
(1972) 07 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 102 of 1971

Agar Singh

APPELLANT

Vs

State Etc.

RESPONDENT

Date of Decision : 03-07-1972

Acts Referred:

Punjab Police Rules, 1934 — Rule 10.63, 10.76

Citation : (1972) 1 ILR HP 284

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; A.S. Bhatnagar, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The question in this writ petition is whether a deduction can be effected from the compensatory allowance payable to the Petitioner as a member of the Himachal Pradesh Police Force by reason of his occupying rent-free accommodation while posted at Dharampur and Simla.

2. The Petitioner was a member of the Punjab Police Force before November 1, 1966. With effect from that date, he was allocated to the Union territory of Himachal Pradesh and has been serving since as a member of the Himachal Pradesh Police Force. On October 31, 1966, the day immediately preceding "the appointed day" specified in the Punjab Re-organization Act, 1966, the Petitioner was drawing a basic pay of Rs. 162, dearness allowance of Rs. 10 and compensatory allowance of Rs. 14 p.m. On becoming member of the Himachal Pradesh Police Force, he continued to receive the same amount as pay and allowances and thereafter the increments to which he was entitled. On October 11, 1967, the Petitioner was posted at Dharampur and he says, he became entitled to compensatory allowance at 20% of his pay. In the result, the compensatory allowance amounted to Rs. 32.40P. According to the Petitioner it was worked out on the basis of Notification No. F. 1 (4)-05/49-19254, dated March 17, 1950, which had been issued by the Government of Patiala and East

Punjab States Union at a time when Dharampur was part of the State of Pepsu. While at Dharampur, the dearness allowance received by him was increased to Rs. 98 p.m. and with effect from February 1, 1968 Rs. 90 of the dearness allowance was merged with the pay and described as dearness pay. Accordingly, the compensatory allowance computed at 20% of the pay plus dearness pay while posted at Dharampur increased. The Petitioner continued to serve at Dharampur upto July 22, 1970, when he was transferred to Simla and now he holds the post of Head Constable. Upon his transfer to Simla, the Petitioner again became entitled to compensatory allowance at Rs. 14 p.m. only. Later, with effect from March 1, 1971, the compensatory allowance was raised to 30% of the pay subject to a maximum of Rs. 75, and the Petitioner has been enjoying compensatory allowance on that basis ever since. As the Petitioner occupied rent-free accommodation at Dharampur and Simla, a reduction to the extent of 1/4th is now being effected in the compensatory allowance. The Petitioner challenges the validity of the deduction. When the Petitioner became a member of the Punjab Police Force, he was governed by the Punjab Police Rules, 1934. Two provisions of those rules are relevant. Rule 10.63 provides for pay as well as compensatory allowance. Rule 10.76 declares that all enrolled police officers are entitled to free quarters for themselves at the headquarters. Where accommodation cannot be provided, they are entitled to house-rent allowance in lieu thereof. The order was communicated by letter No. 12149-FR-55/5884, dated August 27, 1956 and took effect from September 1, 1956. Shortly, thereafter, the Governor of Punjab exempted police personnel posted at Simla, Dharampur and Dharamsala from the operation of that order, and this was communicated by letter No. 12548-S.H.-57/11928-C/87573, dated October 9/18, 1957 from the Home Secretary, Punjab Government, to the Inspector General of Police, Punjab. The result was that while police personnel posted at those three places were entitled to compensatory allowance, they were not liable to any reduction in their salary because they occupied rent-free quarters.

3. It may be pointed out at this stage that as regards the Union territory of Himachal Pradesh, by a notification dated July 31, 1951, a body of rules identical with the rules printed in Volumes 1 to 3 of the Punjab Police Rules, 1934 were framed for Himachal Pradesh. Of the two provisions mentioned above paragraph 10.63 was not incorporated in those rules but paragraph 10.76 was. Therefore, while the compensatory allowance prescribed by paragraph 10.63 was not available to the police personnel of Himachal Pradesh, they were entitled to rent-free accommodation or house-rent allowance in lieu thereof. But subsequently by a letter No. F. 7/44/60-Him (MMT), dated September 22, 1964, the Government of India intimated the grant of compensatory allowance to the employees of the Himachal Pradesh Government. Then, by an office memorandum No. Fin. 10-79/59-IV, dated September 1, 1966, the Himachal Pradesh Government decided that with effect from May 13, 1963, the rate of compensatory allowance sanctioned in favour of non-Secretariat employees of that Government borne on Punjab scales of pay and allowance should be reduced by 1/4th in the case of

Government servants who had been provided with rent-free quarters or allowed house-rent allowance in lieu thereof.

4. On August 27, 1956, the Punjab Government decided that the rate of compensatory allowance should be reduced as a uniform rule by 1/4th in those cases where Government servants were provided rent-free quarters or were allowed house-rent allowance in lieu thereof.

5. On November 1, 1966, a number of police personnel of the Punjab Police Force were allocated to the Himachal Pradesh Police Force, and their conditions of service were governed by Section 82(6) of the Punjab Re-organisation Act, 1966, which contained a proviso stating:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or Sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

The allocated Punjab personnel were, therefore, ensured that the conditions of service applicable to them in the undivided State of Punjab would not be altered to their detriment without the previous approval of the Central Government. It seems that there was some doubt on the question whether compensatory allowance in the hill areas should be reduced by 1/4th in the case of Constables and Head Constables provided with rent-free quarters or allowed house-rent allowance in lieu thereof. Upon enquiry by the Himachal Pradesh Government, the Inspector General of Police, Punjab wrote a letter No. 561/C-5, dated January 19, 1968 and clarified that the reduction was attracted except where the police personnel were posted at Simla, Dalhousie and Dharamsala. A copy of the letter of the Inspector General of Police, Punjab was sent by the Himachal Pradesh Government to the Inspector General of Police, Himachal Pradesh under a memorandum No. Fin. 10/79/59-111, dated February 9, 1968, and it was pointed out that Constables and Head Constables availing of rent-free accommodation were liable to a reduction in their compensatory allowance. Reference was specifically made to letter No. 12548-S.H.-57/11928-C/ 87573, dated October 9/18, 1957. The Inspector General of Police, Himachal Pradesh wrote a letter No. 10-37/67-7622, dated March 1, 1968 seeking clarification on two points: (i) whether the exemption from reduction of compensatory allowance in the case of police personnel posted at Simla, Dalhousie and Dharamsala was attracted in respect of those employees who were posted in those places after the re-organisation of Punjab State from the districts or units of old Himachal Pradesh and (ii) whether the reduction could also be made in the case of those employees who were posted in Simla, Dalhousie and Dharamsala prior to the integration of the State and thereafter. The Himachal Pradesh Government by a letter No. Fin. 10-79/59-IV, dated September 19, 1968 conveyed the clarification received from the Government of India, that since the exemption had been given by the erstwhile State of Punjab in respect of the towns of Simla, Dalhousie and Dharamsala, the police personnel posted at those places, whether before or after

the re-organisation, would be entitled to the benefit of the exemption. It seems that thereafter the Himachal Pradesh Government took the view that the police personnel stationed at Simla and its suburbs were also liable to a reduction by 1/4th of their compensatory allowance if they had been provided with rent-free accommodation or allowed house-rent allowance in lieu thereof. This view was communicated by letter No. 2-6/70-Fin (R&E), dated May 17, 1971 to the Inspector General of Police, Himachal Pradesh, who issued a directive by memorandum No. 10-59/70-19440-46, dated May 31, 1971 that over-payments already made to police personnel should be recovered. The Petitioner contends that the view communicated by the Himachal Pradesh Government by its letter dated May 17, 1971 and the direction issued by the Inspector General of Police, Himachal by the memorandum dated May 31, 1971 are contrary to law and prays for relief against the reduction of his compensatory allowance.

6. Learned Counsel for the Petitioner contends that so far as the Petitioner is concerned, he was entitled by virtue of the proviso to Section 82(6) of the Punjab Re-organisation Act, 1966, to the entire amount of the compensatory allowance available to him as on October 31, 1966, and no subsequent direction by the Himachal Pradesh Government could reduce the compensatory allowance except with the previous approval of the Central Government. There is substance in that contention. On October 31, 1966, the Petitioner was governed by the conditions of service applicable to members of the Punjab Police Force. He was entitled not merely to the pay and dearness allowance and compensatory allowance payable to him on that date, but also to the right of exemption sanctioned by the Governor of Punjab and communicated by the letter dated October 9/18, 1957, that police personnel posted at Simla would be exempted from the operation of the order contained in the Punjab Government letter dated August 27, 1956 providing for reduction by 1/4th of the compensatory allowance. That right could not be varied to his disadvantage by the Himachal Pradesh Government without the previous approval of the Central Government, and in the absence of such previous approval, it is difficult to see how there could be any justification in law for reducing the compensatory allowance payable to the Petitioner. There is no warrant for applying the view taken by the Government under the letter dated May 17, 1971 so far as the Petitioner is concerned, and accordingly the direction of the Inspector General in respect of payments made to the Petitioner is not valid.

7. Alternatively, learned Counsel for the Petitioner contends that the compensatory allowance payable to the Petitioner under paragraph 10.63 of the Punjab Police Rules, 1934 is distinct from the house-rent allowance mentioned in paragraph 10.76 and, therefore, if rent-free accommodation is allowed, the house-rent allowance cannot be deducted from the compensatory allowance. There is no question here of deducting the house-rent allowance. The question is whether a reduction by 1/4th can be effected in the compensatory allowance by reason of the member of the police force occupying rent-free accommodation. From the definition of "compensatory allowance" set out in paragraph 10.72, it is

clear that it is an allowance granted to meet expenditure necessitated by the special circumstances in which the duty is performed and includes as a component an allowance on account of house-rent. Where the accommodation is provided rent-free to the police officer, there is a logical basis for reducing the compensatory allowance so as to exclude that component. The alternative basis on which learned Counsel for the Petitioner rests his case must be rejected.

8. So far, therefore, as the reduction sought to be made in respect of the compensatory allowance available to the Petitioner while posted at Simla is concerned, the reduction cannot be justified in law.

9. Learned Counsel for the Petitioner further contends that the compensatory allowance to which the Petitioner was entitled while posted at Dharampur was also exempt from reduction. He urges that the order dated March 17, 1950 of the Government of Pepsu entitled the police personnel to compensatory allowance at 20% of the pay subject to a maximum of Rs. 50 p.m. and a minimum of Rs. 10 p.m., and that that compensatory allowance was guaranteed to a police officer by Section 115(7) of the States Re-organisation Act, 1956 when Dharampur became a part of the State of Punjab. This guarantee continued as a condition of service with the police officer when on November 1, 1966, Dharampur became part of Himachal Pradesh. It is not necessary, however, to consider whether such a police officer continues to enjoy that guarantee when absorbed in the Himachal Pradesh Police Force, because in the present case there is nothing to show that the Petitioner was a member of the police force of the State of Pepsu. Clearly, the guarantee extended by Section 115(7) of the States Re-organisation Act, 1956 can be available only to police personnel who belonged to the State of Pepsu and were absorbed into the Punjab Police Force. If the Petitioner was allowed compensatory allowance while posted at Dharampur in accordance with the terms of the order of March 17, 1950 it could only have been because the terms of that order were expressly made applicable by the Punjab Government to its police officers, even though they were never in the employment of the Pepsu Government. Unless Section 115(7) of the States Re-organisation Act can be applied to the Petitioner, there is nothing to prevent the Government from making a reduction in the compensatory allowance. In the circumstances, the case of the Petitioner concerning the compensatory allowance while at Dharampur must fail.

10. Finally, it is pointed out by learned Counsel for the Petitioner that while the scales of pay were revised in respect of Government services in Himachal Pradesh with effect from February 1, 1968, the scales of pay in respect of the Police Department were revised with effect from March 1, 1971 only, and it is contended that Articles 14 and 16 have been contravened. Paragraph 8 of the writ petition deals with this aspect of the case, but I am unable to find any foundation therein or indeed in any other part of the writ petition on which the contention can be based. It should have been shown by appropriate material in the writ petition that the conditions and circumstances of all the Government

services, including the Police Department fell materially in the same class and there was no valid reason why one should be treated distinct from the rest. Besides, paragraph 8 of the return filed by the Respondents avers that the pay scales of lower subordinates and Assistant Sub-Inspectors in the Police Department were revised with effect from October 1, 1962 and subsequently the scales of pay of the Assistant Sub-Inspectors in the Police Department were revised from April 1, 1968. It was only compensatory allowance that was revised with effect from March 1, 1971. The Petitioner does not allege in his writ petition that the compensatory allowance in the case of other services was revised with effect from an earlier date. The contention must fail and is rejected.

11. Accordingly, the writ petition is allowed in so far that the Respondents are restrained from reducing the compensatory allowance to which the Petitioner is entitled during his posting at Simla, and are directed to refund any amount already deducted on that account. The remaining relief prayed for is refused. In the circumstances, there is no order as to costs.