

Budh Ram And Others vs State Of Haryana And Others on 22 May, 2009

Bench: T.S.Thakur, Jasbir Singh, Surya Kant

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of decision 22nd May, 2009

(1) Civil Writ Petition No.2799 of 2008
Budh Ram and others .

Petitioners

Versus

State of Haryana and others

...Respondents

(2) Civil Writ Petition No. 1015 of 2008
Km. Sahib Kaur

...Petitioner

Versus

State of Haryana and others

...Respondents

(3) Civil Writ Petition No. 1608 of 2008
Sunder Lal and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(4) Civil Writ Petition No. 2484 of 2008
Veena Sapra

...Petitioners

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd and Others

...Respondents

(5) Civil Writ Petition No. 3265 of 2008
Data Ram

...Petitioner

Versus

State of Haryana and others

...Respondents

(6) Civil Writ Petition No. 3944 of 2008
Paramjit Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

(7) Civil Writ Petition No. 16585 of 2008
Civil Writ Petition No.2799 of 2008

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Swaran Lata

...Petitioner

Versus

State of Haryana and others

...Respondents

(8) Civil Writ Petition No. 16690 of 2008
Smt. Santosh Rani and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(9) Civil Writ Petition No. 16707 of 2008
Ishwar Dass Gupta

...Petitioner

Versus

State of Haryana and others

...Respondents

(10) Civil Writ Petition No. 5725 of 2007
Bhale Ram

...Petitioner

Versus

State of Haryana and others

...Respondents

(11) Civil Writ Petition No. 14550 of 2007
Madhu Bala

...Petitioner

Versus

State of Haryana and others

...Respondents

(12) Civil Writ Petition No. 16634 of 2007
Shakuntala Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

(13) Civil Writ Petition No. 11861 of 2006

Brij Mohan Sharma and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE T.S.THAKUR, CHIEF JUSTICE
HON'BLE MR.JUSTICE JASBIR SINGH
HON'BLE MR.JUSTICE SURYA KANT

Present: Mr. Rakesh Nagpal, Advocate
for the petitioners in CWP No.2799 of 2008.

Mr. S.R. Hooda, Advocate
for the petitioner in CWP No.1015 of 2008

Mr. B.K. Bagri, Advocate,
for the petitioner in CWP No.3265 of 2008
Mr. R.N. Sharma, Advocate
for the petitioner in CWP No.16690 of 2008

Mr. G.K. Chatrath, Sr. Advocate with
Ms. Alka Chatrath, Advocate
for the petitioner in CWP No.16707 of 2008

Mr. Narender Hooda, Advocate
for the petitioners in CWP No.11861 of 2006

None for the petitioners

In CWP No.2484 of 2008.
In CWP No.3944 of 2008.
In CWP No.16585 of 2008.

Mr. Rameshwar Malik, Addl. AG Haryana
for the respondents

T.S.THAKUR, CHIEF JUSTICE

A Division Bench of this Court has referred to the Full Bench the following question of law for an authoritative pronouncement:-

"Whether the Government is entitled to recover from an employee any payment made in excess of what he was otherwise entitled to, on account of any mistake or bonafide but erroneous interpretation or belief regarding any Rule, Regulation or Government instructions whatsoever especially in cases where the employee concerned is not guilty of any fraud or misrepresentation in claiming or receiving such monetary benefits."

The reference was necessitated by what the Division Bench of this Court felt was a conflict between the decisions delivered by the Supreme Court on the question whether the financial benefits granted to an employee under a mistaken interpretation or application of a Rule or Regulation can be recovered from him, if the employee himself was not responsible for any fraud or misrepresentation? In *Sahib Ram Vs. State of Haryana*, 1994 (5) SLR 753 and *Purshotam Lal and others Vs. State of Bihar and others*, 2007(1) RSJ 150, Court answered the question in the negative and held that no recovery could be made if the employee was not himself responsible for any fraud or misrepresentation in the grant of the benefit. The other line of decisions, which according to the Division Bench came in conflict with the above decisions discourage undue enrichment of any person not entitled to hold the benefit granted to him. These decisions include those delivered by the Supreme Court in *Union of India Vs. Smt.Sujata Vedachalam and others*, JT 2000 (6) SC 217, *Comptroller and Auditor General of India and others Vs. Farid Sattar*, JT 2000 (4) SC 374 and *Mafatlal Industries Ltd. and others Vs. Union of India and others*, 1997(5) SCC 536. The Division Bench felt that since there was an apparent cleavage in the decisions delivered by their Lordships' as well as those delivered by this Court from time to time and since a large number of cases on the subject matter are frequently coming up before this Court, an authoritative pronouncement by a larger Bench of this Court would be more appropriate and helpful in deciding such cases.

We have heard at some length the learned counsel for the parties and perused the record. The Division Bench has not in the order of reference made by it set out the factual backdrop in which the issue regarding recovery of benefits received by the employees arises for consideration. Having gone through the averments made in the writ petitions, we are of the opinion that we also need not set out in detail the factual matrix in which the question referred to us arises for consideration for determination especially when the facts appear to us to be peculiar to each case forming part of this Bench. Having said so, the question referred to us can in our opinion be seen from three distinct dimensions. These are:-

- i) Cases in which the benefits sought to be recovered from the employees were granted to them on the basis of any fraud, misrepresentation or any other act of deception;
- ii) Cases in which the benefits sought to be recovered were granted on the basis of a bonafide mistake committed by the authority granting the same while applying or interpreting a provision contained in the service rule, regulation or any other memo or circular authorizing such grant regardless whether or not grant of benefits involved the performance of higher or more onerous duties by the employee concerned;
- iii) Cases that do not fall in either one of the above two categories but where the nature of the benefit and extent is so unconnected with his service conditions that the employee must be presumed to have known that the benefit was flowing to him undeservedly because of a mistake by the authority granting the same.

We shall for the sake of clarity deal with each one of the categories separately, hoping that the categorization made by us would cover all conceivable situations but leaving any other case falling outside the said categories to be determined independently by the Court or authority before whom the same may arise.

Cases falling in Category (i) The legal position in regard to the effect of fraud, misrepresentation and deception is fairly well settled by a long line of decisions rendered by the Supreme Court. While it is not necessary to burden this judgment by referring to all such pronouncements, we may gainfully refer to some of them in order to elucidate the point. In *S.P.Chengalvaraya Naidu Vs. Jagannath*, AIR 1994 Supreme Court 853, the Supreme Court declared that fraud avoids all judicial acts, ecclesiastical or temporal and that judgment or decree obtained by playing a fraud on the Court is a nullity and nonest in the eyes of law. The Court observed:-

" A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage."

In *Lazarus Estate Ltd. Vs. Beasley*, (1956) 1 QB 702, Denning LJ observed "No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

In *Indian Bank Vs. M/s Satyam Fibres (India) Pvt. Ltd.*, AIR 1996 Supreme Court 2592, the Supreme Court was examining whether in a case where the Court had been misled to pass an order by a party playing fraud on it, the latter has the inherent power to recall its order. Answering the question in the affirmative, the Court declared:-

"Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been

held to have inherent power to set aside an order obtained by fraud practiced upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order."

We may also refer to the decisions of the Supreme Court in *United India Insurance Co.Ltd. Vs. Sanjay Singh and others*, AIR 2000 Supreme Court 1165, where again the Supreme Court was examining whether the Court was powerless where it has been misled by fraud to grant benefit not otherwise deserved. Answering the question in the affirmative, their Lordships held that the remedy by way of moving a re-call order on discovery of fraud of high degree cannot be foreclosed in such a situation. The withdrawal of an order passed by the Court, Tribunal or authority, which has been secured fraudulently by a party is, thus, clearly permissible and indeed obligatory for the Court, Tribunal or the authority once the facts constituting such fraud are brought to its notice.

The question, however, is whether while withdrawing such benefits, the authority would also be justified in recovering the amount that has already been received by the beneficiary of the fraud. In the ordinary course, once the mistake caused by fraud or otherwise is corrected, the benefits flowing from such mistake must also be reversed and restored to the benefactor. Equitable consideration may, however, at times intervene to block such restitution. In cases that arise out of fraud, misrepresentation or deception such consideration cannot possibly have any relevance, for it is well settled that one who seeks equity must do equity. Permitting an employee to retain the benefit obtained by him by fraud or misrepresentation on the ground of equity would not only amount to permit him to improve his condition by his own misdeed but also extend equity too far. Both these would be contrary to well known principles governing equity, viz, *Nemo ex suo delicto meliorem suam conditionem facere potest*. (No one can improve his condition by his own misdeed) and *Nihil iniquius quam aequitatem nimis intendere*. (Nothing is more unjust than to extend equity too far). It follows that a person, who has committed a fraud, misrepresentation or any other act of deception cannot possibly qualify for any relief in equity. A priori, it must be held, that any benefit received or obtained by an employee by reasons of fraud, misrepresentation or any other act of deception would disentitle him to retain the benefit, which he has obtained as a result of such acts or any one of them.

Cases falling in Category (ii) Cases involving recovery of benefits received by the employees on account of misrepresentation or erroneous application of rules, regulations, circulars or instructions issued by the Government have often come up before the Courts including the Apex Court. The consistent view taken as regards the recovery of such benefits erroneously extended to the employees without the employee being, in any way, guilty of any fraud, misrepresentation or deception is that such recovery would be unfair inequitable and against justice and good conscience. In *Bihar State Electricity Board and another Vs. Bijay Bahadur and another*, 2000 (10) SCC 99, even when their Lordships recorded a finding that the employee did not possess the requisite qualification for the benefit granted to him and was not, therefore, entitled to any relaxation of the Rules held that it would be against the concept of fairness, equity, justice and good conscience to recover the amount received by him in consequence of the benefit granted to him. Concurring with the observations made by their Lordships' in *Sahib Ram's case* (supra), the Court observed:-

" We do record our concurrence with the observations of this Court in Sahib Ram case (supra) and come to the conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances. "

In Sahib Ram's case (supra), referred to earlier, also the employee did not possess the requisite qualification but had received the salary on revised scales. Their Lordships however, held that the benefit flowing to the employee was not on account of any misrepresentation but on account of legal construction made for which the employee cannot be found fault with. The Court observed :-

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances, the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale.

However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till the date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

To the same effect is the decision of Purshottam Lal Das vs. the State of Bihar, 2007(1)RSJ 151, where basic health workers Class-III employees were promoted to Class-II posts against the rules. Even the Committee which accorded promotion was not properly constituted nor was the reservation policy followed. Relief against recovery had been denied on the ground that those who granted it had committed a grave irregularity in doing so. The Court, however, directed that while the order of reversion could not be faulted, there could be no recovery of the amounts already paid to the employees during the period they held the promotional posts.

Reference may also be made to Union of India and another etc. etc. vs. M. Bhaskar and others etc. etc. 1996(3)RSJ 205, where too the Apex Court declined permission to recover the amount already paid to the employee on the ground that the same would cause hardship. In P.H.Reddy vs. N.T.R.D., 2002 (2) SCT 987, the court was dealing with a case where the salary of a defence pensioner was revised on re-employment against a civil post erroneously and a direction to recover the excess amount issued. The Supreme Court while upholding the correction of the error by the authorities declared that the demand for reimbursement of the excess amount could not be sustained.

To the same effect are the decisions of the Supreme Court in Babulal Jain vs. State of M.P. and Others, 2007(3)SCT 134, and State of Haryana and another Vs. Partap Singh and Others, 2007 (1) RSJ 6 and the decisions of the Division Bench of this Court in Sudarshan Kumar Sood and others Vs. Bhakra Beas Management Board, Chandigarh and others 2003(1) RSJ 308, Ajit Singh Vs. Managing Director, PEPSU Road Transport Corpn. and another 2007(3) RSJ 83 and Union Territory Chandigarh Administration and others Vs. Sudesh Rathore and others 2004(1) RSJ 523.

It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount simply because on a true and correct interpretation of the rules, such a benefit was not due. It does not require much imagination to say that additional monetary benefits going to an employee may not always result in accumulation of his resources and savings. Such a benefit may often be utilized on smaller luxuries of life which the employee and his family may not have been able to afford had the benefit not been extended to him. The employees can well argue that if it was known to them that the additional benefit is only temporary and would be recovered back from them, they would not have committed themselves to any additional expenditure in their daily affairs and would have cut their coat according to their cloth. We have, therefore, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be recovered from them.

The decisions of the Supreme Court in Smt. Sujata Vedachalam, Comptroller and Auditor General of India and Mafatlal Industries Ltd. Case (supra) have in our view no application to the situations with which we are dealing in the present reference. Mafatlal Industries' case (supra) dealt with refund of excess duty recovered on erroneous mis-application of statutory provisions and not with the recovery of monetary benefits received by an employee. The entire perspective in that case was in our view different from what is being examined by us in these cases. Sujata Vedachalam's case (supra) no doubt dealt with erroneous fixation of pay but the question whether recovery of the amount already paid would cause any injustice, inequity or hardship was never argued before their Lordships. It is also evident from the reading of the order that the kind attention of their Lordships was not drawn to the decisions of the Supreme Court in Sahib Ram's case and Bihar State Electricity Board's case (supra) which are directly on that point. The decision in Comptroller and Auditor

General of India's case (supra) does not even deal with the question of recovery of excess amount received by an employee and does not, therefore, lend any help to the respondents.

Cases falling in Category (iii) Apart from cases that fall in categories (i) and (ii) above, there is one conceivable situation in which an employee may even when he is not guilty of mis-representation, fraud, deception or the like receive, under a mistake of any functionary of the State, an amount which he has no reason to either receive or appropriate. For instance and purely on a hypothetical plane, there may be a case where an employee of the State Government or the instrumentality of the State receives an amount with his salary that is wholly disproportionate, unexpected or inexplicable. An employee whose monthly emoluments are, for instance Rs.20000/- receives in a given month, a sum of Rs.30000/- instead of Rs.20000/-. Such a payment may be purely accidental and erroneous arising out of an un-intended mistake. The question is whether the employee has any obligation to verify the reason or the genesis of the windfall that he has received and to refund the same, if he is not lawfully entitled to the same. Our answer to this is in the affirmative. Such a case may not fall in category (i) as the employee has not committed any mistake but it is not a case that would fall in category (ii) either as the benefit is unrelated to any erroneous interpretation or application of rule. It is a case where by reason of sheer neglect of a functionary of the State Government, a payment that is undeserved and wholly uncalled for is made to the employee. Such a case cannot be equated with those falling in category (ii). Such a case may be dealt with independently and the employee concerned called upon to refund to the Government the undeserved payment that he has received. We say so because in our opinion, once the undeserved payment came to his notice, every employee is under an obligation to verify the reason for the same and act in a manner that is fair and equitable. Appropriation of a payment which the employee had no reason to expect or accept would in such a case be dishonest. And one who is dishonest cannot take shelter behind equity. We cannot for obvious reasons exhaustively enumerate situations where such payments are received and can be lawfully recovered. All that we propose to point out is that while generality of the cases would fall in category (i) and (ii), some freak cases like the one in category (iii) that we have been able to conceive, may need to be dealt with independently depending upon whether the employee can be attributed the knowledge that the payment was undeserved and whether the duty to verify the factual position and refund the amount when the same came to his notice could be read into his duty as an employee of the State or its instrumentalities.

The reference is answered accordingly. These petitions shall now be placed before the appropriate Bench for disposal in the light of what we have said above.

(T.S. THAKUR) Chief Judge (JASBIR SINGH) Judge (SURYA KANT) Judge May 22, 2009 'kalra'