(2011) 04 SHI CK 0320

In the High Court Of Himachal Pradesh

Case No : CWP (T) No. 14394 of 2008

Dr. Jagat Ram Thakur APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0320

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J

1. The Petitioner, by means of this petition, has prayed for the grant of the following amongst other reliefs:

i)To quash and set aside the impugned orders at Annexures PA & PB dated 18.5.2006 and 20.3.2006 respectively;

ii)To command the Respondents not to make any deduction on account of alleged excess payment made as a result of wrong fixation of pay vide order dated 21.9.1998 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 the Whether reporters of the local papers may be allowed to see the judgment? Yes applicant on 28.2.2006 only and not otherwise i.e. by refixing his pay from back date as proposed formally.

2. The undisputed facts are that the Petitioner was placed in the pay scale of Rs. 14300 18150 and his pay was fixed at Rs. 15100/-on 1.1.1996. Subsequently vide order dated 13th August, 2001 the fixation of the pay of the Petitioner as on 1.1.1996 was reduced from Rs. 15100/- to Rs. 14300/-.

The Petitioner challenged this order before the erstwhile H.P. State Administrative

Tribunal which quashed the impugned order vide order dated 29.5.2003 which reads as follows:

The learned Counsel for the parties submitted that the present original application is fully covered by the decision given in OA (M) 357/2001 titled as Sumedh Kaul v. State of H.P. and Ors. The facts and legal proposition of the present Original Application are similar and identical, to that of OA(M) 357/2001.

In view of this position, we allow the present application and quash and set-aside the operation of Annexure PA dated 13.8.2001. Accordingly the present O.A. stands disposed of with no orders as to cost.

3. Thereafter, a fresh orders were issued on 18.5.2006 & 20.3.2006 and the Petitioner was informed that his pay would again be refixed on 1.1.1996 at the lower level.

4. I have heard Sh.R.L. Kaith, learned Counsel for the Petitioner and Sh. Vivek Thakur, learned Additional Advocate General for the Respondent-State.

5. The main ground raised by Sh. Kaith is that once the Tribunal had decided the matter and quashed the order, the State had no power to itself reopen the proceedings. On the other hand, Sh. Vivek Thakur urges that the earlier order was quashed only on the ground that no show cause notice was given to the Petitioner before reducing his pay and therefore it is implied that the State could have reopened the matter.

6. In my view, the submission of the State cannot be accepted. When an order is quashed without making any express provision that the liberty is reserved to the State to issue notice to the employee and pass a fresh order after giving hearing to the employee, the State cannot itself assume the role of the Court and reverse the order of the Court/Tribunal.

7. In the aforesaid case, the operative portion of the order of the Tribunal clearly shows that the order whereby the pay of the Petitioner had been reduced was quashed. No liberty was reserved to the State to initiate fresh proceedings after giving notice to the Petitioner. If the State was aggrieved by this order it could have challenged the same before this Court. However, without challenging the order the State could not presume that after giving notice to the Petitioner it could again initiate action against him.

8. In view of the above discussion, the petition is allowed and the orders dated 18.5.2006 and 20.3.2006, Annexures PA & PB are quashed. The State is restrained from reducing the pay of the Petitioner fixed at Rs. 15,100/- w.e.f. 1.1.1996. The State is also directed to ensure that all benefits including pensionary benefits are paid to the Petitioner in accordance with the aforesaid directions latest by 30th September, 2011 failing which the State shall be liable to pay interest @ 9% p.a. on the entire amount payable to the Petitioner. No costs.

