

J. C. ARORA v. FOOD CORPORATION OF INDIA
AND OTHERS (*Ajay Tewari, J.*)

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Before Ajay Tewari, J.

J.C. ARORA—Petitioner

versus

**FOOD CORPORATION OF INDIA
AND OTHERS—Respondents**

CWP No. 18429 of 2009

August 8, 2013

Constitution of India, 1950 - Arts. 14, 16 and 22C - Recovery from retiral benefits - Petitioner joined service with respondent-Corporation as AG-III (D) in the year 1969 - Promoted as AG-I(D) on 05.06.1972 - Promoted further as Manager (D) on 27.12.1996 - Petitioner retired on 31.01.2007 on attaining age of superannuation entitling him to receive gratuity and other retiral benefits to tune of ₹3.5 lac - Recovery of ₹4.88 lac ordered to be recovered from retiral dues on account of drawal of excess salary as a result of re-fixation of salary post retirement but with effect from 13.08.1985 - However, there was no misrepresentation or fraud on part of Petitioner in re-fixation of his pay by Respondent-Corporation - Held, that no recovery can be effected from retiral dues of Petitioner - Respondent-Corporation directed to release gratuity amount of ₹3.5 lac.

Held, that from the above facts it is clear that the said orders have been passed after about 2 years and 8 months of the retirement of the petitioner and before passing the said orders, no show cause notice had been issued on him. It is also clear that there was no misrepresentation or fraud on the part of the petitioner while re-fixing his pay.

(Para 5)

Further held, that in my considered opinion the arguments of both learned counsel are too extreme. In any case in view of the decision of the Hon'ble Supreme Court in *Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors.* (2012) 8 SCC 417 the recovery of amount cannot be ordered to be made and consequently the same is set aside. The respondents are directed to release the gratuity amount of ₹3,50,000/-

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to the petitioner within a period of one months from today failing which the petitioner will be entitled to recover the amount with interest at the rate of 8% p.a. from the date of retirement till the date of payment.

(Para 7)

B.R.Gupta, Advocate, *for the petitioner.*

Hari Pal Verma, Advocate for the respondents.

AJAY TEWARI, J. (Oral)

(1) The petitioner joined service with respondent -Corporation in the year 1969 as AG-III(D). He was promoted as AG-I(D) on 5.6.1972. He was finally promoted to the post of Manager (D) on 27.12.1996. On attaining the age of superannuation he retired on 31.1.2007. On his retirement he was entitled to gratuity and other retiral benefits. He visited the office of respondents for releasing his gratuity but in vain. He was then constrained to serve a legal notice dated 28.11.2007(Annexure P-2) on the respondents but no action was taken thereon. He then filed C.W.P No. 3055 of 2008 which was disposed of by judgment and order dated 05.05.2009 in the following terms:—

“In view of the aforesaid statement, this petition is disposed of with a direction to the respondents to consider the claim of the petitioner within three months and pass the final order in that regard. If the petitioner is not satisfied with the order of gratuity, it will be open for him to challenge the same in accordance with law.”

(2) Thereafter his retrial dues were ordered to be released. His basic pay was refixed w.e.f. 13.8.1985 vide order dated 21.8.2009. Subsequently another office order dated 27.8.2009 was passed sanctioning the gratuity amounting to ₹3,50,000/-. However, an amount of ₹4,88,113/- was ordered to be recovered from his retiral dues on account of drawal of excess salary by him. Afterwards another order dated 29.8.2009 was passed by respondent No.3 intimating him that the sanctioned gratuity amounting to ₹3,50,000/- was adjustable against the over payment of ₹4,88,113/- allegedly on account of drawl of higher salary and a notice was issued by respondent No.3 directing the petitioner to deposit an amount of ₹1,38,113/- allegedly fallen due on that account after adjusting the sanctioned gratuity amounting to ₹3,50,000/-. He

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replied to the said notice requesting not to take any action to recover the alleged amount of ₹1,38,113/- arising on re-fixation of pay of the petitioner in view of the fact that there was no misrepresentation or fraud on his part in re-fixation of his pay and also that his pay had been rightly fixed and claimed his gratuity. No relief having been granted he filed the present petition.

(3) As regards his grievance of recovery from retiral benefits, the learned counsel has relied upon ***Chandi Prasad Uniyal & Ors. v. State of Uttrakhand and Ors.***(1) to canvass that recovery could not be made and has relied upon Paras 14 and 17 of the said judgment which are quoted herein below:-

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.”

17. “We are, therefore, of the considered view that except few instances pointed out in *Syed Abdul Qadir* case (*supra*) and in *Col. B.J.Akkara (retd.)* case (*supra*), the excess payment made due to wrong/irregular pay fixation can always be recovered.”

(4) Learned counsel has argued that the office orders as mentioned above have been passed after about 2 years and 8 months of his retirement. He has further argued that before passing the said orders no show cause notice had been issued to him. As per learned counsel the said orders are illegal and violative of Articles 14 and 16 of the Constitution. He has further argued that in any case no recovery could have been ordered to be made from his retiral benefits in view of the decision of *Chandi Prasad Uniyal* case (*supra*) in paras 14 & 17.

(5) From the above facts it is clear that the said orders have been passed after about 2 years and 8 months of the retirement of the petitioner and before passing the said orders, no show cause notice had been issued on him. It is also clear that there was no misrepresentation or fraud on the part of the petitioner while re-fixing his pay. Learned counsel for the respondents has sought to argue that in *Chandi Prasad Uniyal* case

(1) (2012) 8 SCC 417

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(supra) the Hon'ble Supreme Court has, as a point of principal laid down that over payment paid to employees cannot be retained by them.

(6) In my considered opinion the arguments of both learned counsels are too extreme. In any case in view of the decision of the Hon'ble Supreme Court in *Chandi Prasad Uniyal* (supra) the recovery of amount cannot be ordered to be made and consequently the same is set aside. The respondents are directed to release the gratuity amount of ₹3,50,000/- to the petitioner within a period of one month from today failing which the petitioner will be entitled to recover the amount with interest at the rate of 8 % p.a. from the date of retirement till the date of payment.

(7) With respect to the refixation , in my view it would be in the interest of justice if the petitioner files a representation to respondent No. 3 within a period of one month from today putting forth his point of view and the reasons why, in his opinion, the pay could not be refixed. The respondent No. 3 is directed to consider the same and pass a speaking order thereon within a period of three months. Thereafter, and, in case the petitioner is found entitled to any relief, the same be released to him within a further period of three months.

(8) Petition disposed of.

S. Gupta

Before K. Kannan, J.

**ANTU SON OF SEHZADA SON OF DIWANA AND
OTHERS—Appellants**

versus

**STATE OF HARYANA THROUGH THE LAND
ACQUISITION COLLECTOR, KAITHAL AND
ANOTHER—Respondents**

RFA No. 2973 of 1994

December 17, 2012

***Land Acquisition Act, 1894 - Ss. 4, 6 and 18 - Enhancement -
Basis - Comparable sale deeds - Claimants sought enhancement of***