
(2008) 05 P&H CK 0116
In the Punjab And Haryana At Chandigarh

Dr. Inder Bala Malhotra

APPELLANT

Vs

Haryana Power Generation Corporation Limited

RESPONDENT

Date of Decision : 13-05-2008

Acts Referred:

Citation : (2008) 152 PLR 83 : (2009) 2 SLR 89

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Judgement

Mohinder Pal, J.—Dr. Inder Bala Malhotra (Petitioner) retired from Haryana Power Generation Corporation Limited (for short "the Corporation") with effect from October 31, 2001, on attaining the age of 58 years and after putting in twenty and a half years" service. Her pensionary benefits were calculated and released by including the Non Practising Allowance (for short "N.P.A.") of Rs. 900/- per month, being paid to Doctors in lieu of private practise. Vide Circular dated April 09, 2001 (Annexure P-1), issued by the Financial Commissioner and Secretary to Government Haryana, Finance Department, N.P.A. of the Doctors was revised with effect from April 01, 2001. The Corporation adopted the Circular (Annexure P-1) vide order dated June 18, 2003 (Annexure P-3). The petitioner's N.P.A. was increased from Rs. 900/- to Rs. 2,500/- with effect from April 01, 2001 as per Circular dated April 09, 2001 (Annexure P-1), adopted by the Corporation. However, the Corporation ordered recovery of Rs. 46,189/- from the petitioner on account her pension having been calculated and paid by including the N.P.A. from November 01, 2001 to July 31, 2003.

2. It is the case of the petitioner that she is entitled to the arrears and revised pension by calculating the N.P.A. at the rate of Rs. 2500/- instead of Rs. 900/- per month as per the Circular (Annexure P-1).

3. On May 24, 2004, when notice of motion was issued to the respondents, recovery from the petitioner was stayed.

4. In the written statement filed by the Corporation, it has been pleaded that as

per para No. 5 of the Circular (Annexure P-1), N.P.A. is to be treated part of the pay for purposes of D.A., entitlement of loan and advances and T.A./D.A. only. Therefore, pension of the petitioner was re-calculated in view of Annexure P-1, vide which the N.P.A. will not form a part of emoluments for the purposes of calculation of pensionary benefits, and after adjusting the increased N.P.A., recovery of Rs. 46,189/- is due from her. It has been further stated that the petitioner is now receiving the pension as per the Circular (Annexure P-1).

5. We have heard Mr. Anshuman Narula, Advocate, appearing for the petitioner and Ms. Vandana Malhotra, Advocate, appearing for the respondents and have gone through the records of the case.

6. In para 5 of the Circular (Annexure P-1), it has been specifically stated that N.P.A. would only be treated as part of the pay for purposes of entitlement of Dearness Allowance, advancement of loans and advances and payment of Travelling Allowance/Diet Allowance. It reads as under:

5. The non-practising allowance would be treated as part of the pay for the purposes of DA entitlement for Loans & Advances and TA/DA only.

7. The petitioner was given the arrears of N.P.A. from April 01, 2001 to October 31, 2001 i.e. the date of her retirement by giving the benefit of increase as per Circular dated April 09, 2001 (Annexure P-1) and the amount of arrears was adjusted towards the amount to be recovered from her. As per the Circular (Annexure P-1), the amount of Rs. 46,189/- has been paid to the petitioner in excess. We do not see any illegality in the action of the Corporation. The Corporation acted as per the provisions of the Circular Annexure P-1. However, so far as recovery from the petitioner is concerned, the Corporation is not entitled to it in view of the law laid down by the Hon'ble Supreme Court in the case of Sahib Ram v. State of Haryana 1995(2) Recent Services Judgments 139. In that case, appellant Sahib Ram was given relaxation in the educational qualification by the Principal of the College where he was working by wrong construction of the recommendations of the University Grants Commission, on account of which he drew salary in the revised scale from the date of relaxation. However, the Government of Haryana directed the Principal to withdraw the pay scale allowed to the appellant. The appellant challenged the action of the Haryana Government by filing Civil Writ Petition No. 10988 of 1993 in this Court, which was dismissed. The appellant filed SLP (Civil) No. 1924 of 1994 in the Apex Court, which was partly allowed by the following order:

Admittedly, the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the

circumstances, the amount paid till date may not be recovered from the appellant. The Principal of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.

8. For the aforesaid reasons, this writ petition is disposed of with a direction to the Corporation not to recover the amount sought to be recovered from her. However, the petitioner will not be entitled to the inclusion of N.P.A. towards the calculation of pensionary benefits. Her pension has been rightly re-calculated by the Corporation without including the N.P.A. as per the Circular (Annexure P-1), which the petitioner is now receiving.