

Before G. C. Mital & G. S. Chahal, JJ.

BALDEV RAJ DEVGAN AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 10644 of 1990.

December 10, 1990.

Constitution of India, 1950—Art. 226—Code of Civil Procedure, 1908—S. 60—Stay order granted not to discontinue compensatory allowance to petitioners—Writ petition dismissed finally—Recovery of such amount—Can be effected subject to provisions of S. 60 C.P.C.

Held, that the petitioners are bound to refund the amount to which they were not entitled and had received in pursuance of the stay order granted in their favour. It would be just and equitable to direct the State to make recovery from the petitioners in instalments to be calculated, in the case of salaried persons, in accordance with the provisions of S. 60 of the Civil Procedure Code.

(Paras 4 & 5)

Petition under Article 226 of the Constitution of India, praying that a writ of Mandamus or any other suitable writ, order or direction be issued, directing the respondents:—

- (i) to produce the complete records of the case;
- (ii) to issue an appropriate writ, order or direction especially in the nature of Mandamus directing the respondents to pay the petitioners House Rent Allowance/Compensatory Allowance drawn by them as on 30th August, 1988 before the House Rent Allowance/Compensatory Allowance as abolished/reduced in terms of letter dated 30th August, 1988 (Annexure P. 1 and P. 2) since the *ibid* letters have also protected the payment of House Rent Allowance/Compensatory Allowance which was paid to the petitioners and another similar situated persons before its discontinuation/reduction till the same is adjusted in the scales sanctioned with effect from 1st September, 1988, vide Annexures P. 1 and P. 2.
- (iii) It is further prayed that the operation of the order dated 31st May, 1990 (Annexure P. 3), vide which it has been ordered to stop the payment and also to effect recoveries be quashed and the operation of the order be stayed during the pendency of the writ petition;

(iv) *It is further prayed that the respondents be directed to allow them to draw the House Rent Allowance/Compensatory Allowance at the rates drawn by them as on 30th August, 1988, as the same have been protected during the pendency of the writ petition;*

(v) *It is further prayed that it may be declared that the petitioners are entitled to all the consequential reliefs including the arrears with interest;*

P. K. Goklaney, Advocate, for the Petitioners.

H. S. Mattewal, A.G., Punjab and Rajiv Atma Ram, Advocate, for the Respondents.

JUDGMENT

Gokal Chand Mital, J.

(1) The petitioners were posted within 16 Kms of International border with Pakistan and earlier to 1st September, 1988, were granted compensatory allowance. *Vide* government decision dated 30th August, 1988, copy Annexure P2, which came into force with effect from 1st September, 1988, the compensatory allowance payable to the employees serving within 16 Kms of International border was discontinued. However, to certain categories of employees, the house rent allowance was allowed and to the remaining, rural area allowance was allowed. Here, we are concerned with the discontinuation of the compensatory allowance to the employees serving within 16 Kms of International border.

(2) The petitioners earlier filed C.W.P. No. 8534 of 1988 to challenge Annexure P2 by which compensatory allowance payable to them was discontinued; and they got interim order and they continue to receive the compensatory allowance till the decision of that writ petition. Ultimately, the writ petition was dismissed on 19th December, 1989. We are informed that the petitioners' S.L.P. filed before the Supreme Court was also dismissed but no order has been placed before us.

(3) After the dismissal of the writ petition, the State Government started making recovery of the amount, which was paid to the petitioners with effect from 1st September, 1988 in pursuance of the stay order granted by this Court. This Court while dismissing writ petitions had held that the petitioners were not entitled to compensatory allowance after 30th August, 1988 and the Government could withdraw the concession earlier given to the petitioners.

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(4) When recovery was sought to be effected, the petitioners again came to this Court in writ petitions which are being disposed of by this order. The earlier decision between the parties would operate as *res-judicata* and regarding those who have not come to the Court earlier, we follow the same as binding precedent. Once that is so, there is obviously no merit in the writ petitions and the petitioners are bound to refund the amount to which they were not entitled and had received in pursuance of the stay order granted in their favour.

(5) The only point that remains for consideration is how much deduction should be made from the salaries of the petitioners per month to make recovery. According to petitioners a huge amount is sought to be deducted from their salaries in accordance with the provisions of Section 60 of the Civil Procedure Code in the case of salaried persons, out of the monthly salary recovery can be made of an amount after leaving first Rs. 400/-, and from the balance only 1/3rd can be recovered. On a consideration of the matter, we are of the view that it would be just and equitable to direct the State to make recovery from the petitioners in instalments, each of which shall not exceed the amount equal to, to be calculated in the manner indicated above, that is, out of the monthly salary, after leaving first Rs. 400/-, from the balance, 1/3rd would be deducted/recovered.

(6) With this order and directions, the writ petition Nos. 10644, 11929, 11284, 10989, 11839, 12546, 11285, 12040, 2467, 3943, 5912, 12547 and 11899 of 1990 are dismissed with no order as to costs.

S.C.K.

Before G. C. Mital & G. S. Chahal, JJ.

DEVINDER SINGH AND OTHERS.—Petitioners.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 3571 of 1990.

11th December, 1990.

Constitution of India, 1950—Art. 14, 16, 226 & 227—Employees living in rural areas within 8 kms. allowed House Rent Allowance with effect from 1st January, 1986—Compensatory Allowance paid to employees in border areas with effect from 1st January, 1986—Rural