CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A NO. 552/2004

THURSDAY, THIS THE 12th DAY OF OCTOBER, 2006.

CORAM

HON'BLE MRS. SATHI NAIR, VICECHAIRMAN
HON'BLE MR.K.B.S. RAJAN, JUDICIAL MEMBER

1 K.M. Rajan
Trained Graduate Teacher(Science)
Jawahar Navodaya Vidyalaya
Periya, Kasaragod

2 Margaret P.L.
Trained Graduate Teacher(Science)
Jawahar Navodaya Vidyalaya
Periya, Kasaragod Applicants

By Advocate Mr. K. Shri Hari Rao

Vs.

1 Union of India represented by the
Secretary,Ministry of Human Resources
and Development, New Delhi.

2 The Director
Navodaya Vidyalaya Samithi
New Delhi.

3 The Deputy Director
Navodaya Vidyalaya Samithi
Regional Office, Hyderabad

4 The Principal
Jawahar Navodaya Vidyalaya
Periya, Kasaragod. Respondents

By Advocate Mr. M.K. Damodaran
Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The case of the applicants in this O.A is that they are working as Trained Graduate Teachers (Science and Malayalam) in the school under the respondents and the respondents on the basis of the order dated 22.1.2003 fixed the pay of the applicants at Rs. 7100/- the first applicant from 7.6.2001 and the second applicant from 11.9.2001 respectively and now without any notice or hearing, Annexures A-1 and A-2 orders dated 28.6.2004 have been issued by the 4th respondent refixing their pay at Rs. 6900 from 7.6.01 and that the excess payment will be recovered from their salary starting from June 2004 onwards in ten equal installments. The impugned orders have therefore been assailed as against natural justice having been passed without giving any opportunity to the applicants. They have also relied on the judgement of the Hon'ble High Court in Satyapalan Vs. Deputy Director of Education (1998 (1)KLT 399) holding that any amount obtained by wrong fixation of pay by the administrative authority can not be directed to be refunded.

2 A reply statement has been filed on behalf of the respondents 3 and 4 in which it has been submitted that the impugned orders were issued because of wrong fixation of pay granted by the 4th respondent and the said fixation by the 4th respondent is provisional subject to confirmation by the 3rd respondent. Further, it was based on a written undertaking by the applicants and hence they are estopped from contending that there is violation of the principle of

natural justice. It has been further submitted that the Government of India OM dated 7.9.1995 lays down that the scale of pay of teaching staff on their promotion to Senior Scale and Selection Scale on completion of 12 years of service in the entry Scale and Senior Scale will be fixed following the guidelines for fixation of pay when an employee is appointed to a post not involving higher responsibilities. However, while fixing the scale of pay of the applicants in the Senior Scale, the above guidelines were overlooked and the pay was fixed as applicable to the next promotion post involving higher responsibilities. The fixation being provisional and pending confirmation from the third respondent, there is no irregularity or any illegality in the recovery proceedings. With respect to the legal contentions it has been submitted that the decision in Sathyapalan's case was under a different context and that the employee had already retired from service. The Hon'ble High Court has permitted recovery from employees in service by the judgment in OP 5830 of 1995 dated 5.6.2003 and in 2004 (1) KLT 934, the Hon'ble High Court has held that the employer has every authority to recover the excess salary drawn on account of the wrong fixation of pay.

3 The applicants have filed a short rejoinder stating that a decisions referred to above by the respondents are not applicable to their case and that no such undertaking as mentioned by the respondents has been taken from the applicants and there is no mistake in the fixation of pay already done.

4 We have heard Shri Sri Hari Rao the learned counsel for the applicants and Mr. Rajeev and Mrs. Resmi G. Nair on behalf of the learned counsels for the respondents. The learned counsel for the applicants cited a series of judgments of the Apex Court to buttress his contention that recovery was not permissible, that provisional pay was not fixed by mistake by the respondents. The following judgments have been referred.:

1. Sahib Ram Vs. State of Haryana & Ors. (1995 Suppl. (1) SCC 18)

2 Nand Kishore Sharma & Ors. State of Bihar and Ors (1995 Suppl. (III) SCC 722)

3 Shyam Babu Verma and Others Vs. UOI and Others (1994 (2) SCC 521)

4 The Director, State Water Transport Deptt. & Anr. Vs. C.N. Sankara Kaimal & Ors. (2006 (2)KLJ 552)

5 The respondents have relied on the judgment of the Hon'ble High Court in 2005 (4) KLT 649 wherein the Court has pronounced that unless there is statutory bar in recovering the amount any amount paid by mistake can be recovered depending on the facts and circumstances of each case.

6 The facts of the case are admitted. The original fixation orders have not been produced by either of the parties. However, it is an admitted position of the respondents that they have fixed the pay of the applicants at Rs. 7100/- inadvertently without reference to the existing guidelines that such promotions to the Senior Scale and

Selection Scale after completion of 12 years of service in the entry scale has to be done at the stage equal to the pay in the old post and if there is no such equal stage, the pay will be fixed at the next higher stage and the orders were issued by the 4th respondent and when the mistake was detected by the regional office namely the 3rd respondent the impugned orders at Annexures A1 and A2 were issued. The undertakings stated to have been given by the applicants have been produced by the respondents as Annexure R-3 (a) and R-3(b) are dated 24.2.1998 and obviously have no connection with the option exercised ~~was done~~ in 2001. Hence, these undertakings have no validity vis-a-vis the impugned orders in this O.A. However, the fact remains that the pay of the applicants was fixed in 2001 without following the guidelines governing the said promotions and that since the mistake was detected by the higher authorities a direction was given to refix the pay and accordingly the refixation was done by order dated 28.6.2004 in respect of the applicants. The applicants have also not seriously contended the refixation and their relief is only against the recovery of the amount already paid till 31.5.2004. Therefore the only question to be decided is whether the recovery order is ~~an~~ irregular or illegal. As far as recovery of excess amount paid to an employee there are a number of judgments for and against and both sides cited judgments in their ~~support~~ favour. The judgments relied upon by the applicant in Shyam Babu Verma and Others Vs. UOI and Ors. (1994 (2) SCC 521) where the higher pay scale was given to the petitioner since 1973 and it was

sought to be reduced in 1994 after a period of ten years and that was the main ground on which the court held that it will not be just and proper to recover any excess amount payable as they were not responsible for the same. In 1995 (1) SCC 15, the Court restrained the Department from recovery of excess payment on the ground that it was not on account of any misrepresentation made by the applicant and that the Department had itself granted the regularisation in relaxation which he was not entitled to. In N.K.Sharma Vs. State of Punjab (1995 (III) SCC 722) the order of recovery was quashed as no opportunity was given to the appellants on the revision effected on the basis of an anomaly. In The Director, State Water Transport Deptt. & Another Vs. C.N. Sankara Kaimal & Ors. Vs. State (2006 (2) KLJ 553), though the Court accepted that there is anomaly in giving undeserved benefit to the petitioners, directed that considering that most of them had retired from service they will be entitled to continue to enjoy the benefit sanctioned by the respective Government. It is evident from a close reading of the above orders that the question of recovery of the payments made was considered by the Courts with reference to the facts and circumstances of each case and that no general principle that recovery cannot be effected has been propounded in any of these judgments.

7 In Shantakumari Vs. State of Kerala (2005 (4) KLT 649) relied on by the respondents, the Hon'ble High Court after analysing the earlier judgments and the principles laid down therein have held that the mistake committed by the administration as well as the

employees who are bound by statutory provisions is mutual and consequently the same has to be set right unless there is statutory bar in recovering the amount. The Courts have been lenient in restraining the employer from recovering any excess amount where long period had lapsed between the grant of benefit and its subsequent withdrawal or where the employee had already retired from service. None of these circumstances exist in the present case. It was clearly an error committed by the administration while fixing the pay ignoring the instructions on the subject and when the mistake was detected it was sought to be corrected. A duty is cast on the Administration to rectify the error or mistake instead of propagating it. The applicants herein are continuing in service and there is a long service left, the total amount to be recovered from each of the applicant is only Rs. 10,075/- and it has been ordered to be recovered ~~the same~~ in ten equal installments which works out to about Rs. 1007.50 per month which is not a very heavy burden on the applicants. We therefore do not find any case for interference with the impugned orders of the respondents. The O.A. is dismissed.

Dated 12.10.2006.

K.B.S. RAJAN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

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