

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6357-6358 OF 2019
[@ SPECIAL LEAVE PETITION (C) NO. 14138-14139 OF 2018]

SABBIR HASAN

Appellant (s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

O R D E R

1. Leave granted.
2. These appeals arise out of the impugned Judgment and Order dated 17.08.2017 and 07.03.2018 passed by the High Court of Judicature at Allahabad, Bench at Lucknow, in Service Bench No. 18476 of 2017 and Review Application No. 98187 of 2017 respectively.
3. The brief facts of the appeals are as under :-
On 26.01.1979, the appellant was appointed as Junior Engineer. Under the Assured Career Progression (ACP) Scheme, the salary of the appellant was ordered to be revised on 01.12.2012 with other similarly situated employees and on 13.12.2012, the salary was revised.
4. The pay revision order was subsequently cancelled by Respondent No. 2 - Managing Director on 19.09.2015 and it was directed to recover the excess salary paid to the appellant vide order dated 02.02.2016 after due calculations, but subsequently Respondent No. 2

stayed his earlier order of recovery by order dated 04.04.2016. The appellant was superannuated on 31.10.2016 and the amount of excess salary was recovered from the gratuity amount of the appellant on 01.03.2017.

5. Being aggrieved, the appellant approached the High Court by way of Writ Petition No. 18476 (S/B) of 2017 challenging the Office Memorandum dated 02.02.2016 to be illegal and ultra vires. By the impugned Judgment and Order, the High Court has dismissed the writ petition stating that the salary of the appellant was upgraded with the condition that if any mistake is found, the payment made in excess would be recovered from his salary. The review application filed by the appellant has also been dismissed by the High Court. Hence, the appellant is before this Court in the present appeals, by way of special leave.

6. We have heard the learned counsel appearing on both sides and have perused the record. This is the case of the appellant that in the case of similarly situated persons, "Ram Murthi Singh vs. State of U.P & Ors." and "Badri Narayan Chaube Vs. State of U.P. & Ors.", the High Court has issued the Writ of Certiorari and quashed the order of recovery on the ground that the recovery had been ordered just 19 days from the date of the retirement of the

petitioners.

7. This Court, in *"State of Punjab and Others Vs. Rafiq Masih and Others"*, reported in (2015) 4 SCC 334, has laid down the following principles of recovery :-

"It is not possible to postulate all situation of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :-

(i) Recovery from employers belonging to Class-III and Class -IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery

if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. In the light of the above decision and the principles laid down by this Court, in our opinion, the recovery could not have been made from the appellant. Thus, the impugned order is set aside and the appeals are allowed holding that the recovery shall not be made from the appellant.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[ARUN MISHRA]

.....J.
[SURYA KANT]

New Delhi;
AUGUST 16, 2019.

ITEM NO.44

COURT NO.4

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 14138-14139/2018

(Arising out of impugned final judgment and order dated 17-08-2017 in SB No. 18476/2017 07-03-2018 in RA No. 98187/2017 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

SABBIR HASAN

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

Date : 16-08-2019 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s) Mr. Dushyant Parashar, AOR

For Respondent(s) Mr. Shrish Kumar Misra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

(Signed order is placed on the file)