



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 1635 OF 2013

JAGDISH PRASAD SINGH

....APPELLANT(S)

VERSUS

STATE OF BIHAR AND OTHERS

....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.
2. This appeal by special leave is directed against the final judgment dated 27th August, 2012 passed by the Division Bench of the High Court of Judicature at Patna in Letters Patent Appeal No. 1254 of 2011, whereby the said appeal preferred by the appellant herein was dismissed and the judgment dated 23rd February, 2010 passed by the learned Single Judge of the High Court in Civil Writ Jurisdiction Case(CWJC) No. 18542 of 2009

and so also the judgment dated 23rd March, 2011 passed by the learned Single Judge in Civil Review No. 82 of 2010 were upheld.

3. Facts in a nutshell are that the appellant herein was appointed to the post of Supply Inspector in the Government of Bihar in the year 1966. After serving for 15 years, he received his first time bound promotion as Marketing Officer and was put in Junior Selection Grade w.e.f. 1st April, 1981. Upon completing 25 years in service, the appellant was further promoted to the post of Senior Selection Grade, Marketing Officer-cum-Assistant District Supply Officer(in short 'ADSO') w.e.f. 10th, March 1991 in the pay scale of Rs.2000-3800.

4. The Government of Bihar issued a Resolution dated 8th February, 1999 revising the pay scale of Marketing Officer from Rs.1640-2900 to Rs.5500-9000 and that of ADSO, from Rs.2000-3800 to Rs.6500-10500 w.e.f. 1st January, 1996. Since the appellant had been promoted as ADSO w.e.f. 10th March, 1991, his pay scale was revised to Rs.6500-10500 in accordance with the Resolution dated 8th February, 1999 which is quoted below for ready reference: -

"11. The State Government have decided to abolish the existing facilities of Time Bound Promotions and Selection Grades, discussed in paras 10 and 12 of F.D. Resolution No.6021 dated 18th December, 1989 and they shall cease to

be applicable with effect from 1st January, 1996 and thereafter in the existing pay scales. If any such promotion, however, is due under the Rules before 1st January, 1996, it shall be given and the payment of arrears in the existing scale shall be made only upto 31st December, 1995 after which the promotion would be deemed to have been automatically terminated. While fixing pay in the revised scales, such promotions given after 31st December, 1995 will not be taken into consideration. If such promotions have been given after 31st December, 1995 then the question of adjustment of such additional emoluments obtained in the process, will be decided after the Fitment Committee submits its recommendations on promotion Policy. Promotion to any vacancy of a post identified as need based post would be admissible. The procedure for identification of such need based posts has been set out in paragraph 12."

(emphasis supplied)

5. The appellant superannuated from the post of ADSO on 31st January, 2001. At the time of retirement, the last pay drawn by the appellant was Rs.10500 in the pay scale of Rs.6500-10500 with admissible emoluments. As per the Bihar Pension Rules of 1950, his pension was calculated at 50% of the average emoluments and was quantified at Rs.5247 per month. Accordingly, the pension as above was disbursed to the appellant from the date of his retirement.

6. It seems that the Accountant General, State of Bihar, raised an objection dated 28th January, 2003, regarding the promotion accorded to the appellant on 10th March, 1991 with a further remark that the promotion given to the appellant on 10th March, 1991 would become ineffective after 1st January, 1996 in view of

the Government Resolution dated 8th February, 1999 and, thus, the pay scale of the appellant would have to be revised and reduced to match that of the lower post, i.e., the Marketing Officer.

7. After more than eight years from his retirement, the appellant received a letter dated 15th April, 2009 from the Government of Bihar conveying that an error had been committed in his pay fixation and, therefore, a sum of Rs.63,765/- had to be recovered from him as the same had been paid in excess beyond his entitlement. The letter directed the appellant to refund the aforesaid amount in one go or instalments. Language of the said letter is extracted below :-

“With reference to the above mentioned subject it is submitted that after receiving the enquiry report from the enquiry officer of the departmental enquiry done against you and the analysis of the department, it has been decided that a sum of Rs.63,765/- has been paid to you in excess due to mistake in fixation of pay which is recoverable from you.

Kindly make it clear whether you will pay the said amount in one go or in instalments. Kindly submit your report in this regard within 15 days to ensure further action.”

(emphasis supplied)

8. Being aggrieved by the recovery notice and the reduction of his pension, the appellant made several representations to the Government of Bihar protesting against the reduction of his pension and the proposed recovery. However, when such representations were not responded to by the concerned authority,

the appellant preferred a petition under Article 226 of the Constitution of India, being Writ Petition No. 6714 of 2009 before the High Court. The High Court, *vide* order dated 20th July, 2009 directed the State of Bihar to consider the appellant's representation. Pursuant thereto, on 4th September 2009, the appellant filed another detailed representation to the Government of Bihar, pointing out that paragraph 11 (*supra*) of the Government Resolution dated 8th February, 1999 had been misinterpreted in the letter dated 15th April, 2009, to deny the benefit of the admissible pay scale to the appellant as per his entitlement, which led to the unjust reduction of his pensionary benefits. A pertinent plea was taken in the representation that the paragraph 11 (*supra*) could not be interpreted to the prejudice of the appellant as he had been given time bound promotion much before 31st December, 1995 and that the said Resolution specifically protected the promotions made prior to the said date. Therefore, the appellant was entitled to seek protection of his pay scale fixed in the bracket of Rs.6500-10500 on the promotional post of ADSO.

9. The Secretary, Food and Consumer Protection Department, Government of Bihar issued a communication dated 8th October, 2009 rejecting the appellant's representation observing that the

promotion granted to the appellant would automatically come to an end after 31st December, 1995 by virtue of the Government Resolution dated 8th February, 1999 and hence, his pay scale would have to be revised and reduced to Rs.5500-9000, by treating the appellant on the post of Marketing Officer instead of ADSO at the time of retirement.

10. The appellant preferred CWJC No. 18542 of 2009 before the High Court of Patna assailing the said order. The learned Single Judge, *vide* order dated 23rd February, 2010 dismissed the said writ petition.

11. Asserting that his grievances had not been properly addressed by the learned Single Judge, the appellant filed a Review Petition No. 82 of 2010 before the High Court which was rejected *vide* order dated 23rd March, 2011.

12. Being aggrieved by the aforesaid orders, the appellant filed two Letters Patent Appeals being Letters Patent Appeal No. 1254 of 2011, challenging the order dated 23rd February, 2010 and Letters Patent Appeal No. 815 of 2011 challenging the order dated 23rd March, 2011. Learned Division Bench, rejected the LPA No. 815 of 2011 as not maintainable *vide* order dated 24th August, 2012, whereas the LPA No. 1254 of 2011 was rejected *vide* order

dated 27th August, 2012, holding that the revision and consequent reduction in pay fixation of the appellant had been done in accordance with the paragraph 11(*supra*) of the Government Resolution dated 8th February, 1999 as per which, the appellant was not entitled to the higher pay scale which had wrongly been accorded to him. The said order is assailed in this appeal by special leave.

Submissions on behalf of the appellant: -

13. Learned counsel for the appellant urged that the impugned orders are *ex facie* bad in the eyes of law because the Government Resolution dated 8th February 1999, was misinterpreted by the authorities as well as by the High Court. He urged that paragraph 11(*supra*) of the Government Resolution dated 8th February 1999, clearly postulates that the same would not have any adverse effect on the employees who had received the time bound promotions prior to 31st December 1995. Admittedly, the appellant had been given time bound promotion as Senior Selection Grade, Marketing Officer-cum-Assistant District Supply Officer on 10th March, 1991, which was long before the cut off date fixed under the said Government Resolution, i.e., 31st December, 1995 and thus, he was rightfully conferred the benefit of the revised pay scale i.e.

Rs.6500-10500 under the recommendations of the 5th Pay Commission. The Government Resolution dated 8th February, 1999 having clearly indicated the cut-off date as 31st December, 1995, the appellant would be protected from the adverse effects thereof and was entitled to protect his promotion and pay scale. He thus, urged that the impugned orders are grossly illegal and cannot be sustained.

14. He further contended that the reduction in the pay scale of the appellant and the direction to effect recovery eight years after his retirement, that too, without adhering to the principles of natural justice, is even otherwise illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and thus, the same cannot be sustained. He urged that the learned Single Judge as well as the Division Bench of the High Court clearly fell in error while interpreting the Government Resolution dated 8th February, 1999 because paragraph 11 (*supra*) thereof protects the time bound promotion offered to the appellant as per his entitlement on 10th March, 1991 and so also the revised pay scale applicable to the said post under the 5th Pay Commission.

15. On these grounds, learned counsel for the appellant implored the Court to set aside the impugned orders and the proposed

recovery from the appellant and so also the consequential reduction in his future pensionary benefits.

Submissions on behalf of the respondent: -

16. *Per contra*, learned counsel representing the State of Bihar, vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant. It was contended that the Government Resolution dated 8th February, 1999 was made uniformly applicable to all employees in the State of Bihar. The appellant has not been singled out for the impugned action and thus, there is no question of any discrimination being meted out to the appellant. The Office of the Accountant General had noticed the manifest error/irregularity in grant of revised pay scale to the appellant and thus, a letter dated 15th April, 2009 was issued thereby, requiring the appellant to refund the excess amount which he had received on account of wrong pay scale having been conferred to him. He submitted that the learned Single Judge as well as the Division Bench of the High Court rightly interpreted the Government Resolution dated 8th February, 1999 and recorded concurrent findings of fact denying relief to the appellant and thus, the appellant is not entitled to seek indulgence from this Court in

this appeal under Article 136 of the Constitution of India. He urged that the appeal should be dismissed.

Discussions and Conclusion: -

17. We have given our thoughtful consideration to submissions advanced at bar and have gone through the material available on record.

18. At the outset, we may note that the fact regarding the appellant having been accorded time bound promotion from the post of Marketing Officer in Junior Selection Grade to Senior Selection Grade, Marketing Officer-cum-Assistant District Supply Officer(ADSO) as per his entitlement on 10th March 1991 is not in dispute. It is not the case of the respondents that the said promotion suffered from any irregularity or was given against the rules and regulations. The Resolution dated 19th January, 1991 placed on record as Annexure P-1 indicates that the next promotional channel from the post of the Lower Senior Grade(Marketing Officer) was to the post of Upper Senior Grade(Upper Marketing Officer). Earlier, the pay scale for the post of Lower Senior Grade(Marketing Officer) was fixed at Rs.1800-3330 whereas for the promotional post i.e. Upper Senior Grade(Marketing Officer), the applicable pay scale was fixed at

Rs.2000-3800. The appellant having been duly promoted to the post of Upper Senior Grade(Upper Marketing Officer) w.e.f. 10th March, 1991 was entitled to and was rightly given the pay scale of the promotional post. Pursuant to the 5th Pay Commission being applied, the Government of Bihar issued a Resolution dated 8th February, 1999, whereby the pay scale applicable to the post of Upper Senior Grade(Upper Marketing Officer) was revised from Rs.2000-3800 to Rs.6500-10500. The paragraph 11(*supra*) of the said Government Resolution specifically protects the promotions granted to the employees prior to 31st December, 1995. Only those employees who were not promoted by the cut off date, i.e., 31st December, 1995 would get a notional promotion and consequent rise in pay scale which would come to an end w.e.f. 31st December, 1995. Apparently thus, the appellant could not have been put to a disadvantage and his pay scale could not have been reduced prospectively by virtue of the said Resolution. Even if paragraph 11(*supra*) was not in existence, the appellant could not have been subjected to eight years after his retirement because there was no illegality in conferment of the revised pay scale to the appellant which was an action taken by the State Government as per the applicable rules and regulations.

19. The order dated 15th April, 2009 whereby it was communicated to the appellant that it had been decided to recover a sum of Rs.63,765/- paid in excess due to mistake in fixation of pay, also indicates that a departmental inquiry was conducted against the appellant which had led to the impugned action. On a pertinent query being made in this regard, the learned counsel candidly conceded that no such departmental inquiry was ever conducted against the appellant.

20. Without prejudice to the above findings, we are of the view that no departmental action could have been initiated by the State against the appellant after eight years following his superannuation because the employer employee relationship had come to an end after the appellant's superannuation. The order directing reduction in pay scale and recovery from the appellant was manifestly not preceded by any show cause notice and was thus, passed in gross violation of the principles of natural justice. Pursuant to the order dated 20th July, 2009 passed in the Writ Petition No. 6714 of 2009 filed by the appellant, he submitted a representation to the Secretary, Food and Consumer Protection Department, Government of Bihar, which *vide* order dated 8th October, 2009 was rejected, preceded by a personal hearing. A

perusal of the said order would indicate that the Secretary took a view that as per paragraph 11(*supra*) of the Government Resolution, the first/second time bound promotion of the appellant had come to an end automatically w.e.f. on 1st January, 1996 and thus, the appellant was required to be redesignated to the post of Marketing Officer and would be entitled to the revised pay of Rs.5500-9000 w.e.f. 1st January, 1996 as recommended by the Fitment Committee. Thus, even in this order, the promotion conferred to the appellant to the post of ADSO on 10th March, 1991 is not doubted.

21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of ***Syed Abdul Qadir and Others v. State of Bihar and Others*¹**, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the ***Syed Abdul Qadir***(*supra*) are extracted hereinbelow: -

¹ (2009) 3 SCC 475

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount that has been paid to the appellant 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 appellant 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 appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

(emphasis supplied)

22. Similarly, this Court in *ITC Limited v. State of Uttar Pradesh and Others*², held as under: -

² (2011) 7 SCC 493

“108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation.”

(emphasis supplied)

23. In the case of ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others***³, this Court held as under: -

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

³ (2015) 4 SCC 334

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

(emphasis supplied)

24. Recently, this Court in ***Thomas Daniel v. State of Kerala and Others*⁴**, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.

25. The Government Resolution dated 8th February, 1999 to be specific, the highlighted portion *supra* is amenable to the interpretation that it protects the status and pay of those employees who had received their time bound promotions prior to 31st December, 1995. As a consequence, the Secretary concerned, while rejecting the representation clearly misinterpreted and misapplied the said Resolution to the detriment of the appellant.

26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he

⁴ 2022 SCC OnLine SC 536

had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained.

27. The order dated 8th October, 2009 passed by the State Government directing reduction in the pay scale of the appellant from Rs.6500-10500 to Rs.5500-9000 w.e.f. 1st January, 1996 and directing recovery of the excess amount from him is grossly illegal and arbitrary and is hereby quashed and set aside. The impugned order dated 27th August, 2012 passed by the Division Bench of the High Court does not stand to scrutiny and is hereby quashed. Therefore, the appellant shall continue to receive the pension in accordance with the pay scale of Rs.6500-10500.

28. In case, if any reduction in pension and consequential recovery was effected on account of the impugned orders, the appellant shall be entitled to the restoration/reimbursement thereof with interest as applicable.

29. The appeal is allowed in these terms. No order as to costs.

30. Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANDEEP MEHTA)

.....**J.**
(R. MAHADEVAN)

New Delhi;
August 08, 2024