

Court No. - 5

Case :- WRIT - A No. - 17494 of 2024

Petitioner :- Shashi Kumar

Respondent :- State Of Up And 4 Others

Counsel for Petitioner :- Anuj Mishra, Kunal Shah

Counsel for Respondent :- Kartikeya Saran, Archit Mandhyan, C.S.C.

Hon'ble J.J. Munir, J.

Order on Writ Petition.

The petitioner, was a Head Clerk with the Krishi Utpadan Mandi Samiti, Tanda, District- Rampur. He has retired from service on 30.11.2014. The petitioner's fixation was incorrectly done earlier by an order dated 15.07.2011. It was then rectified by an order dated 14.12.2023 passed by respondent nos. 3 and 4. In consequence of this order, the petitioner's fixation was revised to his advantage by the impugned order dated 09.08.2024. The order dated 14.12.2023 has been revoked and the order dated 15.07.2011 has been restored, seriously prejudicing the petitioner in the matter of determination of his emoluments.

It is averred in paragraph no. 50 of the writ petition that the order dated 09.08.2024, passed by respondent nos. 3 and 4, is one made without hearing the petitioner or giving him any opportunity to show cause. To the same effect are averments in paragraph no. 50 which say that the order is *prima facie* illegal because it has been passed without opportunity, whereas it entails civil consequences adverse to the petitioner.

The other order impugned is a sequel to the order dated 09.08.2024 where recovery of a sum of Rs. 4,20,045/- has been directed. This is an order dated 11.09.2024 passed by the Secretary, Krishi Utpadan Mandi Samiti, Tanda, District- Rampur.

Prima facie the impugned orders, being ones passed without any opportunity of hearing and adverse to the petitioner's interest, are manifestly illegal.

It is also argued by Mr. Kunal Shah, learned Counsel for the petitioner that the order of recovery would, in any case, be vitiated because the petitioner is a retired Group- C employee who was not responsible for the fixation of his emoluments *vide* order dated 14.12.2023. There is an undertaking given by the petitioner dated 23.02.2024 that, in case the fixation done *vide* order dated 14.12.2023 is incorrect, the petitioner would be liable to refund the excess amount.

In regard to the liability of Class- III or IV employee who has undertaken to refund in case of a fixation being found incorrect, Mr. Kunal Shah has relied upon a Bench decision of the Himachal Pradesh High Court in **S.S. Chaudhary v. State of H.P. through Principal Secretary, Information Technology and others, 2022 SCC OnLine HP 900**, where it is remarked in paragraph nos. 15 to 22:

"15. Now, coming to the next question as to whether even in the case of undertakings given by Class-III and Class-IV employees, recovery can be effected solely on the strength of Jagdev Singh's case (supra), the answer is clearly in negative.

16. Firstly, the undertaking given by the respondent in Jagdev Singh's case (supra), while opting for the revised pay-scale, was in pursuance of the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Since the respondent had submitted an undertaking under the said Rules that he would refund to the Government any amount paid to him in excess either by adjustment against future payment due or otherwise, he was held to be bound by such undertaking.

17. Additionally, the respondent had not retired from service on superannuation but he was compulsorily retired from service. Also, the respondent being a judicial officer was not holding a Class-III/Group-C post on the date he was compulsorily retired. It is in such circumstances that the Supreme Court held that the respondent was bound by the undertaking given by him and that the Government was justified in its action of seeking to recover excess payment that was made.

18. There is yet another reason for us to hold that the ratio in Jagdev Singh's case (supra) has no applicability because of situations (i) and (iii) forming part of paragraph 18 of Rafiq Masih (supra). Situation (i) clearly bars recovery from employees belonging to Class-III/Group-C service. Further, situation (iii) bars recovery from employees when excess payment has been made for a period in excess of five years before the order of recovery is issued.

19. Now, a very arduous situation would arise that even though

recoveries from employees belonging to Class-III/Group-C cannot be made in terms of situation (i) (supra) while in service, such recovery could be made from the retired Class-III/Group -C employees who have either retired or are due for retirement within one year of the order of recovery. It would lead us to a situation that although there could be a declaration given by a Class-III/Group-C employee while in service that excess payment could be recovered from him from future salary to be paid to him, which cannot be recovered in terms of situation (i), but in terms of situation (ii), as interpreted in Jagdev Singh's case (supra) recovery could be effected from his retirement benefits after the relationship of employer-employee ceases to subsist.

20. The Hon'ble Supreme Court in Rafiq Masih's case (supra) has consciously carved out situation (v) (supra), proceeding on the premise that recovery from retirement benefits, by asking the retired employee to refund excess amount, if any, received by him, if found to be iniquitous and arbitrary and thereby causing hardship, such step ought to be avoided.

21. Once this be the reason, it would be far-fetched to state that what the employer (State) cannot resort to against Class-III/Group-C employee while he is in service, such employer would be empowered to do so after retirement of the Class-III/Group-C employee. Obviously, if accepted, the same would amount to a distorted interpretation of the situations in Rafiq Masih's case (supra), which has to be eschewed.

22. Accordingly, we are of the considered view that the observations made in para- 11 of the Jagdev Singh's case (supra) must be confined to Class-I/Group-A and Class-11/Group-B officers. Therefore, we are inclined to uphold that despite undertaking given by Class-III/Group-C and Class-IV/Group-D employee, recovery cannot be effected solely on the strength of Jagdev Singh's case (supra)."

A prima facie case is made out.

Admit.

Issue notice.

Notice on behalf of respondent no. 1 is accepted by Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel, while that on behalf of respondent nos. 2 to 5 is accepted by Mr. Vinayak Ranjan, Advocate holding brief of Mr. Kartikeya Saran, learned Counsel. Both the learned Counsel for the respondents are granted two weeks' time to file counter affidavits.

List for **orders** on **12.12.2024** along with a report regarding status of pleadings.

Order on Civil Misc. Stay Application No. 1 of 2024.

Issue notice.

Until further orders of this Court, operation of the order dated 09.08.2024 passed by the Deputy Director (Administration/Marketing), Rajya Krishi Utpadan Mandi Parishad, District- Moradabad and the order dated 11.09.2024 passed by the Secretary, Krishi Utpadan Mandi Samiti, Tanda, District- Rampur, shall remain **suspended** and no recovery shall be made from the petitioner.

Let this order be communicated to the Deputy Director (Administration/Marketing), Rajya Krishi Utpadan Mandi Parishad, District- Moradabad through the Chief Judicial Magistrate, Moradabad and the Secretary, Krishi Utpadan Mandi Samiti, Tanda, District- Rampur through the Chief Judicial Magistrate, Rampur by the Registrar (Compliance) **within 48 hours.**

Order Date :- 28.11.2024

Prashant D.