

Before Permod Kohli, J
SHEETLA DEVI .. *Petitioner*
versus

STATE OF PUNJAB AND OTHERS .. *Respondents*

C.W.P. No. 5803 of 2009
and other connected writ petitions

28th May, 2009

Constitution of India, 1950—Art. 226—Refixation of salaries—Recoveries ordered—No misrepresentation or fraud on part of employees—Bona fide mistake or misrepresentation of rules/circulars by functionaries of employers—No recovery can be effected from petitioners—Where recovery has already been made, the same ordered to be refunded to petitioners.

Held, that the benefit was given to the petitioners by either mistake or misrepresentation of the rules/regulations/circulars by the functionaries of the employers and the employees/petitioners were/are not responsible for extraction of any illegal benefits. In most of the cases, the recoveries are being effected from their pensionary benefits after a number of years of the retirement. In some cases pensionary and retiral benefits have been withheld for a number of years forcing the retired employees to approach this Court. It is also noticed that in most of the cases, the employees have not even been put to notice. However, in none of the cases, the fraud or misrepresentation has been attributed to the petitioners and, thus, the respondents cannot be permitted to effect recovery or retain the recovered amount. In all such cases where the amounts have been recovered in part or in whole, the same shall be refunded to the petitioners within a period of two months from the date a certified copy of this order is served upon the competent authority.

(Para 12)

Surmukh Singh, S.K. Arora, S.K. Sharma, A.S. Bhaskar, Amrik Singh, Anupam Bhardwaj, D.D. Bansal, Anil Chawla, Ranjivan Singh, Vijay Sharma, Manohar Dadwal, A.K. Walia, R.S. Bal, Ms. Monika Goyal, Ms. G.K. Daulat, Arvind Kashyap, A.K. Goel, Karamjit Verma, Arihant Jain, Ashish Grover, R.K. Arora, B.R.. Mahajan, Advocates, *for the petitioner(s)*.

B.S. Chahal, DAG, Punjab.

Yatinder Sharma, AAG, Punjab, *for the respondents*.

PERMOD KOHLI, J. (ORAL)

(1) Common question of law with similarity of facts and circumstances being involved, these petitions were heard and are being disposed of by common order.

(2) Most of the petitioners are the retired employees of the State Government or of various State owned Corporations and autonomous bodies. However, some of them still in service. They are aggrieved of action of the respondents in realization of their salary and consequential recovery either on the basis of the objection raised by the Accountant General, the audit inspection or under other circumstances. The issue involved is re-fixation of the salary, consequential recovery and even reduction in the pensionary benefits. Since on the basis of the legal issues, the controversy involved in all these petitions can be conveniently sorted out, settled, factual back ground in each case is not being addressed to.

(3) The question of re-fixation and recovery had been considered by the Hon'ble Apex Court in the case of **Sahib Ram versus State of Haryana, (1)** which was later on followed in the case of **Purshotam Lal and others versus State of Bihar and others, (2)** wherein it has been held that where any benefit has been granted to an employee without any misrepresentation or fraud attributed to him, the employer has the right to re-fix the salary/emoluments, but without right to recover such benefits already granted to the employee.

(4) However, other version of the issue came to be opined in some of the judgments passed in the case of **Union of India versus Smt. Sujata Vedachalam and others (3)**, **Comptroller and Auditor General of India and others versus Farid Sattar, (4)** and **Mafatlal Industries Ltd. and others versus Union of India and others, (5)** Since the judgment passed in the case of **Sahib Ram (supra)** held the field for a number of years, various judgments came to be delivered by the Court following the dictum therein.

(1) 1994 (5) SLR 753

(2) 2007 (1) RSJ 150

(3) J.T. 2000 (6) S.C. 217

(4) J.T. 2000 (4) S.C. 374

(5) 1997 (5) S.C.C. 536

(5) A Division Bench of this Court, however, noticing both sets of judgments referred the matter to a larger Bench for an authoritative pronouncement and following question of law was referred to the larger Bench :—

“Whether the Government is entitled to recover from an employee any payment made in excess of what he was otherwise entitled to, on account of any mistake or bona fide but erroneous interpretation or belief regarding any Rule, Regulation or Government instructions whatsoever especially in cases where the employee concerned is not guilty of any fraud or misrepresentation in claiming or receiving such monetary benefits.”

(6) The Hon’ble Full Bench of this Court presided over by Hon’ble the Chief Justice heard and answered the reference,—*vide* judgment dated 22nd May, 2009 passed in **CWP No. 2799/2008 etc. (Budh Ram and others versus State of Haryana and others (6))**. On consideration of the controversy, Hon’ble Full Bench formulated following three issues to answer the reference :—

- (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 undeservedly because of a mistake by the authority granting the same.”*

(7) On consideration of various judgments, issue no. 1 was answered as follows :—

“.....It follows that a person, who has committed a fraud, misrepresentation or any other act of deception cannot possibly qualify for any relief in equity. A priori, it must be held, that any benefit received or obtained by an employee by reasons of fraud, misrepresentation or any other act of deception would disentitle him to retain the benefit, which he has obtained as a result of such acts or any one of them.”

(8) Issue No. (ii) has been answered with the following observations :—

“It is in the light of the above pronouncement, 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.....”

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.....”

(9) While considering issue No. (iii), Hon’ble Full Bench perceived certain situations and made following observations :—

“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....”

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. The reference is answered accordingly. These petitions shall now be placed before the appropriate Bench for disposal in the light of what we have said above.”

(10) The claims of the petitioners in the present petitions have been considered in the light of the aforesaid judgment of the Full Bench and the issues decided therein. Two categories of cases are being disposed of by this order. In writ petitions shown under Category (i) in the cause title of this judgment, the petitioners have assailed only the recovery part and have not challenged the re-fixation of the salary. I have perused the orders impugned whereby the recoveries have been ordered on re-fixation either during the service or after retirement. In none of the cases, the State has attributed mis-representation or fraud to the employee(s). All these cases

thus fall in Category (ii) noticed by the Hon'ble Full Bench. In all these cases the benefit was passed on to the employees without mis-representation/ fraud on the basis of either *bona fide* mistake or misinterpretation of any rule, Circular or order of the employer. In view of the answer to issue No. (ii), no recovery can be effected from these petitioners.

(11) In the cases shown in Category (ii) in the cause title above, even though re-fixation has been challenged, but during the course of the arguments, learned counsel for the petitioners abandoned the challenge to the re-fixation and confined their relief only to the recovery part. Since the challenge to the re-fixation in these petitions has been given up, these petitioners will also be entitled to be placed in Category (ii) noticed in Full Bench judgment and thus, no recovery is to be made from them.

(12) In some of the petitions, no recovery has been effected either on account of any interim order or otherwise by the employer. However, in some cases, part recovery has been made and in some cases full amount sought to be recovered on re-fixation stands recovered. Mr. B.S. Chahal, learned counsel appearing on behalf of the State has attempted to argue that where the recovery has already been made the same cannot be ordered to be refunded. I am unable to accept his contention for the simple reason that the benefit was given to the petitioners by either mistake or misinterpretation of the rules/regulations/circulars by the functionaries of the employers and the employees/petitioners were/are not responsible for extraction of any illegal benefits. In most of the cases, the recoveries are being effected from their pensionary benefits after a number of years of the retirement. In some cases pensionary and retrial benefits have been withheld for a number of years forcing the retired employees to approach this Court. It is also noticed that in most of the cases, the employees have not even been put to notice. However, in none of the cases, the fraud or misrepresentation has been attributed to the petitioners and thus, the respondents cannot be permitted to effect recovery or retain the recovered amount. In all such cases where the amounts have been recovered in part or in whole, the same shall be refunded to the petitioners within a period of two months from the date a certified copy of this order is served upon the competent authority.

(13) In view of the above, these petitions are thus, allowed. The action of the respondents and the impugned orders passed for recovery are hereby quashed while upholding the re-fixation of their salaries etc. It is, however, directed that the respondents will refund the amount already recovered either in part or whole wherever applicable as indicated herein-above.

(14) A copy of this judgment be placed on record on each concerned file.

R.N.R.

Before K. Kannan, J

ANIL KUMAR JAGGI .. *Petitioner*

versus

**PRESIDING OFFICER, CENTRAL GOVERNMENT,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH AND ANOTHER .. *Respondents***

C.W.P. No. 2346 of 2009

9th September, 2009

Constitution of India, 1950—Art. 226—Charges of misconduct—Disciplinary proceedings—Suspension—Stoppage of two increments with cumulative effect—Period of suspension also ordered to be treated as not spent on duty—Challenge thereto—Prosecuting agency finding no case to prosecute—No power to Deputy General Manager to treat period of suspension as not spent on duty under Regulations—Power of management was not more than to continue with enquiry and hand down such punishment as contemplated under Regulation 4—Manner of treatment of suspension period itself is not anyone of enumerated punishment—Orders of Labour Court set aside restricting punishment to stoppage of two increments only.