(2010) 12 SHI CK 0353

In the High Court Of Himachal Pradesh

Case No : CWP No. 3035 of 2008

Amar Singh APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 12 SHI CK 0353

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldip Singh, J.—This judgment shall dispose of CWP No. 3035 of 2008 and CWP No. 2912 of 2009 as common question of law is involved in both the petitions.

CWP No. 3035 of 2008

2. The facts, in brief, are that Petitioner was appointed as peon on 10.1.1966 in Respondent No. 2 and after serving 40 years, he retired from service on attaining the age of superannuation on 31.10.2005. On 27.9.2005 the Respondent No. 4 had sent a letter to Respondents No. 2 and 3 that on account of superannuation of Petitioner some amount was due to Petitioner which included salary from November 2004 to October 2005 Rs. 1,01,084/-, gratuity Rs. 1,28,848/- and leave encashment Rs. 78,090/- total amounting to Rs. 3,08,022/-. The Petitioner had retired on 31.10.2005 but the Petitioner has not been paid any retiral benefits. The Petitioner made several representations, lastly Petitioner had issued notice dated 21.10.2008 to the Secretary, State Social Welfare Board, Shimla with copy to Respondents No. 3 and 4.

3. The Respondent No. 4 responded vide reply dated 10.11.2008 and stated that pension case of the Petitioner was not sent by the Family and Child Welfare Project Churah-II to his office which will authorize the pension to Petitioner as soon as the case is forwarded by the Department to his office. It has been

submitted that action of Respondent No. 3 by not sending the pension case of the Petitioner to the concerned Department has deprived the Petitioner pension and all retiral benefits which is wrong, illegal, arbitrary and in violation of Article 14 of the Constitution. In these circumstances, Petitioner filed the petition with the prayer that Respondents may be directed to release the retiral benefits of the Petitioner alongwith 9% interest.

4. The Respondent No. 1 has filed the reply in which preliminary objections have been taken that Respondent No. 2 is a subsidiary institution of Central Social Welfare Advisory Board which is working under the guidelines/directions of Central Social Welfare Advisory Board. The role of the State Government is restricted to release of grant-in-aid to State Social Welfare Advisory Board and to regulate the payment of grant-in-aid released to State Social Welfare Board for implementing various welfare schemes / programmes as sanctioned by Central/ State Board. The State Government is releasing 100% grant-in-aid for running the Family and Child Welfare Projects. The administrative control of the scheme entirely rests with the State Social Welfare Board since inception of the scheme and staff employed is working under the administrative control of Respondent No. 2 and are governed by the rules and regulations of the State Social Welfare Board.

5. The Petitioner had been working as Peon under the scheme of Family and Child Welfare Project and was thus under the direct administrative control of Respondent No. 2. The State Government is releasing grant-in-aid to Respondent No. 2 every year for implementation of the scheme in accordance with the available budget. The State had released an amount of Rs. 36.50 lacs as grant-in-aid to Respondent No. 2 for running Family and Child Welfare Projects during the year 2006-07. The issue of releasing gratuity and leave encashment to Petitioner pertains to Respondent No. 2 only. The matter regarding extension of retiral benefits to the State Welfare Board''s staff had been taken up with the State Government and the State Government after obtaining the prior concurrence of the Finance Department had approved to extend the gratuity benefits to the staff of the State Social Welfare Board with the condition that the expenditure incurred will be borne by the Board within its sanctioned grants. The Respondent No. 1 has ultimately stated that the State Government cannot be held responsible for non-releasing of gratuity and leave encashment to the Petitioner.

6. The Respondent No. 2 has contested the petition by filing the reply and has stated that the Family and Child Welfare Projects running in the State of Himachal Pradesh have been transferred to the State of Himachal Pradesh for its maintenance in view of letter dated 15.5.1969, hence the maintenance of the project is 100% liability of the State which includes expenditure on salaries and other service benefits. The Respondent No. 2 has no source of income of its own. The budget is to be released either by the State of H.P. or by the Central Government or by both on sharing basis subject to provision of the scheme. The Respondent No. 2 had sent the proposal to State Government including salary

and retiral benefits. There are five projects running under Family and Child Welfare Programme and Respondent No. 2 has raised budget as per demands received from respective project. The Respondent No. 2 had sent total budget proposal of Rs. 1, 18, 61,474/- including the demand raised by Family and Child Welfare Project, Salooni. As against the budgetary proposal the Respondent No. 2 has received a sum of Rs. 36,50,000/- with a short fall of Rs. 82,11,474/- out of which Rs. 40,32,763/- is the short fall on account of dues of retired employees in five projects including Salooni.

7. The Petitioner had been an employee of the project for all intents and purposes. The project is 100% State sponsored project. As such budget is to be provided by the State of Himachal Pradesh. The Petitioner has been paid a sum of Rs. 1,01,084/- by Respondent No. 3 on account of salary for the period 1.11.2005 to 31.10.2005. It has been stated that for gratuity and leave encashment of Petitioner the Respondent No. 2 has not received the budget from the State as such the same could not be released. The Respondent No. 2 has prayed for dismissal of the writ petition. The Respondent No. 3 has filed more or less the same reply as has been filed by Respondent No. 2.

CWP No. 2912 of 2009

8. The brief facts of the case are that Petitioner is widow of late Karam Chand who had worked as Accountant with Respondent No. 2. Karam Chand was appointed on 27.9.1966 and after serving 38 years he got voluntarily retirement on 31.5.2004 as he was suffering from paralysis. On 29.7.2004 the Respondent No. 3 had sent a letter to Respondent No. 2 disclosing that an amount of Rs. 1,09,053/- on account of leave encashment and an amount of Rs. 2,63,010/- on account of gratuity total amounting to Rs. 3,63,963/-was due to late Karam Chand.

9. The further case of the Petitioner is that revised pay scale arrears w.e.f. 1.1.1996 to 30.6.2002 amounting to Rs. 2,58,840/- of late Karam Chand which were due to him were not paid to Karam Chand and details of such arrears have been given in Annexure P-3. Karam Chand voluntarily retired on 31.5.2004, though the actual date of superannuation was February, 2005 but he was not paid his retiral benefits such as leave encashment, gratuity and revised pay arrears. Karam Chand died on 31.3.2005 but even after his death due amount which was payable to Karam Chand was not paid to his widow Petitioner.

10. The son of the Petitioner made various representations in this regard but to no effect. The Petitioner herself was aged 58 years at the time of filing of the petition with liability of unemployed son and daughter and is suffering financial difficulty. In these circumstances, the Petitioner has filed the petition directing the Respondents to release due amount Rs. 6, 22,803/- of late Karam Chand to Petitioner alongwith 18% interest.

11. The Respondent No. 1 has contested the petition by filing the reply and has taken more or less the same stand as taken in CWP No. 3035 of 2008. It has

been stated that Karam Chand husband of the Petitioner was working under the scheme of Family and Child Welfare Project. The issue of releasing retiral benefits needs to be settled by Respondent No. 2.

12. The Respondent No. 2 has also contested the petition by filing the reply and has taken more or less the same stand as taken in CWP No. 3035 of 2008. It has further been stated that Respondent No. 2 had sent total budget proposal of Rs. 1,33,37,700/- including the demand raised by Family and Child Welfare Projects , Salooni. The Respondent No. 2 against the aforesaid demand has received a sum of Rs. 36,50,000/- leaving a short fall of Rs. 96,87,700/- out of which Rs. 56,42,356/- is short fall dues of retired employees in five projects including Salooni. It has been admitted that a letter was received from the Petitioner. The Respondent No. 2 had raised demand for retiral benefits i.e. leave encashment, gratuity and revised arrears including salary etc of the employees working under the project. But the Respondent No. 2 has not received the budget from the State as per demand. It has also been admitted that husband of the Petitioner superannuated from service on 31.5.2004. The grants against the projects are to be released by the State of Himachal Pradesh including grants for gratuity, leave encashment and arrears of salary, if any.

13. I have heard the learned Counsel for the parties. It emerges from the material on record that Petitioner in CWP No. 3035 of 2008 and late Karam Chand husband of the Petitioner in CWP No. 2912 of 2009 had worked in the Family and Child Welfare Project, Churah-II Salooni. The State in the replies in both the petition has stated that State Government is releasing 100% grant-in-aid to the State Social Welfare Board for running the Family and Child Welfare Projects. The State Social Welfare Board in its replies in both the petition has stated that the Family and Child Welfare Projects running in the State of H.P. are to be 100% maintained by the State Government including the salaries and other service benefits. It is also the stand of the State Social Welfare Board that the budget proposals which included outstanding dues of the retired employees of the Family and Child Welfare Project, Salooni were sent to the State but as against the demand the State had released very less amount leaving huge short fall and for that reason the dues of the retired employees could not be paid. It is the stand of the Respondent No. 2 that it doesn''t have any independent source of income and it depends upon the grants. The State in its replies has clearly stated that 100% grant-in-aid is being released by the State Social Welfare Board for running the Family and Child Welfare Projects. It is thus clear that Respondent No. 2 is to clear the dues of Petitioner in CWP No. 3035 of 2008 and also the dues of late Karam Chand in CWP No. 2912 of 2009 and due to non-availability of funds the Respondent No. 2 is not in a position to clear the dues.

14. The Petitioner in CWP No. 3035 of 2008 has retired on 31.10.2005 and late Karam Chand got voluntary retirement on 31.5.2004 as he was suffering from paralysis, otherwise he was to superannuate in February, 2005. Karam Chand had died on 31.3.2005. The Respondent No. 2 in CWP No. 3035 of 2008 has

stated Rs. 1,01,084/- on account of salary for the period 1.11.2004 to 31.10.2005 has already been paid. It is not the stand of any Respondent that Petitioner in CWP No. 3035 of 2008 has been paid gratuity amounting to Rs. 1,28,848/-and leave encashment Rs. 78,090/-. In CWP No. 2912 of 2009 as per Annexure P-1, Rs. 1,00,953/- was due to late Karam Chand on account of leave encashment and Rs. 2,63,010/- on account of gratuity total amounting to Rs. 3,63,963/-. In addition, Karam Chand was also entitled to revised pay scale arrears w.e.f. 1.1.1996 to 30.6.2002 amounting to Rs. 2,58,840/- as per Annexure P-3. It is not the stand of any Respondents that late Karam Chand or his any heir has been paid leave encashment, gratuity and arrears on account of revision of pay w.e.f. 1.1.1996 to 30.6.2002 which were otherwise payable to Karam Chand. Thus, it is clear that Respondent No. 2 is liable to pay Rs. 1,00,953/- leave encashment, gratuity Rs. 2,63,010/- and arrears of revision of pay scale w.e.f. 1.1.1996 to 30.6.2002 amounting to Rs. 2,58,840/- total amounting to Rs. 6,22,803/-to legal heirs of Karam Chand after his death.

15. The Respondents have not shown any cause for non-payment of dues to Petitioner in CWP No. 3035 of 2008 and to the heirs of Karam Chand in CWP No. 2912 of 2009. The only defence projected by Respondent No. 2 is that due to paucity of funds which were not released by Respondent No. 1, the dues could not be paid. On its turn, the Respondent No. 1 has admitted that it is releasing 100% grant-in-aid to the State Social Welfare Board with further plea that it is the duty of Respondent No. 2 in its turn to pay the dues to its employees. The Respondent No. 2 can pay the dues of its retired employees only if matching amount is released by Respondent No. 1 for such payment. The Respondent No. 1 has not shown any legally acceptable cause why the grant for releasing the dues of Petitioner in CWP No. 3035 of 2008 and of late Karam Chand in CWP No. 2912 of 2009 has not been released. Thus, both the Petitioners have made out a case in their favour.

16. In view of the above, both the petitions are allowed. In CWP No. 3035 of 2008 the Respondent No. 1 is directed to release, if not already released, grant-in-aid for payment of gratuity amount of Rs. 1,28,848/- and leave encashment amount of Rs. 78,090/- total amounting to Rs. 2,06,938/-in favour of Respondent No. 2 within three months from the date of supply of copy of this judgment by the Petitioner to the competent authority and Respondent No. 2 in turn shall pay, if not already paid, gratuity amount of Rs. 1,28,848/- and leave encashment amount of Rs. 78,090/- to the Petitioner in further one month, failing which the Petitioner shall be entitled to 9% interest per annum on aforesaid amounts w.e.f. 31.10.2005 till payment. In CWP No. 2912 of 2009 the Respondent No. 1 is directed to release, if not already released, grant-in-aid for payment of gratuity amount Rs. 2,63,010/-, leave encashment Rs. 1,00,953/- and arrears on account of revision of pay scale w.e.f. 1.1.1996 to 30.6.2002 Rs. 2,58,840/-total amounting to Rs. 6,22,803/- in favour of Respondent No. 2 within three months from the date of supply of copy of this judgment by the Petitioner to the competent authority and Respondent No. 2 in turn shall pay in

accordance with law, if not already paid, gratuity amount Rs. 2,63,010/-, leave encashment Rs. 1,00,953/- and arrears on account of revision of pay scale w.e.f. 1.1.1996 to 30.6.2002 Rs. 2,58,840/-total amounting to Rs. 6,22,803/- to the legal heirs of Karam Chand in further one month, failing which the legal heirs shall be entitled to 9% interest per annum on aforesaid amounts w.e.f. 31.5.2004 till payment. No costs.

