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**Dakshinamoorthy Vs. the Union of India, Represented by Its General Manager, Integral Coach Factory and Another**

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**SooperKanoon Citation** : sooperkanoon.com/953468

**Court** : Chennai

**Decided On :** Nov-27-2012

**Judge** : K. Chandru

**Appeal No.** : W.P.No.8351 of 2012 and M.P.Nos.1 and 2 of 2012

**Appellant** : Dakshinamoorthy

**Respondent** : The Union of India, Represented by Its General Manager, Integral Coach Factory and Another

**Advocate for Pet/Ap.** : For the Petitioner: R. Sankarasubbu, Advocate. For the Respondents: R1, V.G. Sureshkumar, CGSC, R2, C.K. Chandrasekar, Advocate.

**Judgement** :

(This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the impugned order issued by the second respondent herein made in his order Memo No.CCPC/S.Pension/2009, dated 24.1.2012 and quash the same as illegal and direct the second respondent to pay the monthly pension of Rs.13,090/- paid in the month of November, 2011 and continue to pay the monthly pension of Rs.13,090/- paid to the petitioner. )

This writ petition is filed by the petitioner seeking to challenge an order dated 24.01.2012 passed by the second respondent State Bank of India and after setting aside the same, seeks for a direction to the second respondent to pay the monthly pension of Rs.13,090/- paid during November, 2011 and continue to pay the pension at the same rate to the petitioner.

2. The writ petition when it came up for hearing on 03.04.2012, this court ordered notice of motion and had granted an interim stay. The matter was directed to be posted along with W.P.No.10469 of 2012. On notice, the first respondent employer has filed a counter affidavit, dated 31.10.2012. In the counter affidavit, in paragraphs 3 to 7, it was averred as follows :

"3. With regard to the averments set out in paragraphs 1 and 2 of the affidavit, I state that the services of the petitioner, Emp.No.568309, Technician Grade-I, who was working in Electrical Department ceased with this administration with effect from 30.11.2008, on his attaining the age of superannuation. At the time of retirement he had completed 33 years and 8 months of qualifying service and was drawing pay of Rs.14,000/- in Pay Band of Rs.5200-20200 + 2800 Grade Pay. I state that since major disciplinary proceeding was pending against the petitioner, at the time of his retirement, 100% pension was provisionally sanctioned with effect from 1.12.2008 in terms of Railway Services (Pension) Rules 1993. Accordingly, the provisional pension calculated was Rs.7000/- plus Dearness Relief as his last pay drawn was Rs.14000/- in the pay band of Rs.5200-20200 + Grade Pay.

4. With regard to the averments set out in para-3 of the affidavit, I state that the other settlement benefits like Gratuity, Commutation of pension, etc. were not paid till the finalisation of the disciplinary proceeding. On 26.5.2009, an order cancelling the charge memo issued earlier on 17.7.2008 against the petitioner was received from Disciplinary Authority, without prejudice to initiate action under Discipline and Appeal Rules. However, after the finalisation of disciplinary proceeding as the petitioner was free from charges, all the settlement benefits were paid to the employee as follows:

Superannuation pension: Rs.7000/- + Relief w.e.f.1.12.2008

Less Commutation (40%): Rs.2800/-

Reduced pension: Rs.4200/- + Relief (as admissible)

Death cum Retirement Gratuity: Rs.267960/- (16.5 x 16240)

Commutation: Rs.275319/-

Insurance: Rs.18322/-

The superannuation pension of the petitioner was reduced to Rs.4200/- + Relief after deduction of 40% commutation of pension of Rs.2800/-. The rate of relief is subject to revision from time to time in accordance with the order issued by the Ministry of Personnel, Public Grievances and Pension.

5. I further submit that consequent on regularisation of pension, sanction was accorded for the payment of Rs.2,75,319/- being the lump sum for the commutated value of Rs.2800/- (that is 40% on Rs.7000 being superannuation pension) to Shri M.Dakshinamoorthy in his favour. In this regard, a revised Pension Payment Order was sent to Pension Disbursing Authority, vide No.AES/SETT/13479/MD, dated 7.8.2009.

6. I further submit that the Pension Disbursing Authority has to disburse the pension after the deduction of the commutated value according to the revised Pension Payment Order issued on 7.8.2009.

7. I therefore submit that the pension of Rs.4200/- + Relief paid in the case of Shri M.Dakshinamoorthy after deduction of 40% of commutation of pension is in order as per the extant rules."

3. The stand taken by the second respondent State Bank of India as set out in their counter affidavit dated 16.7.2012, in paragraphs 7,9 and 10 reads as follows :

"7. I submits that in the case of the petitioner, it was found out during December, 2011 that his pension had been erroneously opened under the Fifth Pay Commission instead of Sixth Pay Commission. The excess payment on account of higher percentage of Dearness Allowance had been made from December 2008 to

November 2011 (three years) worked out to Rs.1,12,700/- and the same was decided to be recovered in monthly installments from December 2011 onwards at the rate of Rs.3,000/- per month. The lowering of Dearness Allowance and the deduction of excess payment had resulted in reduction of the monthly pension drawn by the petitioner, which has been duly informed to him vide letter dated 03.01.2012.

9. I submit that the Second Respondent has acted strictly in accordance in law and there is no infirmity either in the impugned decision or the decision making process warranting interference. As pointed out by the Division Bench of this Hon'ble Court in Indian Bank Vs. Hemavathy Rajan (2005 Writ Law Reporter 703), the binding regulations dated 18.04.1991 issued by the Reserve Bank of India envisage that once an excess payment made to a pensioner comes to the notice of the paying branch, it is given the right to adjust the same against the amount standing to the credit of the pensioner's account to the extent possible and then call upon the pensioner to refund the shortfall. It has been further ruled therein that the said regulations do not contemplate a prior notice to the pensioner before adjustment, and that when payment in excess of entitlement is not in dispute, no prejudice is caused to the pensioner for want of notice prior to adjustment and therefore principles of fair play is not violated. In view of this settled legal position, the alleged violations of principles of natural justice and Article 21 of the Constitution are imaginary and cannot be countenanced.

10. I submit that the excess payment was not made by applying any wrong principle by the employer. On the contrary, it was occasioned on account of an inadvertent error committed in a purely banking transaction while computing monthly pension, which the petitioner was aware but had conspicuously failed to disclose till it was found out during audit. Inasmuch as the petitioner does not have any disagreement, much less any real or substantial dispute, that the excess payment had been mistakenly paid to him while disbursing pension, it undoubtedly amounts to an unjust enrichment made by him at the cost of public exchequer that entitles the respondent to its restitution as recognised in common law and statutorily provided in Section 72 of the Indian Contract Act, 1872, and the petitioner cannot take any exception to the same. It is equally a well known

banking practice that a customer, while opening an account, also undertakes to refund any excess credit in his account with the banker. Moreover, having due regard to the age of the petitioner and avoid sudden inconvenience or hardship to the petitioner, the impugned recovery of the excess payment to the tune of Rs.1,12,700/- has been spread over in easy instalments of Rs.3,000/- per month and that too, without charging any interest for delayed repayment. In this incontrovertible fact situation, the petitioner ought to have co-operated with the second respondent in recovering its legitimate dues in an amicable manner instead of prosecuting the instant writ petition abusing the legal process with ulterior motives to retain the illegal gains indefinitely. "

4. Already this court in W.P.No.10469 of 2012 in respect of an another employee R.N.Sankaran, vide order dated 19.11.2012 had rejected the contentions and in paragraphs 7 and 8, it was stated as follows :

"7. However, the petitioner has not justified receiving of excess amount than what he is entitled to. In such circumstances, it is necessary to refer to a judgment of the Supreme Court in Registrar, Cooperative Societies, Haryana Vs. Israil Khan and others reported in (2010) 1 SCC 440, wherein the Supreme Court in paragraphs 9 and 10 had held as follows :

9. What is important is, recovery of excess payments from employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, courts will not use their discretion to deny the right to recover the excess payment.

10.....There was no question of any wrong calculation or erroneous understanding of the legal position. Most of the employees who received similar relief have refunded or have agreed to refund the excess payment. Making any exception in the case of the respondents would also lead to discrimination."

8. Very recently, the Supreme Court in Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others reported in 2012 STPL (Web) 437 SC had reviewed all previous cases including a three judge bench judgment of Syed Abdul Qadir's case and held in paragraphs 14 to 17 as follows :

"14. We may point out that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as tax payers money which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered."

5. In the light of the above, there is no case made out by the petitioner. Hence the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

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