
(2016) 05 SHI CK 0066
In the High Court Of Himachal Pradesh
Case No : LPA No. 155 of 2015

Brig. L.S. Thakur (Retired)	Vs	APPELLANT
State of Himachal Pradesh & another		RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Constitution of India, 1950 — Article 318(a)

Citation : (2016) LIC 2432

Hon'ble Judges : Mr. Mansoor Ahmad Mir, C.J. and Mr. Sandeep Sharma, J.

Bench : Division Bench

Advocate : Mr. Satyen Vaidya, Senior Advocate with Mr. Vivek Sharma, Advocate, for the Appellant; Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals, Mr. J.K. Verma, Deputy Advocate General, Mr. D.K. Khanna, Advo

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J. (oral) - This Letters Patent Appeal is directed against the judgment dated 17th April, 2015, passed by the learned Single Judge in CWP No. 9439 of 2013, titled as Brig. L.S. Thakur (Retired) v. State of H.P. & another, whereby the writ petition came to be dismissed, for short "the impugned judgment".

2. By the medium of the writ petition, the appellant-writ petitioner had invoked the jurisdiction of the Writ Court for grant of the following reliefs, on the grounds taken in the memo of the writ petition:

"a. Annexure P-5 may kindly be quashed being wrong, illegal and violative of provisions of Constitution of India;

b. Direct the respondent No. 1 to pay the pension at the rate of Rs. 1250/- per month or as may be applicable in case of petitioner by extending the benefit of Regulation 11-A of 1974 Regulations w.e.f. 1.4.2011."

3. Precisely, the case of the appellant-writ petitioner was that the respondents

have wrongly interpreted Regulation 11-A of the Himachal Pradesh Public Service Commission (Members) Regulations, 1974, for short "the Regulations", thereby rejected his representation (Annexure P-4) vide order (Annexure P-5).

4. The moot question for consideration in this appeal is-whether a person, who came to be appointed as a Chairman or a Member of the Himachal Pradesh Public Service Commission, for short "the Commission", is entitled to pension, in terms of Regulation 11-A of the Regulations?

5. It is apt to reproduce the said Regulation herein:

"The Chairman or a Member, who at the date of his appointment as such was not in the service of the Central Government or a State Government, a local authority, a University, a privately managed recognised school or affiliated college or any other body wholly or substantially owned or controlled by the Government of Himachal Pradesh shall on his ceasing to hold office as Chairman or Member be paid a pension for his life at the rate of Rs. 300/- (Rupees three hundred) per month in the case of Chairman and Rs. 250/- (Rupees two hundred and fifty) per month in the case of Member for each completed year of service as Chairman or Member, as the case may be, subject to a maximum of Rs. 1800/- (Rupees one thousand eight hundred) only per month in the case of Chairman and Rs. 1500/- (Rupees one thousand five hundred) per month in the case of Member."

6. Regulation 11-A, quoted herein above, mandates that a Chairman or a Member, who at the time of his appointment as such, was not in service of the Central/State Government or the organisations described in the said Regulation, is entitled to pension, as prescribed.

7. Admittedly, the appellant-writ petitioner was not in service at the time when he came to be appointed as a Member of the Commission and had retired from the service of the Central Government at that time.

8. The respondents rejected the representation of the appellant-writ petitioner on the ground that he was drawing pension, which is not the mandate of Regulation 11-A of the Regulations and no such restriction/rider is contained in the said Regulation.

9. Thus, we are of the considered view that the learned Single Judge has fallen in an error in interpreting Regulation 11-A of the Regulations and in holding the petitioner not entitled to pension.

10. Having said so, the impugned judgment is set aside, the order (Annexure P-5) is quashed and the appeal is allowed. The respondents are directed to grant pension to the appellant, as admissible under Regulation 11-A of the Regulations, along with arrears, if any.

11. Accordingly, the writ petition is allowed.

12. Pending application(s), if any, stands disposed of.

13. Copy dasti.