

(2011) 04 SHI CK 0341
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 14393 of 2008

Dr. Inder Singh

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0341

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed mainly the following reliefs:

- i) To quash and set-aside the impugned order at Annexure "PA" dated 18.5.2006 ;
- ii) To command the Respondents not to resort to make any deduction on account of alleged excess payment made as a result of wrong fixation of pay during 1998 from the Death-cum-Retirement Gratuity of the applicant ;
- iii) To direct the Respondents to fix his pension on the basis of last pay drawn by him on 30.04.2006 only and not otherwise i.e. by re-fixing his pay from back date as proposed formally i.e. vide letter dated 23.7.2001;

Whether the reporters of the local papers may be allowed to see the Judgment?
Yes

2. The brief facts of the case are that Petitioner retired as Chief Medical Officer, Bilaspur on 30.04.2006. As Medical Officer, the pay of the Petitioner was revised with effect from 01.01.1996 vide order dated 21.09.1998 in the pay scale of ` 14,300-18,150/- and was fixed at ` 15,100/- plus NPA. The pay of the Petitioner was reduced by Respondent No. 3 to ` 14,300/- plus NPA with effect from 1.1.1996 vide Office Order dated 23.07.2001 without serving any show cause notice to the Petitioner.

3. The further case of the Petitioner is that as a result of re-fixation of his pay vide order dated 23.07.2001, the alleged excess amount of salary paid to the Petitioner from 01.01.1996 to 23.07.2001 was ordered to be recovered from the monthly salary of the Petitioner. The Petitioner filed OA No. 2463 of 2001 in the Tribunal to quash and set aside the order dated 23.07.2001. The Tribunal vide order dated 29.05.2003 quashed and set aside the order dated 23.07.2001. The order dated 29.05.2003 of the Tribunal attained finality. The Respondent No. 2 passed the impugned order dated 18.05.2006 directing the Chief Medical Officer, Mandi to keep in view the recovery of excess amount allegedly paid to the Petitioner due to alleged wrong fixation of pay while issuing "No Demand Certificate" to the Petitioner. The Respondents cannot go behind the order dated 29.05.2003 passed in OA No. 2463 of 2001.

4. The Respondents 1 to 4 have contested the petition by filing joint reply. It has been stated that while disposing of OA No. 2463 of 2003, the Tribunal had passed the order dated 29.05.2003 that the original application was fully covered by decision given in OA (M) No. 357 of 2001. In OA (M) No. 357 of 2001, the Tribunal had observed that the learned Additional Advocate General fairly and squarely admitted that before reduction of the pay scale, no show cause notice was given to the Petitioner to defend his case. The Tribunal while disposing of OA (M) No. 357 of 2001 had not debarred the Respondents from effecting recoveries except with due process i.e. after serving the show cause notice which stands now complied with vide memo dated 04.11.2003. The Petitioner in the garb of order passed by the Tribunal cannot take wrong benefit as the recovery of amount is legal and just. It has been stated that fresh notice has been issued after complying with the principle of natural justice which was not done earlier. The Respondents 1 to 4 have prayed for dismissal of the petition.

5. The Respondent No. 5 has also contested the petition by filing reply. It has been stated that order dated 18.05.2006 Annexure PA has been issued by the department. The pension case of the Petitioner has already been finalized vide C & R dated 28.04.2006. The Respondent No. 5 is not in picture regarding reducing of pay of the Petitioner leading to over-payment and recovery thereof as alleged by the Petitioner. The Petitioner has filed rejoinder to the reply of the Respondent No. 5 and reiterated his stand taken in his petition.

6. I have heard learned Counsel for the parties. It has been submitted on behalf of the Petitioner that Petitioner retired as Chief Medical Officer, Bilaspur on 30.04.2006. The Respondents may be directed to fix his pension on the basis of last pay drawn on 30.04.2006 and not otherwise by re-fixing his pay from back date as proposed in the order dated 23.07.2001. The order dated 18.05.2006 Annexure PA may be quashed. It has been submitted on behalf of the Respondents 1 to 4 that the pay of the Petitioner was wrongly fixed and, therefore, it was re-fixed vide order dated 23.07.2001. This was assailed by Petitioner in OA No. 2463 of 2001 which was allowed by the Tribunal by observing that the facts and legal propositions of the original application No.

2463 of 2001 were similar to that of OA (M) No. 357 of 2001 and, therefore, OA No. 2463 of 2001 was allowed and the order dated 23.07.2001 was quashed.

7. OA (M) No. 357 of 2001 was allowed by the Tribunal when it was found that principle of natural justice was not followed by the Respondents. Therefore, the order dated 23.07.2001 was also quashed by the Tribunal in OA No. 2463 of 2001 by taking the view that principle of natural justice has not been followed. The Tribunal did not debar the Respondents to re-fix the pay of the Petitioner after following the principle of natural justice. The Petitioner was getting undue benefit of wrong fixation of pay. The Respondents issued show-cause notice to the Petitioner and complied the principle of natural justice and thereafter re-fixed the pay of the Petitioner at ` 14,300/- as on 01.01.1996.

8. The Petitioner has not challenged the order of re-fixation of his pay after the order dated 29.05.2003 passed by Tribunal in OA No. 2463 of 2001. The Petitioner has challenged Annexure PA which is with respect to "No Demand Certificate" of the Petitioner after his retirement. Therefore, in absence of challenge to the re-fixation of pay of the Petitioner after the order dated 29.05.2003, no relief can be granted to the Petitioner for quashing Annexure PA dated 18.05.2006 which is only with respect to "No Demand Certificate" regarding the Petitioner after his retirement. Similarly, Petitioner is not entitled to fixation of his pay on the basis of last pay drawn by him on 30.04.2006. The Petitioner is, however, entitled to pension on the basis of the re-fixation of his pay after the order dated 29.05.2003 in OA No. 2463 of 2001.

9. It has been submitted that Petitioner was not instrumental in wrong fixation of his pay nor any plea of misrepresentation or fraud on the part of the Petitioner for fixing his pay has been raised by the Respondents. The pay of the Petitioner was fixed by the Respondents 1 to 4 of their own. The Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, has held as follows:

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.

10. In view of legal position, it is clear that Respondents 1 to 5 were well within their right to re-fix the pay of the Petitioner, but in absence of defence of fraud and misrepresentation on the part of the Petitioner for fixing his pay by Respondents 1 to 5, or that Petitioner had knowledge that the amount that was being paid to Petitioner was more than what he was entitled to, the Respondents 1 to 5 are not entitled to recover the amount already paid to the Petitioner prior to re-fixation of the pay of the Petitioner after the order dated 29.05.2003 of the Tribunal in OA No. 2463 of 2001. The Petitioner cannot take benefit of interim order dated 22.06.2006 passed by the Tribunal when on merits re-fixation of pay of Petitioner after order dated 29.05.2003 of the Tribunal is found to be valid.

11. In view of above, the petition is partly allowed. The Respondents are directed not to recover any amount already paid to the Petitioner prior to re-fixing his pay after order dated 29.05.2003 passed in OA No. 2463 of 2001 by the Tribunal. The Petitioner is not entitled to any other relief. The interim order dated 22.06.2006 stands vacated.