

Before Rajesh Bindal, J.

RAM KUMAR BEDI—Petitioner

versus

STATE OF HARYANA AND ANOTHER—Respondents

CWP No. 14239 of 2010

February 04, 2013

Constitution of India, 1950 - Art. 226/227 - Service Law - Employees working on deputation - Wrongly awarded incentive in the form of performance award - No entitlement to same - Recovery sought to be effected - Employee not at fault nor misled concerned authority for payment of any amount - Excess payment of public/tax payers money - No rules or regulations which entitle the payee to the amount which has been paid and cannot be claimed as a matter of right since it would amount to unjust enrichment - Petitioners in service and working on reasonably senior positions - Plea of extreme hardship not available - Excess payment liable to be recovered.

Held, that after the judgment of Full Bench of this court in Budh Ram's case (supra), Hon'ble the Supreme Court in Chandi Prasad Uniyal and others v. State of Uttarakhand and others, (2012) 8 SCC 417, had considered the similar issue. It has been opined therein that in many cases decided earlier on facts, it was held that the recipients having retired or on the verge of retirement and occupying lower posts in the administrative hierarchy should not be asked to repay the benefit, which has already been given to them erroneously without there being any misrepresentation or fraud on their parts. The excess payment of public money, which is often described as "tax payers money" belongs neither to the officers who had been made payment nor to the recipients. Excess payment of public money may be due to various reasons, such as negligence, collusion, carelessness, favoritism etc. There can be cases where both payer and payee are at fault. There can be situations where the payment had been made without authority of law, meaning thereby there being no rules or regulations which could entitle

the payee to the amount which has been paid. There can be some exceptions of extreme hardships. It is not a matter of right. Otherwise, it would amount to unjust enrichment.

(Para 9)

Further held, that if the facts of the present case are considered in the light of enunciation of law in Chandi Prasad Uniyal's case (supra), the payment on account of performance award was made to the petitioners for the years 2005-06 and 2006-07 in the year 2008. Immediately when the error was noticed that the employees, who were working on deputation with HAFED were not entitled to that benefit, notices were issued to all those employees in the year 2009 for recovery of the amount erroneously excess paid, hence there was no delay as such in pointing out the error in payment of excess amount to the petitioners. Rather, all the petitioners in the present case are still in service and working on reasonably senior positions as the petitioner in C.W.P. No. 14239 of 2010 is working as District Attorney, whereas the petitioners in C.W.P. No. 6859 of 2011 are working as Sub Divisional Engineers and Junior Engineers hence, even the plea of extreme hardship cannot be raised by them. The amount sought to be recovered is not huge. For the reasons mentioned above, present petitions are dismissed. However, in case the petitioners make a representation for recovery of the amount in instalments, the same will be considered by the competent authority sympathetically.

(Para 11 & 12)

K. S. Dhanora, Advocate, *for the petitioner(s)*.

D. D. Gupta, Addl. Advocate General, Haryana.

Sanjeev Gupta, Advocate for Mr. C. B. Goel, Advocate for respondent No. 2 in both the petitions.

Durgesh Aggarwal, Advocate for respondent No. 3 in CWP No. 6859 of 2011.

RAJESH BINDAL J.

(1) This order will dispose of two petitions bearing C.W.P. Nos. 14239 of 2010 and 6859 of 2011, as common questions of law and facts are involved.

FACTS :CWP No. 14239 of 2010

(2) The petitioner herein is presently working as District Attorney in the office of Advocate General, Haryana. For the period from 11.8.2004 till 14.9.2006, the petitioner remained on deputation with HAFED. During his service in HAFED, he was awarded incentive in the form of performance award, to which the employees working on deputation were not entitled to. The error having been noticed, a notice was issued to the petitioner on 7.9.2009. After considering the representation dated 20.8.2009 made by the petitioner, informing the petitioner that during the year 2005-06, a sum of ' 37,378/- had been wrongly paid to him on account of performance award to which the employees working on deputation were not entitled to and after adjusting ' 21,393/- due to the petitioner on account of arrears of revised pay scale, a sum of ' 15,985/- was directed to be deposited.

(3) The aforesaid order is impugned before this court.

CWP No. 6859 of 2011

(4) In the present petition, there are four petitioners, namely, D. N. Saini, Junior Engineer; S. K. Singla, Junior Engineer (Electrical); Lachhman Dass, Sub Divisional Engineer and Y. K. Gupta, Sub Divisional Engineer. They were working on different posts in Housing Board, Haryana. However, they remained on deputation with HAFED for different periods. During their posting with HAFED, erroneously during the year 2005-06, incentive in the form of performance award was given to the petitioners, which in fact was payable only to the regular employees of HAFED. It continued even for part of the year 2006-07. Having noticed the error, vide communication dated 23.7.2009, petitioners No. 1, 3 and 4 were advised to deposit a sum of Rs. 59,797/-, Rs. 71,826/- and Rs. 47,195/-, respectively. Petitioner No. 2 was advised vide communication dated 6.3.2009 for deposit of Rs. 27,209/- paid to him erroneously as performance award for the year 2005-06, in November, 2008. It was mentioned in the aforesaid communication that performance award paid by HAFED to IAS Officers has already been recovered.

(5) The aforesaid communications are impugned before this court.

ARGUMENTS

(6) Learned counsel for the petitioners, while referring to a Full Bench judgment of this court in C.W.P. No. 2799 of 2008—Budh Ram and others v. State of Haryana and others, decided on 22.5.2009, submitted that once the petitioners were not at fault and had not misled the authority for payment of any amount, the same cannot be recovered.

(7) On the other hand, learned counsel for the respondents submitted that the petitioners herein were working on deputation with HAFED. As per the policy, the performance award could be paid only to the regular employees, however, erroneously the same was paid to the petitioners as well, who were on deputation. Immediately after the error came to their knowledge, notices were issued to all the persons who had been made payment of performance award, to which they were not entitled to. It is not a case where some amount is sought to be recovered from the petitioners for which payment had been made to them for years together and recovery was sought to be made at the time of their retirement. The payment was made in the year 2008. When the error was noticed, they were asked to repay the amount in the year 2009. The petitioners are otherwise also not low paid employees, as they are working on reasonably senior positions having good salary and payment of small amount, which was in fact paid to them wrongly, will not cause any hardship to them.

(8) Heard learned counsel for the parties and perused the paper book.

(9) After the judgment of Full Bench of this court in Budh Ram's case (supra), Hon'ble the Supreme Court in *Chandi Prasad Uniyal and others* versus *State of Uttarakhand and others (1)*, had considered the similar issue. It has been opined therein that in many cases decided earlier on facts, it was held that the recipients having retired or on the verge of retirement and occupying lower posts in the administrative hierarchy should not be asked to repay the benefit, which has already been given to them erroneously without there being any misrepresentation or fraud on their parts. The excess payment of public money, which is often described as "tax payers money" belongs neither to the officers who had been made payment nor to the recipients. Excess payment of public money may be

due to various reasons, such as negligence, collusion, carelessness, favouritism etc. There can be cases where both payer and payee are at fault. There can be situations where the payment had been made without authority of law, meaning thereby there being no rules or regulations which could entitle the payee to the amount which has been paid. There can be some exceptions of extreme hardships. It is not a matter of right. Otherwise, it would amount to unjust enrichment. The relevant paragraphs of the aforesaid judgment are extracted below:

“12. We may in this respect refer to the judgment of two-Judge Bench of this Court in **Col. B.J. Akkara (retd.) case** (supra) where this Court after referring to **Shyam Babu Verma case, Sahib Ram case** (supra) and few other decisions held as follows:

“Such relief, restraining recovery back 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.”

13. Later, a three-Judge Bench in **Syed Abdul Qadir case** (supra) after referring to **Shyam Babu Verma, Col. B.J. Akkara (retd.)** etc. restrained the department from recovery of excess amount paid, but held as follows:

“Undoubtedly, the excess amount that has been paid to the appellants - 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 appellants-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 appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made. (emphasis added)"

14. We may point out that in **Syed Abdul Qadir** case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to

a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

(10) The appellants before Hon'ble the Supreme Court in the aforesaid case were working as Teachers/Principals in various schools. It was held that they do not fall in the exception category, hence, excess payment made to them was liable to be recovered, however, the same was directed to be done in instalments.

(11) If the facts of the present case are considered in the light of enunciation of law in Chandi Prasad Uniyal's case (supra), the payment on account of performance award was made to the petitioners for the years 2005-06 and 2006-07 in the year 2008. Immediately when the error was noticed that the employees, who were working on deputation with HAFED were not entitled to that benefit, notices were issued to all those employees in the year 2009 for recovery of the amount erroneously excess paid, hence there was no delay as such in pointing out the error in payment of excess amount to the petitioners. Rather, all the petitioners in the present case are still in service and working on reasonably senior positions as the petitioner in C.W.P. No. 14239 of 2010 is working as District Attorney, whereas the petitioners in C.W.P. No. 6859 of 2011 are working as Sub Divisional Engineers and Junior Engineers hence, even the plea of extreme hardship cannot be raised by them. The amount sought to be recovered is not huge.

(12) For the reasons mentioned above, present petitions are dismissed. However, in case the petitioners make a representation for recovery of the amount in instalments, the same will be considered by the competent authority sympathetically.