.1998 of 2015

State of Jharkhand		APPELLANT
	Vs	
Bibi Kamrun Nisha		RESPONDENT

Date of Decision: Aug. 3, 2016

Acts Referred:

- Constitution of India, 1950 - Article 311

Citation: (2016) 4 AIRJharR 763 : (2017) 1 JBCJ 602 : (2016) 4 JCR 651 : (2016) 4 JLJR 188

Hon'ble Judges: Mr. D.N. Patel and Mr. Amitav K. Gupta, JJ.

Bench: Division Bench

Advocate: M/s. Atanu Banerjee and Suman Kr Ghosh, Advocates, for the Appellants; None, for the Respondent No. 1; M/s. S. Shrivastava, Advocate, for the Respondent No. 4

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.N. Patel, J.(Oral) - I.A. No.1998 of 2015

This interlocutory application under Section 5 of the Limitation Act has been filed by the appellant for condonation of delay of 421 days in preferring the instant appeal.

2. Having heard learned counsel and looking to the reasons stated in paragraphs 4, 5, 6, 7 and 8 of the interlocutory application, there are reasonable reasons for condoning the delay in preferring the appeal.

3. Accordingly, I.A. No. 1998 of 2015 is allowed and delay in filing the instant appeal is condoned.

L.P.A. No.198 of 2015

4. This Letters Patent Appeal has been preferred against the judgment and order delivered by learned Single Judge in W.P. (S) No.766 of 2008 judgment and order dated 3rd January, 2014, whereby the petition preferred by respondent No.1 was

allowed by learned Single Judge and, hence, the original respondent No.1 – State of Jharkhand has preferred this Letters Patent Appeal. The learned Single Judge has quashed and set aside the order passed by this appellant dated 15th March, 2017, whereby the pay scale of the husband of the respondent No.1 (original petitioner) was reduced by this appellant-State of Jharkhand. The pay scale was given to the husband of this respondent No.1 from "Matric Trained" to "I.A. Trained" on 1st April, 1981 which was withdrawn on 15th March, 2007 and that too, when the original employee has already expired on 20th April, 2006.

5. Counsel for the appellant submitted that the State cannot continue with the mistake, once the mistake is found out. All errors are bound to be corrected once they are known to the State. Wrongly the higher pay scale of "I.A. Trained" from pay scale of "Matric Trained" was given on 1st April, 1981 and, thereafter, when the mistake was found out, the higher pay scale of "I.A. Trained", which was given to the husband of the respondent No.1, was withdrawn on 15th March, 2007. This aspect of the matter has not been properly appreciated by the learned Single Judge. Counsel for the appellant has also relied upon a decision reported in 2012(8) SCC 417. On the basis of the said decision, it is submitted by the counsel for the appellant that if any amount is paid de hors the law to any of the employees of the State, the same can always be recovered.

Reasons

6. Having heard learned counsel for the appellant and looking to the judgment and order delivered by learned Single Judge in W.P. (S) No.766 of 2008 judgment dated 3rd January, 2014, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons: -

(i) The husband of the respondent No.1 was working as a Teacher and he was given initially the Matric Trained pay scale. Thereafter, he was given I.A. Trained Scale which is a higher pay scale. This higher pay scale was given with effect from 1st April, 1981. It is an admitted fact that thereafter the husband of the respondent No.1 expired when he was in the service. He expired on 20th April, 2006. Thus, the husband of the petitioner has served for approximately quarter of centenary. During this period of 24 long years, never any show cause notice was given by the State ventilating the grievance of wrongly given I.A. Trained Scale, nor any enquiry was conducted. After approximately one year from the date of death of the husband of respondent No.1, on 15th March, 2007, abruptly without issuing any show cause notice or without holding any enquiry and unilaterally the pay scale of I.A. Trained was reduced to the pay scale of Matric Trained of the deceased employee after approximately 25 years of granting such pay scale, because, higher pay scale was given on 1st April, 1981 and the same was withdrawn on 15th March, 2007. This unilateral action was under challenge in the writ petition preferred by the widow of the employee in W.P. (S) No.766 of 2008.

(ii) It appears that the action of this appellant withdrawal of pay scale given on 01.04.1981 and reduced on 15th March, 2007 is without issuance of any show cause notice and without holding any departmental enquiry. This type of action are bound to be quashed and set aside by the learned Single Judge. It ought to be kept in mind by the State authorities that no such type of action can be taken after such a long lapse of time and that too after approximately 25 years and more so, when no show cause notice or departmental enquiry has been conducted.

(iii) It has been held by Hon''ble Supreme Court in the case of **State of Punjab v. Rafiq Masih reported in (2015) 4 SCC 334** paragraphs 7, 8, 9, 10 & 18 which read as under:

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"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer''s right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee''s right would outbalance, and therefore eclipse, the right of the employer to recover.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of

achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimising monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the afore stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) xxx xxx xxx

(v) xxx xxx xxx"

(Emphasis supplied)

(iv) In view of the aforesaid decision, action taken by the State authorities without giving any show cause notice and the pay scale is reduced and that too after approximately 25 long years, the said action is not permissible in the eyes of law.

(v) No error has been committed by the learned Single Judge in allowing the writ petition preferred by the widow of the said employee who is respondent No.1 and we see no reason to take any other view than what is taken by the learned Single Judge. We are in full agreement with the reasons given by the learned in allowing W.P. (S) No.766 of 2008 vide order dated 3rd January, 2014.

(vi) It appears that the whole action of the appellant-State is after 25 long years. Moreover, no show cause notice has ever been given and the pay scale has been reduced unilaterally. This is not permissible in the eyes of law. No departmental enquiry has also been conducted. These facts make the present case totally different from the facts of the case which is relied upon by the counsel for the appellant and, hence, the judgment cited by the learned counsel for the appellant is of no help to him.

7. As a cumulative effect of the aforesaid facts and reasons, this Letters Patent Appeal is hereby dismissed.

8. Copy of this order will be sent by the Registrar General of this Court to the respondent No.1 by registered post.