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Court : Karnataka Kalaburagi

Decided On : Jul-18-2016

Judge : Anand Byrareddy & L. Narayana Swamy

Appeal No. : Writ Appeal No. 200529 of 2014 (S-RES)

Appellant : Narasing

Respondent : The State of Karnataka, by its Secretary Department of Education for Primary and Secondary, Bengaluru and Others

Judgement :

(Prayer: This Writ Appeal is filed under Section 4 of the Karnataka High Court Act, praying to set aside the order of the Learned Single Judge dated 18.09.2014 passed by the Learned Single Judge in Writ Petition No.205377-78/2014 further be pleased to allow the writ petition.)

Anand Byrareddy, J.

1. Heard the learned counsel for the appellant and the learned Government Advocate.

2. The appellant is before the court questioning the order of the learned Single Judge in the following circumstances:-

The appellant was working as an Assistant Teacher in the sixth respondent institution, namely, Sathyaniketan Higher Secondary School, Bhalki, Bidar District. Prior to which, the appellant was working as a graduate Head Master at Panchasheela Primary School and it was an aided school and the post of the appellant was also a grant-in-aid post. Subsequently, Panchasheela Primary School was said to have been closed down. Therefore, the appellant and other teachers had approached this court seeking a direction to the fourth respondent namely, the Deputy Director of Public Instructions, Bidar to inspect Panchasheela School, to ascertain if there were any excess teachers in the said school and if there were, they should be re-deployed to some other aided institutions.

It transpires that the appellant and six other teachers of the same institute were treated as excess teachers for the period from March 2000 to August 2002, till the time when the first respondent provided redeployment to the sixth respondent - School. In the said re-deployment order, the first respondent had mentioned at Clause-6 that arrears of the previous period could be claimed.

It transpires that the appellant, after joining as an Assistant Teacher at the sixth respondent School, had made a request for payment of arrears of salary for the above said period as an excess teacher. The fourth respondent, on considering the request made by the appellant and six other teachers, had approved the payment of arrears. According to the appellant, he was fully entitled to the same. The fifth respondent, after making an inquiry as to the entitlement, had made a demand of Rs.3,47,217/- on 2.8.2005. Subsequent to such withdrawal of the arrears by the appellant, a direction appears to have been issued by the fifth respondent to the sixth respondent to recover the sum mentioned above from the appellant, since the said disbursement was incorrect and the appellant was not entitled to the same.

The appellant therefore had approached the first respondent in an appeal. The first respondent is said to have set aside the order passed by the fifth respondent directing recovery of the amount. Though the appeal was allowed by the first

respondent, the fifth respondent is said to have passed yet another order for recovery of the amount from the appellant's salary in the year 2009. The appellant had again approached the first respondent in an appeal challenging the recovery order. Since no interim order was granted by the first respondent, the appellant was constrained to approach this court by way of a writ petition in WP 81420-421/2010, to consider his interim application for stay. It is only after a direction was issued in the said writ petition, that the first respondent had granted an order of stay of recovery.

In the meanwhile, on the directions of the second respondent, an independent inquiry was said to have been initiated against the official, who had recommended the grant of payment of salary which was received by the appellant in the first instance and who had also sanctioned salary to the appellant, to be conducted by a retired District and Sessions Judge and the inquiry was said to have been dropped as they were not found guilty of indiscipline, since the payment was found to be legal and valid. Though the inquiry was dropped against the officials, who had approved and made payment of arrears of salary to the appellant, the first respondent insisted that the second respondent recover the arrears so paid to the petitioner therein, without accepting the inquiry report. Once again, the fifth respondent is said to have issued a memo to the sixth respondent for recovery of the amount from the appellant.

The appellant was again constrained to file a writ petition in WP 103569/2013. It was allowed with a direction to the respondents to treat the impugned memo as a show-cause notice and directing the appellant to file his objection and contest the matter. Accordingly, objections are said to have been filed by the appellant, but without considering such objections, the fifth respondent is said to have issued a direction to the sixth respondent to recover the amount. The appellant was again constrained to approach this court by way of yet another writ petition in WP 202213/2014, challenging that order. This court disposed of the writ petition with a direction that the order dated 1.2.2014 shall be treated as a show-cause notice and the appellant was permitted to file his objections, which the appellant had done. The appellant was in the expectation that an order would be passed by the fifth respondent after taking into account the contentions that had been put forth by

him. However, it is the appellant's allegation that the fifth respondent, ignoring the direction issued by this court again directed the sixth respondent to recover the amount. The appellant had filed yet another writ petition in WP 205377/2014, challenging the direction issued by the fifth respondent to the sixth respondent, by virtue of which, the appellant's salary was reduced by 50%. The learned Single Judge has dismissed the writ petition and therefore the present writ appeal.

3. The learned counsel for the appellant would submit that the learned Single Judge has summarily rejected the writ petition immediately on appearance of the respondents after the service of notice. The learned Single Judge has opined that the records having been secured, it was noticed that the appellant had never worked in any aided institution during the aforesaid period and therefore has opined that since the appellant had not rendered services for the period in question, he was not entitled to any such arrears and salary and it is in that background that the present appeal is filed.

The learned Counsel would submit that the reasoning of the learned Single Judge is not in consonance with the settled legal position insofar as such recoveries being made long after the amount has been paid and seeks to draw attention to a judgment of the Supreme Court in *State of Punjab vs. Rafiq Masih*, AIR 2015 SC 696 and would submit that the entire case law on this aspect has been reviewed and digested in the said decision and the Supreme Court has also laid down norms to be applied in seeking such recovery and would submit that the case stands covered on all fours by the said judgment.

4. The learned Government Advocate, would however seek to justify the reasoning of the learned Single Judge and would submit that the judgment cited by the Counsel for the appellant would itself indicate that there is no hard and fast rule as to whether or not, an employer could recover such amounts paid under mistake and therefore, since it was after a due inquiry that it was found that the appellant had not discharged duties during the relevant period, the recoveries were directed to be made, cannot be found fault with.

5. However, from a reading of the above decision of the Supreme Court, it would appear that the view taken by the Supreme Court is otherwise.

Insofar as the precedents that were considered by the Supreme Court in arriving at its opinion are the judgment in Syed Abdul Qadir vs. State of Bihar, (2009)3 SCC 475, wherein the Supreme Court has observed that 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 or in cases where the error is detected or corrected within a short time of wrong payment.

In this regard, reliance is also placed on Sahib Ram vs. State of Haryana, 1995 Supp.(1) SCC 18; Shyam Babu Verma vs. Union of India, (1994)2 SC 521; Union of India vs. M.Bhaskar, (1996)4 SCC 416 and other cases including Purshottam Lal Das vs. State of Bihar, (2006)11 SC 492.

It is further observed that in Syed Abdul Qadir s case, supra, the Supreme Court had recognised that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, 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. It was also held that any such recovery would be in violation of Article 14 of the Constitution of India. The logic behind that was that it would be impossible for an employee to bear the financial burden of refund of payment received wrongfully for a long span of time. Since a government employee would be primarily dependant on his wages and if a deduction is to be made from his wages, it should not be a deduction which would make it difficult for the employee to provide for the basic needs of his family and on the above consideration, the Supreme Court had taken the view that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek refund of the payments mistakenly made to the employee.

In Syed Abdul Qadir s case, supra which pertained to teachers, taking into consideration the submission of the Counsel for the teachers that the majority of the beneficiaries had either retired or were on the verge of it and keeping in view the peculiar facts and circumstances of the case on hand and to avoid any hardship, the Supreme Court took the view that no recovery of the amount that has been paid in excess to the teachers should be made and has then summarised the following situations, wherein recoveries by workmen would be impermissible in law.

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.

(v) In any other case, where the Court arrives at the conclusion, that recovery is 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.

It is further contended that in the present case on hand, the amount pertained to the period from March 2000 to August 2002, which was disbursed in the year 2005 and the action to recover such amount was taken four months prior to the appellant attaining the superannuation.

It is not in dispute that the appellant was a Group-C employee and given the above principles laid down by the Supreme Court, it would not be permissible for the employer to recover the amounts even if it had been paid by mistake. On the other hand, the appellant would emphasize and stress that he was entitled to the

same and it was disbursed only after verification of the entitlement or otherwise.

It is also pointed out that the learned Single Judge has been swayed by the fact that an inquiry was held against the officers, who had been instrumental in disbursing the amount in the first instance, but however, has failed to notice that the enquiry was dropped after it was found that the disbursement made was in order.

Having regard to the law laid down by the Supreme Court, even if there was a mistake in disbursing the amounts, the employer was not enabled to recover the amounts, given the facts and circumstances of the case.

We fully agree with the Counsel for the appellant, as it is indeed the law laid down by the Supreme Court.

Accordingly, the appeal is allowed. The order of the learned Single Judge is set aside. Annexures - J and I are quashed.

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