
(2014) 01 SHI CK 0056
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition 6572 of 2011

B.R. Thakur

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 01 SHI CK 0056

Hon'ble Judges : V.K. Sharma, J;Sanjay Karol, J

Bench : Division Bench

Advocate : Surender Sharma, Advocates for the Appellant; R.M. Bisht, Dy. Advocate General, Advocates for the Respondent

Judgement

V.K. Sharma, J.—Heard the learned counsel for the petitioner and the learned Dy. Advocate General for the respondents-State.

2. The petition has been filed on the following substantive prayers vide para 20 (i) to (iii):--

"(i) That impugned Annexures-PD, PH and PK dated 30.10.2003, 2.07.2004 and 31.5.2011 respectively may kindly be quashed ad set-aside;

(ii) that the respondents may kindly be directed to re-fix the pay of the petitioner, at Rs. 12750/- w.e.f. 6.6.2000 i.e. the date of absorption of the services of the petitioner by granting him annual increments w.e.f. 1.08.2000 and to pay consequential benefits alongwith interest @ 18% per annum.

(iii) That the respondents may kindly be directed to calculate and pay the Retiral/pensionary benefits after re-fixing the pay of the petitioner w.e.f. 6.6.2000".

3. Some undisputed facts may be noticed first. At the relevant time the petitioner, who has since retired from service, was on the establishment of Himachal Pradesh State Electronics Development Corporation (HPSEDC) and was posted as Manager (Marketing) in TV Factory, Chambaghat, Solan, in the pay scale of Rs. 9200-13200 and was drawing basic pay of Rs. 12750/-. Consequent

upon the decision taken by the Government of Himachal Pradesh, in its cabinet meeting held on 4.10.1997, to close the aforesaid factory and to absorb the employees in Govt. departments, services of the petitioner came to be absorbed in the Industries Department on the post of Manager, DIC (Class-II Gazetted), in the pay scale of Rs. 7000-10980/-, vide notification dated 23rd May, 2000, Annexure PA, where he joined as such on 06.06.2000. Annexure PB is the revised last pay certificate of the petitioner issued by HPSEDC. On absorption, pursuant to communication dated 12.12.2002, Annexure PC, pay of the petitioner was fixed vide order dated 30.10.2003, Annexure PD, in the pay scale of o Rs. 7000-10980/-. Accordingly he was fixed at the maximum of the pay scale, that is, Rs. 10980/- plus Rs. 1770/- as personal pay, with the rider that the personal pay will be absorbed in future increments. Being aggrieved by such rider the petitioner submitted representation Annexure PE, dated nil, January, 2004, followed by representations Annexure PF, dated nil and Annexure PG, dated 3.7.2004, for allowing pay scale of Rs. 9200-13900/-, as a personal measure to protect the pay he was receiving in the parent corporation. However, the request of the petitioner was rejected vide communication dated 2.7.2004, Annexure PH, which was challenged by him before the erstwhile H.P. Administrative Tribunal by way of an Original Application, which on abolition of the said tribunal was transferred to this court and was disposed of by a Division Bench vide judgment dated 21.10.2010 (Annexure PI), in CWP(T) No. 12386 of 2008, B.R. Thakur v. State of H.P. and others, operative part whereof contained in para 2 reads as follows:--

"2. According to the petitioner, even the pay that the petitioner was getting at the time of absorption is not protected. In case there is factual mistake in that regard, it will be open for the petitioner to file an appropriate representation before the first respondent, in which case the matter will be duly considered by the first respondent with notice to the petitioner and appropriate action in accordance with law will be taken within another four months. We make it clear that the petitioner will not be entitled to stake his claim for protection of pay scale, but to pay drawn at the time of absorption. We also make it clear that the grievance of the petitioner that he has been stagnating without increment(s) after absorption till retirement, will be looked into by the first respondent and appropriate orders in that regard will also be passed on the said representation and in the process, decision of Supreme Court reported in K. Gopinathan Vs. Union of India (UOI), will be considered".

3. Representation dated 1.11.2010, Annexure PJ, was submitted by the petitioner to the Principal Secretary (Industries) to the Government of H.P., in terms of the aforesaid judgment dated 21.10.2010 (Annexure PI), in CWP(T) No. 12386 of 2008, which has been disposed of vide order dated 31.5.2011, Annexure PK, text whereof is as under:--

"Government of Himachal Pradesh Department of Industries

No. Ind-A(E)1-24/2005

Dated: Shimla-2, the 2011

ORDER

WHEREAS, Sh. B.R. Thakur (Retd.) Manager had filed CWP(T) No. 12389/08 in the Hon''ble Court regarding release of annual increments from August 2000 to 2007.

WHEREAS, the Hon''ble High Court has passed the judgment on 21.10.2010 in CWP(T) No. 12386/08 titled B.R. Thakur v. State of H.P. and directed the petitioner to file an appropriate representation before the first respondent and the first respondent will consider the matter with notice to the petitioner and appropriate action in accordance with law will be taken within another four months.

WHEREAS, the petitioner has also been given personal hearing on 5.3.2011 by the undersigned and after hearing the petitioner, it was decided that the matter may be again taken up with the Finance Department.

AND WHEREAS, the representation of the petitioner dated 5.3.2011 has been considered/examined in consultation with the Finance Department. As per provisions of Rules i.e. H.P. Civil Services (Revised Pay) Rules, 1998 and FR-22, in no case the pay of a person can exceed the maximum of the time scale of the post. The precedents quoted in support of the instant case are not relevant. In fact, ex gratia increments in the Master Scale were allowed only in case of promotion where the pay drawing in the lower post exceeds the maximum of the pay scale of the promotional post. In this way, the person shall draw increments (ex-gratia increments) in the Master Scale. But the instant case is quite different. In the event of permanent absorption, though after becoming surplus, the last pay drawn by the incumbent has been protected and the difference between the maximum of the pay scale and existing pay has been treated as "Personal Pay" which is to be absorbed in future increments. This was done in order to avoid any loss in the substantive pay meaning hereby that the substantive pay has been protected and so is the version of the Hon''ble Court. The personal Pay is reckoned for all intents and purposes.

Therefore, in view of the above position, there is no jurisdiction/merit in the representation preferred by the petitioner and the same is hereby rejected.

Sd/- Addl. Chief Secretary (Inds.) to the Government of Himachal Pradesh.

No. Ind-A(E)1-24/2005

Dated: Shimla-2, the 31-5-2011.

Copy forwarded for information and necessary action to:--

1. The Director of Industries, H.P. Shimla-1.
2. Sh. B.R. Thakur, H. No. 76/6, Naya Bazar, Nahan, Distt. Sirmour.

3. Guard file,

Sd/- Under Secretary (Inds.) to the Govt. of Himachal Pradesh."

4. Again being aggrieved the petitioner has filed and maintained the present petition.

5. In the reply to paras 6, 7, 16 and 18 (e), (f) & (g) of the petition the respondents have taken the following stand:--

"Para:6 That in reply to this para, it is submitted that the post of the Manager (DIC) against which the petitioner was absorbed was carrying the pay scale of Rs. 7000-10980. The Petitioner was drawing the basic pay of Rs. 12750/- at the time of his absorption in the Respondent Department which was more than the maximum of the pay scale of the said post. Consequently, the case of the Petitioner for fixation of pay was examined in consultation with the Finance Department and the pay of the Petitioner was fixed at Rs. 10980+1770 PP as per provisions of Rules i.e. H.P. Civil Services (Revised Pay) Rules 1998. The difference between the maximum of pay scale and existing pay has been treated as personal pay which is to be absorbed in future increments. Therefore, the substantive pay of the Petitioner has been protected in order to avoid any loss to him and as such the Petitioner has not been deprived of the benefits of future increments as alleged by him in the petition.

Para: 7: That in reply to this para, it is submitted that a communication dated 12.12.2002 was made to the Respondent No. 1 by the Respondent No. 2 for the pay fixation of the Petitioner in view of the Audit objection vide which recovery to the tune of Rs. 58,902/- was pointed out by the Audit Officer (Annexure-PC). Subsequently, the pay of the Petitioner had been regulated by protecting substantive pay of the Petitioner vide order dated 30.10.2003 (Annexure-PD). Thereafter, the Petitioner again made a representation dated 29.1.2004 to the Respondent No. 1 and the same was considered/examined in consultation with Finance Department and rejected vide letter dated 2.7.2004 (Annexure PH) in view of the submission made in Para-supra.

Para:16: That the contents of this para are denied. It is submitted that the pay of the Petitioner has rightly been protected and regulated in accordance with the provisions of Rules i.e. H.P. Civil Services (Revised Pay) Rules 1998. It is also not true that the Petitioner has been debarred from earning the future increments as the same have been earned by him and adjusted against the personal pay shown in pay fixation. Therefore, the representation of the Petitioner has duly been considered and disposed of accordingly in compliance to the judgment delivered by the Hon''ble Court.

18(e)(f)&(g) That in reply to these sub-paras, it is submitted that the order dated 2.7.2004 was passed by the Respondent No. 1 in consultation with the Finance Department. However, the case of the Petitioner was again considered/examined in consultation with Finance Department in pursuance to the judgment

delivered on 21.10.2010 in CWP(T) No. 12386/08 and the same was rejected by passing a speaking order dated 31.5.2011. Therefore, the pay of the Petitioner has rightly been fixed and protected as per provisions contained in the relevant Rules and the Petitioner has not been deprived for earning his future increments as alleged by him in the petition".

6. By filing rejoinder the petitioner has refuted the stand taken by the respondents and has instead reiterated the averments set up in the petition.

7. The controversy between the parties lies within a narrow compass, as to whether in the face of the aforesaid judgment dated 21.10.2010, in CWP(T) 12386 of 2008, whereby it was made clear that "the petitioner will not be entitled to stake his claim for protection of pay scale, but to pay drawn at the time of absorption", the stipulation in pay fixation order dated 30.10.2003, Annexure PD that personal pay of Rs. 1770/- allowed to the petitioner would be absorbed in future increments, is in accordance with law or not. According to the petitioner, once his pay in the parent corporation has been protected, he cannot be deprived of annual increments by treating the difference between the last basic pay of Rs. 12750/- drawn by him in the parent corporation and maximum of the pay scale of Rs. 7000-10980/- granted to him on absorption in the Industries Department, that is, Rs. 1770/-, as personal pay. In this regard, the petitioner has relied upon the dictum of law laid down by the Hon'ble Supreme Court in K. Gopinathan Vs. Union of India (UOI), , text whereof is as under:--

"Leave granted.

2. The appellant K. Gopinathan was working as Assistant Sub- inspector of Police. He was taken on deputation in the central Bureau of Investigation (in short CBI) on 1/02/1965. On such deputation he was paid his pay pertaining to the post of his parent office, as modified from time to time. Besides, he was also paid deputation duty allowance. On 1/02/1983, he was permanently absorbed and his pay was re-fixed.

3. It requires to be stated at this stage that on such absorption his basic pay was reduced from Rs. 510.00 to Rs. 390.00. Therefore, he submitted a representation to the Superintendent of Police, C.B.I, pointing out the loss caused to him by an incorrect fixation. In this regard he made repeated representations and ultimately on 13/09/1990 the appellant was informed that his pay fixation had been correctly done.

4. Aggrieved by that order, he moved central Administrative Tribunal, Madras bench by way of Original Application No. 967 of 1990. Before the tribunal it was contended on behalf of the appellant that the basic pay on account of the absorption should not be reduced. There- fore, merely because the overall pay is more, that does not mean there could be a reduction of the basic pay. He relied on the decision of the Bangalore and the New Delhi tribunals for advancing this plea. However, the tribunal rejected the same. Hence, Mr. M.N. Krishnamani, learned counsel for the appellant commends the acceptance of the view of the

Bangalore bench as well as the Delhi bench which found favour with this court in Special Leave Petition (C) No. 2196 of 1992 while the respondents would submit that the reasoning in the impugned judgment is correct.

5. By means of the following tabulated statement we will point out the position of the appellant's pay as a deputationist and as absorbee in C.B.I.

6. Two things are striking: (i) His basic pay has been reduced from Rs. 510 to Rs. 390. (ii) However the overall pay as a deputationist on the date of absorption was Rs. 899 while after absorption in C.B.I, it is Rs. 1023.70.

7. On these facts the Tribunal comes to the conclusion as follows:

"In fact on the date of absorption, the dearness allowance available under the Tamil Nadu Government Pay Scales was only Rs. 279 for the applicant, whereas the amount of DA available to him under the Central scales was Rs. 518. It is also to be noted that out of Rs. 518, an amount of Rs. 214.70 has been merged with the pay. When the dearness pay of Rs. 214.70 is added to the basic pay of Rs. 390.00, we get the amount of Rs. 604, which is higher than the basic pay of Government servant under the Tamil Nadu Government, attached to the post. We therefore hold that there has not been any reduction in the applicant's basic pay in substance, even though that basic pay consisted of two elements is different. Taking into account the fact that the Tamil Nadu Government scales were revised on April 1, 1978 and that of the Central Government on January 1, 1973, we are of the view that both the scales are not comparable. When a person is being governed by the Tamil Nadu Government pay scales while he was on deputation, and therefore as on February 1, 1983, is absorbed under central scale of pay the diminution in basic pay of the applicant is bound to occur. We also notice that even though the basic pay of the applicant rose to Rs. 604.00 from Rs. 510 by virtue of the addition of the dearness pay of Rs. 214.70 with the existing basic pay of Rs. 390.00. Therefore, this is a case in which there has not been any real reduction in the basic pay of the applicant."

8. We are afraid we cannot subscribe to this reasoning. While upholding the view of central Administrative tribunal, Principal bench, New Delhi in Original Application No. 1680 of 1989 in Special Leave Petition (C) No. 2196 of 1992, we have pointed out how the basic pay cannot be reduced. The same principle will be applicable to this case as well. Accordingly, the appeal is allowed. However, there shall be no order as to costs."

8. Per contra, the learned Dy. Advocate General submits that on absorption in the Industries Department the petitioner was placed as junior-most Manager, DIC (Class-II Gazetted) and in case his basic pay was fixed at Rs. 12750/-, the direct fall out would have been that his pay would have been more than that of his seniors, giving rise to claim for stepping up by them under F.R 22(I)(a)(1). However, this contention on the face of it is fallacious and cannot be given any favourable consideration, as F.R 22(I)(a)(1) is attracted only in case junior and senior were recruited from the same source and the senior was drawing more

pay than the junior even in the lower cadre, which is not the factual situation in the present case, as admittedly on the closure of the aforesaid factory services of the petitioner were absorbed in the Industries Department.

9. The Hon''ble Supreme Court has categorically held in a like fact situation in K. Gopinathan (supra) that on absorption basic pay of an incumbent cannot be reduced by treating the difference between basic pay last drawn in the parent department and maximum of the pay scale allowed in the department of absorption, as personal pay.

10. In view of the above, the petition is allowed. Consequently, the rider in the order dated 30.10.2003, Annexure PD that personal pay of Rs. 1770/- allowed to the petitioner would be absorbed in future increments is quashed and as a result communication dated 2.7.2004, Annexure PH and order dated 31.5.2011, Annexure PK, whereby the representations submitted by the petitioner have been rejected, shall also stand quashed, with a direction to the respondents/competent authority to fix the basic pay of the petitioner at Rs. 12750/- with effect from 6.6.2000, that is, the date of his absorption in the Industries Department and grant him annual increments with effect from 1.8.2000, that is, the date of next increment, along with consequential benefits including retiral/pensionary benefits by 31.03.2014, failing which, interest @ 9% per annum shall also be payable. It is made clear that in case retiral/pensionary benefits have already been granted to the petitioner, he shall be entitled only for the difference between what he has been paid and what was his entitlement in terms of this judgment.

11. The petition stands disposed of in the above terms.