

Before Ajai Lamba, J

SURINDER KAUR,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 9782 of 2009

31st August, 2010

Constitution of India, 1950—Art. 226—Regulaization of Services—Promotion of Apprentice Signaller to post of Singaller giving appropriate deemed date of promotion on condition to submit undertaking not to claim any arrears of pay from deemed date of promotion to date of issue of promotion order—Petitioner accepting condition and filing affidavit in that regard—Refixation of pay—Recovery of amount of annual increments received by petitioner—Whether monetary benefits can be recovered—Held, yes—Respondent giving monetary benefit to petitioner on his inducement—Petitioner cannot turn around to say that no recovery be effected from him—Petitioner on his representation accepting condition of filing affidavit—Action of respondents directing recovery held to be reasonable—Petition dismissed.

Held, that the petitioner approached the respondent that he be promoted from Apprentice Signaller to Signaller with effect from the appropriate deemed date in case he is not given deemed date for earlier promotion, he would be prepared to get notional pay scale fixed and would not claim any arrears, ever. On the asking of the petitioner, the benefit was given, however, on the condition that the petitioner would swear an affidavit that he would not claim arrears of pay for the period from deemed date of promotion to the date of issue of promotion order. The petitioner accepted the condition and swore affidavit. In such circumstances, it transpires that it was on the inducement of the petitioner that the respondent-employer gave monetary benefit to the petitioner. At this point in time, the petitioner cannot turn around to say that no recovery be effected from the petitioner.

(Para 26)

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Further held, that so far as prayer for quashing of the condition asking the petitioner to furnish the affidavit is concerned, it was for the petitioner not to have accepted the condition at that point in time. By way of accepting the condition imposed, on representation of the petitioner, the petitioner continued to accept the monetary benefits. In such circumstances, it does not lie with the petitioner at this stage to challenge the condition. The facts and circumstances do not indicate that condition was imposed because the respondents were in dominant position, or the condition is in any way unreasonable, arbitrary or unwarranted in the facts of the case.

(Para 27)

Parveen Kumar, Advocate for the petitioner(s).

Ms. Charu Tuli, Sr. DAG, Punjab.

AJAI LAMBA, J. (ORAL)

(1) This shall dispose of 10 petitions *viz.* C.W.P.No. 9782 of 2009 titled **Surinder Kaur versus State of Punjab and others**, C.W.P. No. 11641 of 2009 titled **Varinder Kumar versus State of Punjab and others**, C.W.P. No. 11635 of 2009 titled **Prem Kumar versus State of Punjab and others**, C.W.P. No. 9840 titled **Sukhwinder Singh versus State of Punjab and others**, C.W.P. No. 9799 of 2009 titled **Vijay Kumar versus State of Punjab and others**, C.W.P. No. 9780 of 2009 titled **Veena Rani versus State of Punjab and others**, C.W.P. No. 9163 of 2009 titled **Ranjit Singh versus State of Punjab and others**, C.W.P. No. 9159 of 2009 titled **Sukhwinder Singh versus State of Punjab and others**, C.W.P. No. 9152 of 2009 titled **Mohinder Pal versus State of Punjab and others**, C.W.P. No. 9814 of 2009 titled **Ashok Kumar versus State of Punjab and others**.

(2) In this bunch of petitions, issue raised before this Court is whether the respondents would have a right to effect recovery from the petitioners in regard to the monetary benefits released to the petitioners, in view of judgment rendered by Full Bench of this Court on 22nd May, 2009 in C.W.P. No. 2799 of 2008 titled **Budh Ram and others versus State of Haryana and others**, (1) despite the fact that an affidavit/

(1) I.L.R. 2009 (2) Pb. & Hy. 445

undertaking had been furnished by the petitioners to the effect that the petitioners would be bound to pay back such monetary benefits in case they are not found entitled to retain them.

(3) For reference to record **C.W.P. No. 9782 of 2009 titled Surinder Kaur versus State of Punjab and others** is being taken up.

(4) The petitioner has filed this Civil Writ Petition under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of *mandamus* directing the respondents not to recover the amount released to the petitioner as increments, on the basis of order passed by the respondents dated 17th November, 2008, Annexure P-8. Further prayer made in the petition is for issuance of a writ in the nature of *certiorari* quashing order dated 7th December, 2007 Annexure P-5 to the extent it contains the condition of filing affidavit by the petitioner.

(5) The claim has been confined by the learned counsel only in challenge to recovery, and the challenge to refixation of pay has not been pressed.

(6) Learned Counsel for the petitioner contends that the petitioner was initially appointed as Apprentice Signaller on 16th October, 1996 on 89 days basis against a regular post. The services were regularized with effect from 31st July, 1997 alongwith 66 other similarly situated employees *vide* order dated 30th July, 1997.

(7) *Vide* order dated 23rd February, 1998, Chief Engineer/Planning Irrigation Works, Punjab, Chandigarh ordered withdrawal of order dated 30th July, 1997. Copy of the order dated 23rd February, 1998 has been placed on record as Annexure P-2. Aggrieved by order Annexure P-2, the employees filed various writ petitions in the Court. Notice of motion was issued and operation of order was stayed. The petitions were thereafter disposed of *vide* order dated 29th June, 1998 giving liberty to the petitioners to explain their position before the order of regularization is withdrawn.

(8) The matter was kept pending in the department. On 12th October, 2001, the order of appointment and regularization of the petitioner as Apprentice Signaller was withdrawn *vide* order Annexure P-3. The petitioner alongwith other similarly situated aggrieved employees challenged

the order in this Court. Notice of motion was issued and operation of order dated 12th October, 2001 was stayed. Subsequently, after hearing the parties, the writ petition was admitted. During the pendency of the said writ petition, in the contention of learned counsel for the petitioner, the department advised the petitioner and other employees to withdraw the writ petition on the assurance that their case for regularization of appointment as Signaller would be considered sympathetically. The petitioner alongwith other persons withdrew the writ petition.

(9) The petitioner alongwith other employees represented to the employer-department through the Employees Union for considering their case for promotion from Apprentice Signaller to Signaller under the Punjab PWD (Irrigation Branch) Signaller State Service Class-III Rule, 1955 with effect from appropriate deemed date. *Vide* order dated 7th December, 2007, the petitioner was promoted as Signaller from the deemed date i.e. 1st March, 1996. The petitioner, however, was asked to file an affidavit undertaking therein that he shall not claim any arrears from the deemed date of promotion. Copy of order has been placed on record as Annexure P-5. The petitioner furnished an affidavit, copy whereof has been placed on record as Annexure P-7.

(10) Relevant portion of order Annexure P-5 reads as under :—

"5. Whereas after withdrawing the aforesaid civil writ petitions, these Apprentice Signallers have submitted their representation dated 1st October, 2007 through General Secretary, Punjab Canal Signallers Association, to the Chief Engineer/Vigilance, Irrigation Department, Punjab, Chandigarh vide which they have prayed that their case be considered under Punjab P.W.D. (Irrigation Branch) Signaller State Service Class-3 Rules, 1955 and they be promoted from Apprentice Signaller to Signallers under Rule 9(b) (ii) of the above Rules with effect from the appropriate deemed date, and in case they are given deemed date for the earlier promotion, they are prepared to get Notional Pay Scale fixed and will not claim any arrears even.

6.....Therefore, it is requested that orders for promotion of those Apprentice Signallers from amongst Sr. No. 1 to 66 in the list attached herewith, who are working in your circle/ division, to the post of Signallers from the deemed dates which are shown against their names may kindly be passed at your end on the following terms and conditions :—

xxx

xxx

xxx

(3) Before passing the order of promotion, affidavit of the Apprentice Signaller be obtained, a copy of which be sent to this office, stating that he will not claim any arrear of pay for the period from the deemed date of promotion to the date of issue of promotion order."

(11) Consequent affidavit sworn by the petitioner, that has been placed on record as Annexure P-7, reads as under :—

"AFFIDAVIT

I, Surinder Kaur, w/o S. Sukhwinder Singh r/o Bhai Himmat Singh Nagar, Dugri, Ludhiana, solemnly affirm and declare as under :—

1. That I shall be bound to pay back/recovery for the annual increments already received, by me, in case I am promoted as Signaller from the deemed date of promotion.
2. That I shall not create any legal obstruction in the recovery of annual increment/promotion granted to me.
3. That I shall not approach any court in this regard.

Sd/-

Surinder Kaur,
Deponent"

Verified :

All the above statement I have made are correct.

Sd/-

Surinder Kaur,
Deponent."

(12) *Vide* order dated 14th February, 2008, the respondents fixed the pay of the petitioner after taking back the annual increments already granted to him *vide* order dated 17th November, 2008. The respondents ordered recovery of the amount of annual increments already granted and received by the petitioner. The order has been placed on record as Annexure P-8.

(13) Relevant portion of order Annexure P-8 reads as under :—

“As per the Affidavits given by the above employees, and as per directions received from Chief Engineer Canal Irrigation Department, Punjab Chandigarh, the above employees are not entitled to claim any arrears prior to their promotion. These employees are being appointed as a Signaller against the vacant posts in the public interest. In case any employee has been granted any annual increment prior to his promotion, then as per rules, the recovery of the same may be made. The Superintendent Engineer, will have the power to change/amend/withdrawal of the aforesaid orders, in case, there is any order from the court of any case, or there are any instructions received from the State Government.”

(14) Challenge in the petition is to the order Annexure P-8 to the extent it directs recovery and condition contained in order Annexure P-5 to the extent it requires the petitioners to furnish an affidavit.

(15) Learned counsel for the petitioner contends that the case of the petitioner is squarely covered by judgment rendered by Full Bench of this Court in C.W.P. No. 2799 of 2008 titled **Budh Ram and others versus State of Haryana** dated 22nd May, 2009.

(16) Learned counsel for the respondent, however, contends that in view of the affidavit furnished by the petitioner himself, judgment rendered in Budh Ram's case (*supra*) would have no application to the facts and circumstances of the case.

(17) Considering the totality of facts and circumstances of the case this Court is required to deal with the issue as to whether the petitioner would be entitled to the relief under judgment rendered in Budh Ram's case (*supra*) even though the petitioner furnished an affidavit to the respondents to the effect that he shall be bound to pay back the benefits released by the respondents.

(18) In Budh Ram's case (*supra*), three questions were framed for consideration viz.

- (i) *Cases in which the benefits sought to be recovered from the employees were granted to them on the basis of any fraud, misrepresentation or any other act of deception;*
- (ii) *Cases in which the benefits sought to be recovered were granted on the basis of a bona fide mistake committed by the authority granting the same while applying or interpreting a provision contained in the service rule, regulation or any other memo or circular authorizing such grant regardless whether or not grant of benefits involved the performance of higher or more onerous duties by the employee concerned;*
- (iii) *Cases that do not fall in either one of the above two categories but where the nature of the benefit and extent is so unconnected with his service conditions that the employee must be presumed to have known that the benefit was flowing to him underservedly because of a mistake by the authority granting the same."*

(19) It is not even the case of the respondents that the petitioner had played fraud or misrepresented facts by way of any deception etc. so as to claim the monetary benefits from the respondents and, therefore, question No. 1 is *de hors* the controversy.

(20) Question No. 2 as framed and extracted above deals with the cases in which benefits sought to be recovered were granted on a *bona fide* mistake committed by the respondent-authorities. While dealing with the said question, this Court, after taking into account the law on the issue,

(Ajai Lamba, J.)

has relied on the following circumstances before issuing directions that the amount already paid to the employees cannot be recovered from them :—

“It is in the light of the above pronouncements, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount simply because on a true and correct interpretation of the rules, such a benefit was not due. It does not require much imagination to say that additional monetary benefits going to an employee may not always result in accumulation of his resources and savings. Such a benefit may often be utilized on smaller luxuries of life which the employee and his family may not have been able to afford had the benefit not been extended to him. The employees can well argue that if it was known to them that the additional benefit is only temporary and would be recovered back from them, they would not have committed themselves to any additional expenditure in their daily affairs and would have cut their coat according to

their cloth. We have therefore, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be recovered from them."

(21) Question No. 3 as extracted above, would deal with the cases wherein the employee is presumed to have known that the benefit flowing to him undeservedly were because of a mistake of the respondent- authority granting the same. The same has been dealt with by this Court in the following terms :-

Apart from cases that fall in categories (i) and (ii) above, there is one conceivable situation in which an employee may even when he is not guilty of mis-representation, fraud, deception or the like receive, under a mistake of any functionary of the State, an amount which he has no reason to either receive or appropriate. For instance and purely on a hypothetical plane, there may be a case where an employee of the State Government or the instrumentality of the State receives an amount with his salary that is wholly disproportionate, unexpected or inexplicable. An employee whose monthly emoluments are, for instance Rs. 20,000 receives in a given month, a sum of Rs. 30,000 instead of Rs. 20,000. Such a payment may be purely accidental and erroneous arising out of an un-intended mistake. The question is whether the employee has any obligation to verify the reason or the genesis of the windfall that he has received and to refund the same, if he is not lawfully entitled to the same. Our answer to this is in the affirmative. Such a case may not fall in category (i) as the employee has not committed any mistake but is not a case that would fall in category (ii)

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either as the benefit is unrelated to any erroneous interpretation or application of rule. It is a case where by reason of sheer neglect of a functionary of the State Government, a payment that is undeserved and wholly uncalled for is made to the employee. Such a case cannot be equated with those falling in category (ii). Such a case may be dealt with independently and the employee concerned called upon to refund to the Government the undeserved payment that he has received. We say so because in our opinion, once the undeserved payment came to his notice, every employee is under an obligation to verify the reason for the same and act in a manner that is fair and equitable. Appropriation of a payment which the employee had no reason to expect or accept would in such a case be dishonest. And one who is dishonest cannot take shelter behind equity. We cannot for obvious reasons exhaustively enumerate situations where such payments are received and can be lawfully recovered. All that we propose to point out is that while generality of the cases would fall in category (i) and (ii), some freak cases like the one in category (iii) that we have been able to conceive, may need to be dealt with independently depending upon whether the employee can be attributed the knowledge that the payment was undeserved and whether the duty to verify the factual position and refund the amount when the same came to his notice could be read into his duty as an employee of the State or its instrumentalities."

(22) The gist and substance of the reasons given by this Court in Budh Ram's case (*supra*), while dealing with question No. 2, is that an error is committed by the authorities in granting benefit to the employee. The employee is not responsible for the error. When such monetary benefit is received, it induces the employee to believe that the benefit was indeed payable and due. Acting on the belief, the employee arranges his financial affairs accordingly with no preparation that a subsequent point of time, that monetary benefit might be withdrawn when the error comes to the notice

of the employer on correct interpretation, and application of Rules. The employer thus induces the belief in the employee that he is indeed entitled to the monetary benefit and that he may change and arrange his affairs accordingly. In such circumstances, it has been held, "it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount because on a true and correct interpretation of the Rules, such a benefit was not due". The judgment considers the stand of the employee also in so much as, if the employee had known that additional benefit is only temporary and would be recovered back from him, he would not have committed himself to any additional expenditure in daily affairs. It is on such considerations that this Court, in Budh Ram's case (*supra*), directed that employees who are recipients of the benefits extended to them on an erroneous interpretation, the benefits so extended may be stopped for the future, but the amount already paid to the employees, cannot be recovered from them.

(23) While dealing with question No. 3, this Court has considered that in a given situation **where undeserved payment comes to the notice of an employee, such employee is under an obligation to verify the reason for the same and act in a manner that is fair and equitable (*emphasis supplied*)**. It has been said in the judgment that appropriation of a payment which the employee has no reason to expect or accept would in such a case be dishonest. In such circumstances, it has been held that the Government would be at liberty to, and the employee can be called upon, to refund the undeserved payment that he has received.

(24) Considering the reasons for which relief was given by this Court in Budh Ram's case (*supra*), in my considered opinion, the petitioner cannot be allowed the same relief. In the case in hand, the petitioner was made aware by the respondents that the benefit might be recovered. Under such circumstances, the petitioner was not only informed but was also asked to furnish an undertaking in the shape of an affidavit to that effect.

(25) To borrow words from Budh Ram's case, because the petitioners knew that the benefit might be withdrawn from them, the petitioners should "have cut their coat according to their cloth".

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(26) There is another aspect of the matter in so much as it was on the representation of the petitioner that the respondents gave the benefit to the petitioner, as would be clear from the extracted portion from Annexure P-5 (para No. 5). The petitioner approached the respondent that he be promoted from Apprentice Signaller to Signaller with effect from the appropriate deemed date and in case he is not given deemed date for earlier promotion, he would be prepared to get notional pay scale fixed and would not claim any arrears, ever. On the asking of the petitioner, the benefit was given, however, on the condition that the petitioner would swear an affidavit that he would not claim arrears of pay for the period from deemed date of promotion to the date of issue of promotion order. The petitioner accepted the condition and swore affidavit Annexure P-7, that has been extracted above. In such circumstances, it transpires that it was on the inducement of the petitioner that the respondent-employer gave monetary benefit to the petitioner. At this point in time, the petitioner cannot turn around to say that no recovery be effected from the petitioner.

(27) So far as prayer for quashing of the condition asking the petitioner to furnish the affidavit is concerned, it was for the petitioner not to have accepted the condition at that point in time. By way of accepting the condition imposed, on representation of the petitioner, the petitioner continued to accept the monetary benefits. In such circumstances, it does not like with the petitioner at this stage to challenge the condition. The facts and circumstances do not indicate that condition was imposed because the respondents were in dominant position, or the condition is in any way unreasonable, arbitrary or unwarranted in the facts of the case.

(28) In view of the above, the petitioner is not entitled to any relief in extraordinary writ jurisdiction. The action of the respondents in directing recovery from the petitioner is reasonable, for justifiable reasons and not arbitrary. The action of respondents does not call for judicial review in writ jurisdiction.

(29) The petitioners are accordingly dismissed.