



GAHC010125922014

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3909/2014

PRAMOD CH. SARMA,
R/O H/NO.26, SHASTRI PATH, KANWACHAL HILLSIDE, P.O. SILPUKHURI,
GHY-3, ASSAM

VERSUS

STATE OF ASSAM and 3 ORS,
REP. BY ITS SECRETARY TO THE INDUSTRIES DEPTT., DISPUR, GHY-6,
ASSAM

2:COMMISSIONER
INDUSTRIES AND COMMERCE
BAMUNIMAIDAM
GHY-21
ASSAM

3:M/S ASSAM CONDUCTORS AND TUBES LTD.
BAMUNIMAIDAM
GHY-21
ASSAM

4:THE MANAGING DIRECTOR
M/S ASSAM CONDUCTORS AND TUBES LTD.
BAMUNIMAIDAM
GHY-21
ASSA

Advocate for the Petitioner : MR.S CHAKRABARTY

Advocate for the Respondent : DR.B AHMED (SC, INDUSTRIES DEPT., ASSAM)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioner : Mr. S. Chakrabarty.
Advocate.

For the Respondents : Mr. A. Kalita.
Advocate.

Date of Hearing : 08.06.2022

Date of Judgement : 08.06.2022

JUDGMENT & ORDER (ORAL)

Heard Mr. S Chakrabarty, learned counsel for the petitioner. Also heard Mr. A Kalita, learned counsel representing all the respondents.

2. The petitioner who was an employee of M/s Assam Conductor and Tubes Limited, Bamunimoidam (a Govt. of Assam undertaking) under Department of Industry & Commerce. The said organization decided to give all its employees voluntary retirements under a Voluntary Retirement Scheme. The petitioner contends that as per the Voluntary Retirement Scheme, the date of retirement was treated to be 31.03.2006.
3. Though the date of retirement was 31.03.2006, for the skeletal work for closure of the institution, the petitioner along with some other employees were allowed to work as skeletal employee with a fixed remuneration of Rs. 15,000/- per month.
4. According to the petitioner, he continued till 2013 as skeletal worker and on 28.02.2013, the closure benefit of the petitioner under VRS was determined to be Rs.2,99,072/- and on 28.02.2013, through a cheque bearing No. 449439 for an amount of Rs. 2,03,960/- was issued to the petitioner and a balance amount

of Rs. 95,112/- was still remained to be paid. Subsequently, the petitioner was released from service as skeletal staff with effect from 01.01.2014.

5. The petitioner had filed this writ petition assailing that he has not been paid his salary as a skeletal employee and with a prayer that an amount of Rs. 3,52,902/- , the balanced unpaid salary for the period from 01.07.2011 to 30.01.2013 @ Rs. 15,000/- per month be directed to be paid to him. The further prayer was for release of Rs. 95,112/-, which remained unpaid.
6. It is the case of the petitioner that, while releasing the petitioner from skeletal service, a salary cheque up to December, 2013 amounting to Rs. 99,098/- dated 24.12.2013 was also paid to him. The petitioner has claimed the aforesaid amount of Rs. 3,52,902/- as balance amount after deduction of Rs. 99,098/- as paid on the date of his release on 07.01.2014.
7. During the pendency of this writ petition, the respondent authority had filed an affidavit on 24.06.2019, inter-alia, taking a stand that the authority had made a recalculation as complaints were lodged by many employees alleging anomalies in calculating their due entitlement under VRS. On the basis of the said calculation, an amount of Rs. 3,50,902/- was found to be recoverable from the petitioner and accordingly the said amount of Rs. 3,50,902/- was subsequently recovered from the arrears salary of the petitioner. It is the further stand of the respondents that the petitioner was not paid salary from the month of July, 2011 to 30.01.2013, which was calculated to be Rs. 4,50,000/- . and After the recalculation, it was found that an amount of Rs. 3,50,902/- was recoverable from the petitioner and therefore the petitioner was paid an amount of Rs. 99,098/- after deduction of recoverable amount of Rs. 3,50,902/-.

8. I have given anxious considerations to the arguments advanced by the learned counsels for the parties, perused the pleadings and the material available on record.
9. From the pleadings of the parties, certain undisputed facts are discernible, which can be summarised as follows:
 - a) It is an admitted fact that the petitioner was entitled for an amount of Rs. 4,50,000/- on account of unpaid salary with effect from July, 2011 to 31.12.2013.
 - b) Such due, as reflected from the pleadings, was not a due under VRS but a due against salary as a skeletal employee.
 - c) There is no order of recovery, except a calculation sheet, annexed with the affidavit.
 - d) The Calculation Sheet, though bears the name of the petitioner along with others as signatory but the petitioner did not put his signature in the said calculation sheet.
 - e) No notice or any show cause was issued to the petitioner asking him to explain his position to such calculation and resultant recovery.
 - f) There is no allegation of fraud or misrepresentation against the petitioner in alleged over drawl, including in the affidavit in opposition filed by the respondents.
10. While dealing with the issue of recovery from retired employee, the Hon'ble Apex Court in ***Thomas Deniel –Vs- State of Kerala & Ors***

(Civil Appeal No. 7115/2010), after placing reliance on and discussing different pronouncements made earlier by the Hon'ble Apex Court, at paragraph 9 held as under.

*“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or 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, such excess payment of emoluments or allowances are not recoverable. **This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess**”.*

[Emphasis supplied by this court.]

11. The other judgments that Hon'ble Apex Court relied on while delivering the judgment in ***Thomas Deniel (supra)***, and which are relevant for determination of the present litigation are quoted herein below:

- i. In ***Col. (Retd) B. J. Akkara & Ors –Vs- Government of India & ors*** reported in ***(2006) 11 SCC 709***, the Hon'ble Apex Court at Para 27 and 28 held as follows:-

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 07.06.1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma V. Union of India [(1994) 2 SCC 521: 1994 SCC (L&S) 683: (1994) 27 ATC 121], Union of India V. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram V. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):-

- (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*
- (b) 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.*

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter

being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment”.

- ii. In ***Sayed Abdul Qadir & Ors –Vs- State of Bihar & Ors*** reported in ***(2009) 3 SCC 475*** the Hon’ble Apex Court at para 59 held as follows:-

“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”.

12. In the case in hand, it is an admitted fact that the petitioner retired on 31.03.2006. The fact also remains that the petitioner continued to be employed a skeletal employee at a fixed remuneration of Rs. 15,000/-. The further admitted fact in the case is that the petitioner continued as a skeletal worker till 28.02.2013. The closure benefit was paid to the petitioner only on 28.02.2013 by a cheque bearing No. 449439 for an amount of Rs. 2,03,960/- and yet a balance of Rs. 95,112/- was remaining. The fact also remains that the aforesaid payment did not include the salary for rendering service during the skeletal period. The petitioner was only paid an amount of Rs.99,098/- on 24.12.2013 as salary for his skeletal period against admitted due of Rs. 4,50,000/- for the period with effect from 01.07.2011 to 24.12.2013.
13. The admitted fact also remains that till date, the respondent authority has not issued any order of recovery of any amount nor the petitioner was asked to show cause before recovery. When the cheque amounting to Rs.99,098/- against unpaid salary for the period of skeletal service who paid, it was not intimated to the petitioner that recovery has been made. This writ petition was pending since 2014 and an affidavit has been filed in the year 2019, bringing a calculation sheet to show that there were some excess drawl and that the same could be determined after re-calculation and therefore, the recovery is sought for and accordingly the petitioner was not entitled for any arrears of salary. Thus the petitioner came to know from the first time that the arrear of salaries are sought to be recovered, only when the affidavit was filed.

14. The calculation sheet relied on by the respondents and as has been projected by the learned counsel Mr. Kalita that the petitioner was aware of such calculation as he was also one of the person who looked after such calculation, cannot be accepted in absence of any material to that effect inasmuch as though the calculation sheet reflects the name of the petitioner, however, the same had been signed by some other authority and not the petitioner.
15. It is also not in dispute that the recovery is not preceded by any decision on that regard or preceded by any order of recovery. Such recovery is discernible only from the affidavit filed by the respondent authority and till date there is no order of recovery.
16. The petitioner has also not been issued any show cause or any opportunity to present his case refuting such calculation.
17. The Hon'ble Apex Court in ***Mohindhr Singh Gill & Anr Vs- Chief Election Commissioner, New Delhi and Ors*** reported in ***1978 2 SCR 272*** held at paragraph 8 that when an authority makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the case in hand, no reason or order has been issued to determine the validity of the action of recovery, inasmuch as it is well settled that every state action must be supported by reason. As discussed hereinabove, the respondents had for the first time mentioned that a decision to recover the amount in question is taken but same is not discernible from any materials except a statement in the shape of affidavit. Such course of action in the given facts of the case cannot be treated as

an action supported by reason.

18. It is also not a case of the respondent authorities that while in service as skeletal employee, the petitioner had misappropriated any money and committed any fraud or used his position to draw excess amount. Even in the affidavit such allegation is not made. Therefore, the impugned action of recovery is not sustainable under law.
19. The Hon'ble Apex Court in a recent judgment in ***State of Andhra Pradesh –Vs- Dinavahi Lakshmi Kameswari*** arising out of Civil Appeal No. 399/2021, at paragraph 14 held that the direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. A further view was taken that though payment of interest cannot be used as a means to penalize the State Government, there can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate.
20. In the given facts and circumstances and the laws laid down by the Hon'ble Apex Court as discussed herein above, it is clear that the petitioner even after the retirement (VRS) continued to serve the institution with a hope and promise that he will get Rs. 15,000/- per month. More than 25 years had elapsed since the date of VRS and 8 years from release as skeletal employee but the respondent authorities till date had not issued any order of recovery, no fraud is also alleged against the petitioner in alleged overdrawal. Therefore, in the considered opinion of this

Court the petitioner cannot be deprived of his rightful salaries without due process of law and in view of settled proposition of law recovery cannot be allowed to be made in the given facts of the present case as discussed herein above.

21. The petitioner retired in the year 2006. On the date of the closure, the petitioner was not paid his full and final due. He continued as a skeletal employee but even the meager amount of monthly salary of Rs. 15,000/- was not paid to the petitioner regularly and monthly. The petitioner claims that even he could not honour his other dues like insurance installments for non-payment of salaries and for which reason, his insurance policy lapsed. The petitioner continued to suffer in that way and had to face hardship. Not only that, the respondent authorities without issuing any order of recovery and without taking a decision on the recovery, without intimating the same to the petitioner, unilaterally decided to recover the amount from the salary due to him and the same was intimated to the petitioner in the year 2019 by filing affidavit-in-opposition. In the considered opinion of this Court, such action on the part of the respondent authorities also led to hardship to the petitioner, inasmuch as the petitioner was allowed to face hardship by non-payment of his complete due under VRS, non-payment of his regular salary during skeletal period.
22. Equity demands that this Court should exercise its judicial discretion to relief a retired employee from hardship and restrain the authorities from recovering the alleged excess amount.
23. Accordingly, in view of the reasons as discussed herein above, it is directed that the respondent authority cannot and should not recover the



amount of Rs. 3,50,902/- from the salary due to the petitioner and accordingly, it is directed that the respondent authorities shall pay the petitioner his due amounting to Rs. 3,50,902/- against arrears of salary and Rs. 95,112/- against closure due within a period of six weeks from the receipt of a copy of this order to be furnished by the petitioner. The abovementioned amount shall bear an interest @ 4% with effect from 01.08.2014 on which date the present writ petition was filed.

24. With the aforesaid observation, discussions and reasons, this writ petition is allowed.

JUDGE

Comparing Assistant