
(2009) 11 P&H CK 0137
In the Punjab And Haryana At Chandigarh

Chajju Ram and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 11 P&H CK 0137

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajai Lamba, J.—This petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of certiorari, quashing Order dated 7.1.2008 (Annexure P-5); and Orders Annexure P-7 and P-8 dated 26.11.2008 and 31.7.2006, respectively.

2. Perusal of Order Annexure P-5 indicates that Chief Engineer has been directed by the Government of Punjab, Department of Irrigation, to take immediate action in regard to refixation of pension of the pensioners and refixation of basic pay of the employees. As per Order Annexure P-7, the Punjab Government has ordered that pay of the employees who have been granted special increments, be refixed after withdrawal of special increments.

3. As per Order Annexure P-8, Sardool Singh (Petitioner No. 2) has been informed that as per clarification of Punjab Government, special increments given, are to be reduced/ ignored while calculating pensionary benefits.

4. Under the circumstances, pay of the petitioners has been refixed after withdrawal of special increments.

5. In the petition, it has been pleaded that the petitioners are retired and are senior citizens. They had been working on work charge basis with Ranjit Sagar Dam Project. The petitioners had to face tough and hazardous conditions. A

number of persons lost their lives on the project site due to tough working conditions and for early completion of the project. Considering the exceptional circumstances, special increments were granted.

6. It has been pleaded that the matter is covered by Judgment dated 27.5.2009 rendered in Civil Writ Petition No. 5568 of 2008 titled `Charan Dass and Ors. v. State of Punjab and Ors. Learned Counsel for the respondents states that indeed the issue is covered by the said judgment.

7. I have considered the issue.

8. In Charan Dasss case (supra), after considering the arguments, the following has been held:

It is admitted case of the parties that the work charge period is to be counted as qualifying period for the grant of pensionary benefits and thus the emoluments drawn by the employee as work charge employee had to be considered as also the period when the employee served in work charge capacity. It is admitted case of the parties that the benefit of retrenchment increments and special increments was granted to the employees during the period they were serving in work charge capacity without any misrepresentation or fraud on their part. The benefit allowed to the petitioners is, however, sought to be withdrawn after take over and regularisation by the State Government with effect from 13.3.1996. The retrenchment increments were allowed to bring their salary and emoluments at par with other employees in the revised pay scale, keeping in view their last drawn salary as retrenchees. No reasons have been given in the reply as to how such benefit is impermissible or illegal. The State, however, has attempted to justify its action regarding withdrawal of special and retrenchment increments. Admittedly, special increments were granted from time to time to some of the employees/petitioners for their alleged good work. There was no uniform policy and benefit of special increments was given on selective basis. In so far as the retrenchment increments are concerned, there cannot be any second opinion that the benefit was granted to bring their wages at par under the revised pay scale and that too before their take over by the State Government.

As regards the grant of special increments is concerned, it was selectively granted from person to person and is not justified. However, one fact remains common in regard to grant of both the benefits i.e. retrenchment increments and special increments that the said benefits were conferred upon the petitioners without any misrepresentation or fraud on their part. The issue is squarely covered by the Full Bench judgment of this Court passed in CWP No. 2799 of 2008 alongwith other connected matters (Budh Ram and Ors. v. State of Haryana and Ors.) decided on 22.5.2009. The case of the petitioners falls in category ii) wherein following observations have been made:

It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even when the employee concerned was not at fault and was not in any way responsible for the

mistake committed by the authorities, they are entitled to recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount simply because on a true and correct interpretation of the rules, such a benefit was not due

We have, therefore, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be recovered from them.

In view of the above, the respondents are not entitled to effect any recovery from the petitioners either on account of retrenchment increments or special increments allegedly erroneously given. However, the respondents are entitled to re-fix the emoluments by reducing the special increment only. Consequently the pay of the petitioners will be re-fixed and in case of those employees who have already retired from service, the retiral benefits shall be released within a period of two months. The petitioners shall also be entitled to interest on the delayed payment of pension/retiral benefits at the statutory rate wherever admissible and at the rate of 6% on pension and other retiral benefits where statutory interest is not provided for. Any amount deducted from the retiral benefits or the salary of the petitioners shall be refunded within the aforesaid period.

Ordered accordingly. Disposed of.

A copy of this judgment be placed on record on each concerned file.

9. Since the issue is covered by Judgment dated 27.5.2009 rendered in Civil Writ Petition No. 5568 of 2008 titled `Charan Dass and Ors. v. State of Punjab and Ors., this petition is allowed in the same limited terms.