

State of Rajasthan Vs. Ram Narayan

State of Rajasthan Vs. Ram Narayan

SooperKanoon Citation : sooperkanoon.com/753214

Court : Rajasthan

Decided On : Apr-19-2001

Reported in : 2002(2)WLC81; 2001(3)WLN203

Judge : B.J. Shethna, J.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : S.B. Civil Writ Petition No. 2671 of 1999

Appellant : State of Rajasthan

Respondent : Ram Narayan

Advocate for Def. : Sandeep Bhandawat and; H.S. Rathore, Adv.

Advocate for Pet/Ap. : P.R. Singh, Adv.

Disposition : Petition dismissed

Judgement :

Shethna, J.

1. The petitioners - State of Rajasthan, Director Secondary Education and District Education Officer, Nagar have filed this petition under Article 226/227 of the Constitution challenging the judgment and order dated 26.3.1999 passed by the Rajasthan Civil Services Appellate Tribunal Bench at Jodhpur (for short 'the

Tribunal') in Appeal No. 200/98.

2. The respondent No. 1 is working as Physical Teacher Grade- III. He was paid advance increment for B.P.Ed. but later on by an order dated 31.7.98, the District Education Officer - petitioner no. 3 ordered recovery of the excess amount of Rs. 307-paid to the respondent No. 1 per month, which would come to about Rs. 2,000/- in all, on the ground that by mistake, the said amount was paid in excess during the last six years. The same was challenged by the respondent No. 1 by way of appeal no. 200798 before the learned Tribunal. The said appeal was allowed by the learned Tribunal relying upon the judgment of the Hon'ble Supreme Court in case of Shyambabu and ors. v. Union of India (1), wherein the Hon'ble Supreme Court held that if the excess amount is paid without any fault of the person, then the same cannot be later on recovered from him.

3. Learned counsel Mr. Bhandawat appearing for the respondent No. 1 Teacher submitted that this petition is squarely covered against the petitioners by recent division bench judgment of this Court in case of Premlala Gaur v. State of Raj. (2), therefore, in terms of the aforesaid judgment, this petition should be dismissed. However, learned counsel Mr. Singh for the petitioners relying upon the judgment of the Hon'ble Supreme Court in case of State of Haryana & Anr. v. O.P. Sharma & Ors. (3), submitted that the interim ad-hoc relief given and excess amount paid to the employees can always be recovered in phase manner after fixation of dearness allowance. Such recovery cannot be termed as arbitrary, unreasonable, unfair or illegal.

4. Learned counsel Mr. Singh submitted that it was the mistake of the petitioners in paying excess amount to the respondent Teacher and when the same has come to their notice, they have corrected the same and tried to recover the said amount by the impugned order. He, therefore, submitted that it is always not open for the State Government to correct its mistake later on as and when it comes to its notice. In support of his submission, Mr. Singh has relied upon the judgment of the Hon'ble Supreme Court in case of O.P. Sharma (supra) and submitted that this petition should' be allowed as the division bench of this Court in Premlata's case (supra) has never considered this judgment. However, learned counsel Mr.

Bhandawat submitted that the facts of the aforesaid case in O.P. Sharma (supra) were totally different and the same have no application to the facts of this case. He also submitted that the division bench of this Court while deciding Premlata's case (supra) considering as many as 3 judgments of the Hon'ble Supreme Court, namely,

(1) 1994 (2) S.C.C. 521 (supra)

(2) 1995 S.C.C. (Suppl.I) 149 (4)

(3)A.1.R. 1997 S.C. 2776(5)

and also considered the three judgments of this Court namely,

(1) 1999(2) W.L.C. (Raj.) 353 (6),

(2) D.B. Civil Special Appeal (Writ) No. 27272000 (7) and

(3) Writ petition No. 1110/84 (8)

and it was held that if the excess salary is paid to the person and there was no mistake on the part of the Teacher and particularly when recovery against others was dropped in view of the earlier decision of the High Court, then the State Government cannot be permitted to recover such excess amount paid to the other teachers. Learned counsel Mr. Bhandawat has also relied upon the latest judgment of the Hon'ble Supreme Court in case of Ajay Jadhav v. Government of Goa and Ors. (9).

5. Having carefully considered the judgment of the Hon'ble Supreme Court in case of O.P. Sharma (supra), I am of the opinion that the aforesaid judgment has no application to the facts of the present case. Learned counsel Mr. Bhandawat was right in submitting that this petition was squarely covered in favour of the respondent No. 1 by the division bench judgment of this Court in Premlata's case (supra). It was not disputed by learned counsel Mr. Singh for the petitioners that in view of the earlier judgment of this Court, the State Government itself dropped the proceedings of recovery against other Teachers. In that view of the matter, it was not open to them to challenge the order passed by the Tribunal in this petition.

6. Before parting, it must be stated that this petition is filed under Article 227 of the [Constitution of India](#). The scope of which is very narrow and limited as held by the Hon'ble Supreme Court in case of Mohd. Yunus v. Mohd. Mustaqim (10), wherein the Hon'ble Supreme Court has held that this Court cannot even interfere with error of law committed by the subordinate court or Tribunal.

7. In this case, the impugned order at Annex. I is based upon the judgment of Hon'ble Supreme Court in case of Shyam Babu (supra). In view of the above, it cannot be said that the learned Tribunal has committed any error which calls for interference by this Court under Article 227 of the Constitution.

8. In view of the above discussion, this petition fails and is dismissed.

9. Stay petition is also dismissed.

10. Interim relief granted earlier stands vacated forthwith.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com