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Suresh Kumar Ram Vs. Welfare

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Court : Jharkhand

Decided On : May-12-2015

Appellant : Suresh Kumar Ram

Respondent : Welfare

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 6638 of 2013 ... Suresh Kumar Ram Petitioner -V e r s u s-

1. The State of Jharkhand through the Secretary/ Principal Secretary, Department of Welfare, Ranchi

2. The Deputy Secretary, Department of Welfare, Ranchi

3. The Commissioner, Tribal Welfare, Ranchi

4. The Project Director, Integrated Tribal Development Authority(ITDA), Chaibasa, Singhbhum East

5. The District Welfare Officer, Singhbhum East, Jamshedpur ...Respondents CORAM: - HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : - M/s Manoj Tandon, Navin Kr. Singh & Shiv Shankar Kumar, Advs. For the Respondents : - Mr. Prem Pujari Roy, JC to GA. .... 02/12.05.2015 Heard learned counsel for the parties. The petitioner was substantively posted as Clerk in the District Welfare Office, Seraikela-Kharsawan. He was transferred to the office of

MESO Project Office, Chaibasa on 18.09.2008 wherefrom he was placed under deputation vide order at Annexure-2 dated 02.03.2009 in the office of Commissioner, Tribal Welfare at Ranchi. On perusal of the order of deputation, it is clear that it is not hedged with any condition as such. Thereafter though he was transferred to the office of District Welfare Office, East Singhbhum Jamshedpur on 04.12.2012, Annexure-7, but his deputation continued in the office of Tribal Welfare Commissioner at Ranchi. Earlier he approached this Court in W.P.(S) No. 4228 of 2013 with a grievance that his Last Pay Certificate is not being released pursuant to his transfer from the office of MESO Project, Chaibasa to the office of the District Welfare Office, Singhbhum East while he is on deputation in the office of Tribal Welfare Commissioner, Jharkhand, Ranchi. In terms of the judgment dated 03.09.2013, Annexure-8, the writ petition was disposed of by directing the concerned authorities to take a decision in respect of the petitioner's grievances. While issuing the last pay certificate which is at Annexure-10, however, the office of the Project Director, Integrated Tribal Development Authority (in short ITDA), Chaibasa, Singhbhum East enclosed a chart showing an amount of Rs. 1,66,070/- recoverable from the petitioner under different heads. It appears that a separate communication was also issued to the District Welfare Office, East Singhbhum, Jamshedpur dated 21.09.2013, which is enclosed as Annexure-B to the counter affidavit in respect of the recovery of the aforesaid amount of Rs. 1,66,070/-. This has aggrieved the petitioner to approach this Court along with three more prayers. The petitioner, however, is not persisting with prayer nos. 2, 3 and 4 as they either have been granted or are being considered by the respondents. However, he persists with a prayer relating to challenge to the decision dated 21.09.2013 of the Project Director, ITDA, Chaibasa, Singhbhum East whereunder the aforesaid amount of Rs. 1,66,070/- is being sought to be recovered from his salary on account of alleged excess payment. Learned counsel for the petitioner informs that the said amount has already been recovered. While assailing the said recovery undertaken, learned counsel for the petitioner, however, confines his submission to part of the recovery which is based upon letter dated 02.12.2012 bearing Memo No. 234(V), Annexure-6, issued by the Principal Secretary, Finance Department, Government of Jharkhand. According to the petitioner, the component of House Rent Allowance and Transport Allowance paid to the petitioner for the period from

April, 2009 to February, 2012 is being illegally recovered on the basis of the order dated 02.02.2012, Annexure-6, which cannot have retrospective effect. Therefore, part of the recovered amount which relates to HRA and Transport Allowance for the said period should be refunded to the petitioner. Learned counsel for the respondent -State, who has filed counter affidavit, seeks to justify the aforesaid recovery based upon the same letter of 02.02.2012. Though averments have been made at para-15 that the order of deputation contained a condition that he would not be entitled to any Transport Allowance and House Rent Allowance, but the same are not borne out in the order of deputation at Annexure- 2 as already indicated hereinabove. Annexure-6 dated 02.02.2012 communication of the Principal Secretary, Finance Department, Government of Jharkhand is to the effect that an employee of the State Government would be entitled to HRA/Transport Allowance being admissible to his substantive place of posting and not based upon place of his deputation. Since the petitioner's substantive place of posting was at Chaibasa and he was allowed to avail HRA and Transport Allowance on his deputation in the office of Commissioner, Tribal Welfare at Ranchi, therefore, the same being inadmissible have been recovered by the respondent. This is the justification for the aforesaid recovery by the respondents. No other instructions or circulars have been relied upon by the respondents to support decision to recover the aforesaid amounts. Having considered the aforesaid background of the case in relation to subsisting grievances of the petitioner as made out in para-1(i) to the writ petition, it is to be held that communication dated 02.02.2012, which is to the effect that an employee of the State Government would be entitled to House Rent Allowance and Transport Allowance only admissible to his substantive place of posting and not as per his place of deputation, cannot be said to have retrospective effect to justify the recovery of payments made on that account to the petitioner by the Competent Authority under whom he was working. This is in essence the area of dispute between the parties. In this regard the ratio laid down by the Hon'ble Supreme Court in a judgment rendered in the case of P. Mahendran and Ors. Vs. State of Karnataka and Ors. reported in (1990) 1 SCC411is well settled. The relevant para 5 is reproduced hereinbelow:-

5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter. In view of the observation made hereinabove, part of the recovery under the decision dated 21.09.2013 in relation to the payment made under House Rent Allowance and Transport Allowance from April, 2009 to February, 2012 on his deputation under the office of Commissioner, Tribal Welfare at Ranchi at the rate admissible at Ranchi can not be sustained in the eye of law. In such circumstances and in view of the findings recorded hereinabove, the respondents are required to work out the component of House Rent Allowance and Transport Allowance for the said period and if it has been recovered, the same be refunded to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order. Prayer made in para (1)(i) in writ petition is allowed in the manner indicated hereinabove. (Aparesh Kumar Singh, J.) A. Mohanti/Kamlesh/

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