

Dharmendra Jain and ors Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : May-05-2014

Appellant : Dharmendra Jain and ors

Respondent : State and ors

Judgement :

S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 1/10 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1) S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & 6 Ors. Vs. State of Rajasthan & Ors. & (2) S.B. Civil Writ Petition No.2852/2014 Vishnu Lal Dangi & Anr. Vs. State of Rajasthan & Ors. & (3) S.B. Civil Writ Petition No.3316/2014 Sunita Mori (Mali) Vs. State of Rajasthan & Ors. & (4) S.B. Civil Writ Petition No.3334/2014 Robin Chittora & 7 Ors. Vs. State of Rajasthan & Ors. & (5) S.B. Civil Writ Petition No.3411/2014 Prakash Kumar Suthar & 4 Ors Vs. State of Rajasthan & Ors. & (6) S.B. Civil Writ Petition No.3412/2014 Dr. Dilip Singh Parmar & 3 Ors. Vs. State of Rajasthan DATE OF

ORDER

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05. h May 2014 PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI REPORTABLE Appearance: Mr. Kuldeep Mathur]. Mr. Narpat Singh]. Mr. R.S. Choudhary]. for the petitioners. Mr. Shreekant Verma]. Dr. P.S. Bhati, AAG with Mr. S.S. Rathore, for the State. -- S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 2/10 BY THE COURT:

1. These writ petitions involving similar controversy are being disposed of by this common order, however, the facts are illustratively taken of SBCWP No.2351/2014- Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors., in which the respondent State has filed a reply also.

2. The petitioners were working in various positions in the National Rural Health Mission Scheme ('NRHM', for short) like Data Entry Operator, Asha-Supervisor, Accountant, Nurse Grade II, Ayush Doctor etc. The petitioners are aggrieved by the impugned order dated 05.06.2013 of the Medical & Health Department, Govt. of Rajasthan, Jaipur, by which they were informed that in the Central Government Scheme, NRHM, the Budget approval for their fixed monthly honorarium was to a lesser extent than what was being paid to them and, therefore, the excess amount of monthly honorarium paid to them under the Agreement of their employment, was ordered to be recovered back and henceforth only approved Budget amount would be paid to them as monthly fixed honorarium.

3. The petitioners have approached this Court for quashing of that order dated 05.06.2013 and, inter-alia, the learned counsel for the petitioners contended before this Court that the increase of 10% in the fixed monthly honorarium per year was envisaged in the agreement executed for their contractual employment, revisable on yearly basis, and the same was done by the competent authorities of the respondent, Medical & Health Department, like the Chief Medical & Health Officer and consequently while approving the Budget for S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 3/10 such Programme Implementation Plan (PIP) for the year 2013-14, the Central Government and the State Government ought to have taken into

account the payment of fixed monthly honorarium already being paid to the petitioners was more than the Budget approvals; and consequently the Budget accordingly should have been increased for these positions.

4. Learned counsel for the petitioners also brought to the notice of the Court that for same positions in the NRHM of the officers while the fixed monthly honorarium was increased, however, for the lowly paid employees like the petitioners, the monthly fixed honorarium was reduced, which has in turn seriously prejudiced them and such reduction in the approval of Budget is contrary to the contractual increase made in their fixed monthly honorarium from time to time even though they have been working for long periods now.

5. Upon issuance of the notices, the respondent- State has filed reply to the writ petition including the affidavit of the Secretary of the Medical, Health and Family Welfare & Mission Director, NRHM, Jaipur. The crux of the said reply-affidavit, as would be clear from the below quoted portions of the affidavit, is that since the Central Government has sanctioned the lesser amount despite recommendation of the State Government for Rs.9,600/- per month for Data Entry Operator only Rs.6,600/- has been sanctioned for 68 posts of Data Entry Operators, and the concerned Chief Medical & Health Officers were directed to reduce the monthly fixed honorarium S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 4/10 payable to these persons, and also effect the recovery of excess amount, if any paid. The relevant para 2 to 6 of the affidavit of the Secretary are quoted herein below for ready reference: -

2. Financial approval against Budget had FMR Code A.10- Programme Management for state Programme Implementation Plan 2013-14 (PIP2013 2014) was proposed to the Government of India @ Rs.9600/- per month for the district was recommended to Government of India for the contractual post of Date Entry Operator (DEO). But Government of India in the budget sanction in FMR Code A.10.2.6 approved Rs.6600/- per month for Data Entry Operator for existing 68 post for Deputy CM&HO (FW) and Deputy CM&HO (Health) for the Financial Year 2013-2014.

3. That since the Government of India had sanctioned as honorarium @ Rs.6600/- per month instead of @ Rs.9600/- per month for Data Entry Operator as demanded by the State Government, another supplementary PIP for 2013-14 was proposed and sent to Government of India for Data Entry Operator requesting in government of India to sanction @ Rs.3000/- as difference amount as actually proposed by State Government, and approved by GOI.

4. That in continuations of the above sanction the Administartion and Financial sanction was issued on 05.06.2013.

5. That it is further stated that since the Government of India had sanctioned lesser budget for the above PIP, necessary directions were issued to all S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 5/10 Chief Medical & Health Officers that compliance of the sanctioned PIP be followed strictly and no amount should not exceed the PIP sanction, and for and if any financial irregularity is found the CM & HO shall be wholly responsible as per letter dated 09.12.2013, 24.01.2014 and 18.02.2014.

6. It is further stated that the Government of India had also approved Rs.6600/- per month for Data Entry Operator in the PIP-2012-13.. 6. In the supporting reply of the State filed by the Chief Medical & Health Officer, Bhilwara, similar stand has been taken by the respondent State. The relevant portion of the said reply is also quoted herein below for ready reference: - That the reply to the ground (A) to (G) have already been given in the previous paras of the reply to facts and there is no need to repeat the same again and again, however, it is submitted that the project under which the petitioners are said to be working is the project run under the funds and finances of the Central Government and any remuneration which is to be paid to the employees of such project is to be paid as per the Programme Implementation Plan (PIP) for the said year. That the State government can only propose the monthly honorarium but the sanction is to be given by the central government. That the State Government for the post of Data Entry Operator proposed remuneration @ 9600/- per month but the PIP, 2013-14 but the budget sanction in FMR Code A.10.2.6 approved Rs.6600/- per month for Data Entry

Operator for S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 6/10 existing 68 posts. That any amount if any paid due to irregular fixation or under any wrong impression can be recovered. That the recovery cannot be limited to fraud and misrepresentation cases and public ex- chequer cannot put loss by any penny by the cause of any irregularly paid amount or overpayment., That the Hon'ble Apex Court in the case of Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. reported in (2012) 8 SCC417 has held that any amount paid/received without authority of law can always be recovered and has also held that recovery of excess salary paid due to irregular/wrong pay fixation can be recovered. Therefore, the respondent State can recover any such amount which has been wrongly paid to the petitioners and other grounds would be urged at the time of arguments.. 7. Dr. P.S. Bhati, learned Additional Advocate General also submitted that the State Government was bound by the funds and budget sanctioned by the Central Government, which finances such NRHM scheme to the 100% extent and though the State Government recommended for approval of the Budget for higher slabs, as quoted above, but the Central Government has not accepted the request of the State Government and consequently the requisite directions were issued to the concerned Chief Medical and Health Officers for effecting the recovery and also to pay the only the reduced amount of monthly honorarium, as approved by the Central Government for these positions.

8. Having heard the learned counsels for the parties, this S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 7/10 Court is of the opinion that the State Government cannot be faulted in issuing the requisite directions vide the order dated 05.06.2013 to the concerned employer at district level, namely, the Chief Medical and Health Officers, to reduce the amount of monthly fixed honorarium for the various positions in NRHM as per Budget approval given for these specific programmes under the NRHM, which is fully funded and financed by the Central Government. It is reflected in the correspondences and the affidavits of the respondent State that

the State Government had recommended for approval of the higher amounts of fixed monthly honorarium but the Central Government has apparently not accepted the request of the State Government. The State Government was, therefore, bound to issue such directions as has been done in the impugned communication dated 05.06.2013, but the question, on the contrary, is as to whether the recovery of the past amount of monthly honorarium paid to the petitioners can also be effected by the State Government on account of such lesser Budget approval given by the Central Government for the Financial Year 2013-14.

9. The petitioners are lowly paid contractual employees, were working in various positions of NRHM Scheme like Data Entry Operators, Asha-Supervisor, Accountant, Nurse etc., and their monthly fixed honorarium @ Rs.6600/- which was increased under the agreed contractual terms @ 10% per year on yearly basis, has already taken them to the higher level and some of them are getting monthly honorarium ranging between Rs.9600/- and above, and that S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 8/10 is why the respondent State Government had recommended for sanction of Budget to the Central Government @ Rs.9600/- per month for the position of Data Entry Operators, for example. Merely because the Central Government has not sanctioned the said Budget but the payments were already made to the petitioners, this Court is of the opinion that no recovery deserves to be effect of the alleged excess amount so paid to these lowly paid petitioners. They are already lowly paid employees and the low amount of monthly fixed honorarium already paid to them is presumed to have been spent by them and they cannot be expected cough up the said alleged excess amount at this stage and that too in the one go.

10. It is true, as held by the Hon'ble ApexCourt in the case of Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. reported in (2012) 8 SCC417 that question of fraud or misrepresentation on the part of the recipient or even if payers and the payee both are at fault, then at best, the mistake is mutual and such

questions cannot be brought before the Court but the Hon'ble Apex Court in para 14 of the said judgment also observed that otherwise it would amount to unjust enrichment. This Court in respectful agreement of the said judgment finds that there is no question of unjust enrichment in the present case. The monthly fixed honorarium were paid to these persons under the contracts executed with them by the authorities of the State Government and as per the terms of the contract only the 10% increase in the monthly fixed honorarium was given to them. The correspondence between the S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs. State of Rajasthan & Ors. Order dt:

05. 05/2014 9/10 State Government and the Central Government clearly shows that while the State Government was perusing for grant of higher Budget approvals for these persons, but the Central Government, for undisclosed reasons, has chosen only to sanction such lesser amount.

11. The contentions raised by the learned counsel for the petitioners that for some of the positions of higher officials, the monthly fixed honorarium were increased and the approval for them was given by the Central Government, subject to verification, and if it is true, all the more sanction of the lesser amount for the lowly paid employees like the present petitioners, cannot be said to be per se justified, more so when no such specific reasons have been disclosed in the affidavit filed in reply to the present writ petition as well.

12. In these circumstances, this Court is of the considered opinion that the recovery of any amount on account lesser Budget approval, should not be made from the present petitioners, however, for grant of monthly fixed honorarium for future period, both the parties are at liberty to arrive at the revised fixed monthly honorarium as per the Budget approvals in the fresh yearly contractual employment of the present petitioners and the persons like them. The petitioners are also at liberty to make suitable representations to the State Government or the Central Government for increase of their monthly fixed honorarium in these circumstances. They may rely upon such material as is available with them in support of their representations. The respondent authorities of the State Government S.B. Civil Writ Petition No.2351/2014 Dharmendra Jain & Ors. Vs.

State of Rajasthan & Ors. Order dt:

05. 05/2014 10/10 and the Central Government are expected to consider such representation objectively and fairly and then decide the same in accordance with law.

13. It may also be noted that the impugned recovery of the alleged excess amount paid to the petitioners is directed to be made without even affording the opportunity of hearing to them. This is in clear breach of principles of natural justice. The said recovery of the alleged excess amount paid cannot be said to be a recovery of the money paid under a mistake of fact or law covered by the provisions of Section 72 of the Contract Act. It was paid under the valid agreement executed between the parties and the same is sought to be recovered back only on account of approval of lesser amount of the Budget by the Central Government. Therefore, for these reasons also, the recovery of the alleged excess amount from the petitioner would be illegal and cannot be upheld.

14. Therefore, these writ petitions are disposed of with aforesaid liberty to the petitioners and while holding that no recovery of the amount allegedly excess paid to them, deserves to be made in these circumstances because of such lesser Budget approval given by the Central Government in the aforesaid NRHM Scheme. These directions will apply to all such similarly situated persons working in NRHM, even if they have not filed any writ petition in this Court. No costs. A copy of this order be sent to the concerned parties forthwith. (Dr. VINEET KOTHARI), J.

DJ/- 2, 5, 10 101, 103 & 104

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