

(2010) 10 SHI CK 0104

In the High Court Of Himachal Pradesh

Case No : CWP (T) No. 6353 of 2008 (OA No. 2564 of 2006)

Chet Ram

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Citation : (2011) 1 ShimLC 382

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Judgement

Kuldip Singh, J.—The Petitioner has prayed for quashing of Annexure P-4 office order dated 7.8.2006 reducing and re-fixing the pay of Petitioner which was earlier step-up.

2. The further case of the Petitioner is that he has been working as Assistant Consolidation Officer with Respondents. He was granted step-up in pay w.e.f. 2.4.1996 vide order dated 5.9.1997 Annexure P-1 and accordingly the pay of the Petitioner was fixed at Rs. 2270/- as on 2.4.1996 instead of Rs. 2060. The Respondents vide notice dated 28.6.2006 Annexure P-2 after giving reference of letter dated 6.2.2006 and Finance Department Office Memo dated 21.9.1999 informed the Petitioner that the step-up of pay given to him has to be taken back. The Petitioner was directed to file reply. The Petitioner filed the reply annexure P-3 to the notice and submitted that the step-up of pay was rightly granted to the Petitioner inasmuch as one Inder Ram has joined as Assistant Consolidation Officer on 26.5.1996 whereas the Petitioner had joined as Assistant Consolidation Officer on 26.5.1994. The Petitioner had also submitted that the step-up was granted by the Respondents at their own without any misrepresentation on the side of the Petitioner. The Respondents without considering the reply of the Petitioner vide order dated 7.8.2006 has ordered and taken back the step-up of pay granted to the Petitioner w.e.f. 2.4.1996. The Respondents have re-fixed the pay of the Petitioner. The order dated 7.8.2006 has been assailed by the Petitioner on the ground that the step-up of pay was

granted to the Petitioner on the analogy of Inder Ram who was getting the same pay. The Respondents remained silent for more than 10 years and has ordered the recovery of step-up granted to the Petitioner. It has been alleged that the order dated 7.8.2006 is illegal, arbitrary and is result of non-application of mind.

3. The Respondents have contested the petition by filing reply. It has been submitted that the step-up of pay was given to the Petitioner inadvertently for which he was not eligible as the Petitioner was junior to Inder Ram, Assistant Consolidation Officer on the post of Patwari and Kanungo. Later on it came to the notice of the office from the perusal of Finance Department letter dated 7.3.1991 and another letter dated 21.9.1999 and the Government of India's order No. 23 of the Fundamental Rule 22 that the Petitioner was not entitled for step-up. As a result of which, the step-up wrongly given to the Petitioner was withdrawn after notice to the Petitioner. The Petitioner has received overpayment from the Government exchequer, therefore, it is necessary to recover the over-payment from the Petitioner. There is no illegality and arbitrariness in the order dated 7.8.2006. The Respondents have prayed for dismissal of the petition.

4. I have heard the learned Counsel for the parties. The learned Counsel for the Petitioner has reiterated the stand taken by the Petitioner in the petition. It has been submitted that the Petitioner had not mis-represented for step-up of his pay. The Respondents of their own had step-up the pay of the Petitioner. The pay of the Petitioner was step-up on the analogy of one Inder Ram. The learned Counsel for the Petitioner has relied *Sahib Ram Vs. State of Haryana and Others*, and *Syed Abdul Qadir and Others Vs. State of Bihar and Others*, in support of his submissions. The learned Additional Advocate General has submitted that the Respondents have every right to rectify their mistake by taking back the step-up of pay which was inadvertently given to the Petitioner. No fault can be found with the order dated 7.8.2006. The Petitioner cannot take benefit of wrong order and he is liable to pay back the excess amount which was unauthorisedly received by him on account of illegal step-up of his pay.

5. The main contention of the Petitioner is that he has not mis-represented for the step-up of his pay nor it is the case of the Respondents that Petitioner has any part to play for stepping-up of his pay. It is also not the case of the Respondents that Petitioner has mis-represented. The step-up of pay which was granted to the Petitioner has been withdrawn by the Respondents after realizing that the same was granted to Petitioner wrongly. The Petitioner has not established his right for step-up of pay. The Respondents have taken the stand that Petitioner cannot take the analogy of Inder Ram for step-up of pay. The Petitioner as Patwari and Kanungo was junior to Inder Ram. In support of this defence, the Respondents have relied Finance Department letter dated 7.3.1991 and letter dated 21.9.1999 and Government of India's Order No. 23 of fundamental Rule 22. The Petitioner has not assailed the said letters and order. In these circumstances, it cannot be said that the order dated 7.8.2006 taking back the step-up of pay and re-fixing the pay of Petitioner is wrong and illegal.

6. The question, however, is recovery of amount which was paid to Petitioner on account of step-up of pay ordered by the Respondents. There is substance in the submission of learned Counsel for the Petitioner that step-up of pay was allowed by the Respondents to the Petitioner on their own without any misrepresentation on the part of the Petitioner. In *Sahib Ram*, it has been held that the revised scale was paid to the Appellant not on account of misrepresentation but by wrong construction made by the Principal for which the Appellant cannot be held to be at fault and therefore, the amount paid to the Appellant was ordered not to be recovered from the Appellant. In *Syed Abdul Qadir*, it has been held as follows:

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount that has been paid to the Appellant teachers was not because of any misrepresentation or fraud on their part and the Appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the Appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the Appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the Appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the Appellant teachers should be made.

7. In the case in hand the step-up of pay was allowed to Petitioner by Respondents of their own. The Respondents later on found that the step-up of pay granted to the Petitioner was not permissible. There is no mis-representation or fraud on the part of the Petitioner for allowing him step-up of pay. In these

circumstances, Respondents are not entitled to recover from Petitioner the amount of step-up of pay already paid to him.

8. In view of the above, the writ petition is partly allowed. The Respondents are directed not to recover any amount from the Petitioner which was paid to him on account of step-up of his pay till date, however, the remaining claim of the Petitioner is dismissed. It is clarified that no fault can be found with the re-fixing of pay of Petitioner ordered vide order dated 7.8.2006.