

(2007) 09 J&K CK 0008
In the Jammu And Kashmir High Court

Accountant General and Others	Vs	APPELLANT
Kartar Chand and Another		RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Citation : (2008) 2 JKJ 707

Hon'ble Judges : Yash Paul Nargotra, J;Virender Singh, J

Bench : Division Bench

Judgement

Y.P. Nargotra, J.—The Accountant General, one of the respondents in the writ petitions, has filed LPA(SW) Nos.

189/2006,106/2007,110/2007 and 109/2007 for questioning the legality of orders dated 21.10.2005 and 20.4.2007 passed in SWP Nos.

139/2004,634/2005,635/2005 and 636/2005. Whereas, the writ petitioners have also filed LPA(SW) Nos. 114/2007, 116/2007 and 118/2007

against the same orders for non-allowing of interest on the withheld amounts of gratuity and other pensionary benefits. As the common question of

facts and law are involved, therefore, all these appeals are being disposed of together by this common judgment.

2. On the orders passed by the concerned authority, the pay of writ petitioners came to be stepped up while they were in service, for removing the

anomaly as their juniors were drawing higher pay than the pay which was being paid to them, admittedly without obtaining the prior approval of

General Administrative Department of the Government of Jammu & Kashmir. The writ petitioners while drawing salary at the stepped up rate

superannuated. After their superannuation from service, their cases for sanction of pension were submitted to the Accountant General by their

respective Administrative Departments.

3. The appellant instead of sanctioning the pension and other retrial benefits by taking the stepped up pay into account, ordered for withholding of

their gratuity for recovering the arrears of excess pay drawn, as in its view the pay of the writ petitioners had not been validly stepped up for the

reason that no prior approval of the General Administrative Department had been obtained before ordering for the stepping up of their pay.

4. The writ petitioners/respondents being aggrieved of the action of the appellant filed the said writ petitions.

5. The appellant, Accountant General opposed the writ petitions by submitting that for allowing the stepping up of the pay prior approval of

General Administrative Department was necessary and because the same had not been obtained, therefore, stepping up of the pay was not valid,

as such the action of appellant was justified.

6. The State Government and its officials of the Administrative Departments of the writ petitioners, who stood arrayed in the writ petitions as

respondents, did not contest the petitions, so it was not their case that the writ petitioners in the circumstances and fact situation in which they were

placed, were not entitled to the stepped up pay, meaning thereby that the Administrative Department of writ petitioners by implication admitted

their entitlement to the stepped up pay.

7. The learned Writ Court disagreeing with the contention of appellant allowed the writ petitions with costs, by directing the appellant/respondents

to fix and release the pension of the writ petitioners as per stepped up pay.

8. Thus the question arising for consideration before us is; whether the order passed for steeping up of pay without the prior approval of General

Administration Department is invalid and, as such, cannot be taken into account for the purposes of fixation of pension and gratuity?

9. The contention of Mrs. Mahajan and Mr. Tashi, learned Counsel for Accountant General is that in terms of Rule 77-B for stepping up of the

pay of an employee, the prior approval of General Administration Department is necessary. As in the present case there was no such approval

granted by the General Administrative Department of the Government, the orders made for steeping up of the pay of writ petitioners are invalid

and, therefore, could not be made basis for fixing the average pay for the

purposes of sanctioning pension and gratuity in favour of writ petitioners.

10. Rule 77-B of Civil Service Regulations deals with the fixation of pay of a Government servant who has been promoted or appointed in a

substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the

post held by him. Government Instructions 1 to 4 appended to Rule 77-B read as follows:

Government Instruction No. 1.- Cases may arise where a Government servant promoted to a higher post before 1.4.1963 draws a lower rate of

pay in that post than another, junior to him in the lower grade but promoted to another identical posts on or after 1.4.1963. This may be because

the pay of the junior official has been fixed in accordance with the provisions of the above rule.

In order to remove this anomaly, the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the

junior officer in that higher post. The stepping up should be done with effect from the date of promotion of the junior official subject to the following

conditions:

(a) both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in

the same cadre;

(b) the scales of the lower and higher posts in which they are entitled to draw pay should be identical; and

(c) the anomaly should be directly as a result of the application of Article 77-B. For example if even in the lower post the junior officer draws from

time to time a higher rate of pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him, the

provisions of these instructions shall not be invoked to step up the pay of the senior officers.

The next increment of the senior officer (whose pay has been so fixed) will be drawn on the completion of the requisite qualifying service (i.e. one

full incremental period) from the date of refixation.

Provided that the next increment of the senior officer who had applied for the stepping up of his pay before 10.9.1985 but the order of whose

stepping up of his pay has been issued by the competent authority . thereafter

will be drawn on the date on which it would have fallen due but for the refixation of pay.

This shall be deemed to have come into effect from 10.9.1985.

In respect of cases which on the date of issue of this notification were pending with the Accountant General or with the Department concerned the benefit of these instructions shall apply retrospectively from 1.4.1963 i.e. the date when Article 77-B was introduced. In all other cases the fixation shall be made retrospectively from 1.4.1963 under these instructions but actual benefit shall accrue from the date of this notification.

Government Instruction No. 2.- Government Instruction No. 1 above shall apply equally to the cases of seniors drawing less pay than juniors in respect of promotions occurring on or after 1.4.1963.

Government Instruction No. 3.- Where a revision of pay is concurrent with placement of an officer in the selection grade, involving assumption of duties and responsibilities of greater importance (as per Note 2 to Article 66) the pay will be fixed under the provisions of Article 77-B, read with instructions thereunder.

This shall be deemed to have come into effect from 1.1.1973 but pending cases either with the Accountant General or the Administrative Departments will be finalized accordingly.

Government Instruction No. 4.- In the case of a Government servant stepping up of pay shall be exercised by the concerned Administrative Department with prior agreement of the General Department.

Government Instructions 6 and 7 are not relevant.

11. In the instant case, since there was anomaly in the pay drawn by the writ petitioners, as they were drawing lesser pay than their junior counterparts, their respective Administrative Departments passed the orders for stepping up of their pay for removing the anomaly, however, without getting the prior approval of the General Administrative Department. It is not disputed that after the stepping up of their pay, they have been drawing higher salary at the stepped up rate for more than a period of ten months after the same being verified by the appellants office. In terms of Rule 242 for reckoning their pension, the average emoluments, which the writ petitioners had drawn for the last 10 months before the date of their

superannuation, were to be taken into account by the pension sanctioning authority, the appellant. It appears for computing the pension the appellant relying upon Government Instruction No. 4 declined to accept the stepped up pay and, accordingly, ordered for withholding the gratuity of writ petitioners for recovering the excess pay drawn by them.

12. The contention of learned Counsel for Accountant General is that in terms of Government Instruction No. 4 the Administrative Department of writ petitioners was duty bound to obtain the prior approval of General Administrative Department before stepping up their pay for removing the existing anomaly. According to learned Counsel, the failure to obtain the prior approval of General Administrative Department makes the order of stepping up of the pay invalid and, therefore, the Accountant General was justified in ignoring the same for the purposes of fixation of pension, and for directing the withholding of gratuity of writ petitioners.

13. The contention of learned Counsel for writ petitioners is that the writ petitioners cannot be penalized for something which was required to be done by their Administrative Department. Since it is not being disputed by the Administrative Department that the writ petitioners were entitled to the stepping up of their pay in terms of Article 77-B of Civil Service Regulation, therefore, failure on the part of Administrative Department of writ petitioners to obtain the prior approval of General Administrative Department would not affect their right to avail the benefit of stepping up of their pay for the purposes of fixation of pension.

14. We have considered the respective contentions of learned Counsel for the parties.

15. In view of clear instructions appended to Rule 77-B of Civil Service Regulation, it is incumbent upon every Administrative Department to obtain the prior approval of General Administrative Department before ordering stepping up of the pay of an employee under it. But, whether failure to obtain such prior approval, as a necessary consequence, would always render the order passed for stepping up the pay of an employee invalid? In our considered opinion it would not be so in every case. Where otherwise entitlement of an employee to the stepping up of his pay is not disputed by the Administrative Department or by the office of Accountant General, the order of stepping up of pay of such an employee would

not be rendered invalid for being taken into account for the purposes of fixation of pension and gratuity the reason being that matter of obtaining prior approval is between the Administrative Department and General Administrative Department in which the employee has no role to play. By passing an order in violation of the mandate of the Government instructions appended to Rule 77-B, the officer concerned may be exposing himself to the departmental action, but it cannot per se affect the pensionary rights of an employee to which he is otherwise entitled. Therefore, where the right of an employee to have his pay stepped up is not in dispute, the fact of that before passing the order in that behalf by the competent authority, the prior approval of General Administrative Department has not been obtained would only be an irregularity and in such cases the Accountant Generals office would not be justified in not sanctioning the pension, as per the stepped up pay of such an employee. However, where the stepping up of the pay of an employee is found to have been wrongly made by the Administrative Department, the failure to obtain such prior approval would be an illegality and in such like cases the Accountant Generals Office would be justified in not accepting such an order as valid for the purposes of fixation of pension.

16. In the present case, the entitlement of writ petitioners to the stepped up pay for removing the anomaly in terms of Rule 77-B of Civil Service Regulation has not been disputed by the Administrative Department, even the appellants office has verified the stepped up pay. Therefore, the absence of prior approval of General Administrative Department for stepping up the pay of writ petitioners was immaterial being a mere irregularity.

17. Thus, in the circumstances of the case finding no reason to differ with the view expressed by the learned Single Judge that the pension of writ petitioners should have been fixed as per their stepped up pay, we uphold the same.

18. The learned Writ Court has imposed the costs upon the respondents while allowing the writ petitions. In our view the costs should not have been imposed because it is not a case where the appellant can be said to have willfully or unreasonably withheld the gratuity of the writ petitioners.

However, the fact remains that the writ petitioners have come to be denied the

benefit of their money to which they have been held entitled, as such the ends of justice would be met if they are granted the interest on the withheld amount.

19. For the reasons stated above, we uphold the order of learned Writ Court except so far it relates to imposition of costs and provide that there shall be no costs. However, the writ petitioners shall be entitled to interest at the rate of six percent per annum on the withheld amount from the due date for payment till its realization. To that extent orders impugned shall stand modified. These appeals shall, accordingly, stand disposed of.

Before parting with this judgment, it is necessary to observe that in SWP No. 634/2005, entitled, Balwan Singh v. State, the writ petitioner Balwan Singh had also claimed a direction to the respondents to give him the benefit of pay revision with effect from 1996 and consequent arrears of pay, but to this aspect the learned Writ Court has not adverted to in its order passed for disposing of the writ petition. Therefore, instead of remitting the case back to the Writ Court, we deem it proper to give liberty to the petitioner to re-agitate the said issue independently by way of fresh petition, if he so desires.