

(2009) 07 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17156 of 2008

Dr. Jagmohan Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Citation : (2009) 2 ILR (P&H) 1041

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : H.S. Dhindsa, for the Appellant; S.S. Gill, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—The Petitioners are working as Medical Officers and posted at different places as indicated in the cause title of the writ petition. They completed their Post Graduation in different disciplines between the years 1997 to 1999 with the prior permission and consent of the State Government--the employer. The State Government had issued instructions, dated 8th October, 1993 whereunder the doctors having additional/higher qualification, were given the benefit of additional increments in the following manner:

- (i) One or two house jobs (of the duration of one year) Two increments
- (ii) More than one house job (of the total duration of not less than two years) Four increments
- (iii) Post Graduate Degree (with or without house job under three years course) Six increments (these increments will be inclusive of the increments granted for doing one year house job.

(2) 1 On the basis of the aforesaid circular/policy decision, the

2. Petitioners were conferred the benefit of six additional increments with effect from the dates indicated hereinbelow:

Sr. No. Date of joining Date of regularisation Date of acquiring 6 P.G. increments
Speciality

Petitioner No. 1 (Dr. Jagmohan Singh) 7-4-84 7-4-88 10-2-99 M.D. Radio
Diagnosis

Petitioner No. 2 (Dr. Bipan Kumar) 26-9-83 1-4-85 18-10-98 M.D. General Med.

Petitioner No. : (Dr. Surinder Singh) 5 8-1-82 15-3-83 16-12-97 M.D. Paed.

Petitioner No. (Dr.A.K. Saluja \ 4-1-88) 4-1-92 27-11-97 M.D. Radio Diagnosis

Dr. R.K. Kohli 12-10-81 13-3-87 July, 99 court orders) (after M.D. Med.

3. While the Petitioners were enjoying the aforesaid benefit, the State Government issued a fresh circular dated 23rd May, 2001 (Annexure P-3) revoking its earlier notification dated 8th October, 1993 and came out with a new benefit scheme in the following manner:

1. Post Graduate Diploma Higher Education Allowance equal to one increment of initial stage of entry scale.

2. Post Graduate Degree Higher Education Allowance equal to three increments of initial stage of entry scale.

3. Super Specialist Degree to as DM/M. Ch. Higher Education Allowance equal three increments of initial stage of entry scale.

4. Paragraph 3 of the aforesaid circular further provides that this circular will be applicable with effect from 1st January, 1996 and prior to this, the PCMS--1 doctors who joined on regular basis will receive the benefit as per earlier orders. It seems that on the basis of the new circular, the Respondents sought to withdraw the increments earlier granted to the Petitioners and effect recovery. The Petitioners made representations to the Respondents against their action of re-fixation and recovery. In the meantime, the Petitioners filed Civil Writ Petition No. 6437 of 2001 (Dr. Rimpay Purewal and Ors. v. State of Punjab and Ors.) which came to be disposed of by this Court,-- vide order dated 28th October, 2002 whereby orders of reduction of pay were quashed. Simultaneously, the Respondents were directed to decide the matter in accordance with law after observing principles of natural justice. It was further directed that the amount if any recovered from the Petitioners, shall be reimbursed.

5. Pursuant to the aforesaid order, the Petitioners were put to notice regarding re-fixation and recovery. After soliciting reply, the Respondents have passed the impugned order dated 6th May, 2008 (Annexure P-10) whereby the contention of the Petitioners has been rejected and order for withdrawal of the benefit of additional increments has been upheld and consequently recovery ordered.

6. It is this order which is the subject matter of challenge in the present writ petition.

7. I have heard the learned Counsel for the parties at length and perused the record of the case.

8. It is the admitted position that on the basis of Annexure P-1, additional benefit was granted to the Petitioners with effect from the date they acquired Post Graduation qualifications between the years 1997 to 1999. Subsequent policy decision/circular, Annexure P-3, came to be issued only on 23rd May, 2001 and it was sought to be applied retrospectively with effect from 1st January, 1996. Under the new circular instead of additional increments, the benefit of Higher Education Allowance was introduced as referred to here-in-above. From the impugned order, it is evident that by enforcing this circular, the pay of the Petitioners has been refixed and consequently recovery ordered. The clarificatory circular dated 23rd May, 2001 cannot be applied retrospectively with effect from 1st January, 1996 that too to the detriment and disadvantage of the persons who have already been conferred the benefit under the earlier government policy. The basis for passing the impugned order with retrospective operation of the new circular dated 23rd May, 2003, is totally impermissible in law and illegal.

9. Mr. S.S. Gill, learned Deputy Advocate General, Punjab, appearing for the Respondents has attempted to justify the impugned action of the Respondents on the grounds that the circular dated 23rd May, 2001 has superseded earlier instructions. It is further argued that since the Petitioners opted for revised pay scale, they were not entitled to the benefit of additional increment as envisaged under the circular dated 27th October, 1993 (Annexure P-I).

10. It appears that the revised pay scale has nothing to do with the grant of benefit of additional increment under the aforesaid circular. It has only relation with the acquiring of the Higher Qualification specified therein.

11. In view of the above circumstances, the action of the Respondents withdrawing the benefit of additional increments retrospectively is unsustainable in law. The impugned order to the effect it directs the withdrawal of the benefit of additional increments and consequential recovery from the Petitioners is liable to be quashed. I order accordingly.

12. The order of re-fixation having been quashed, the consequential recovery is also quashed. Otherwise also, it is not the case of the Respondents that the benefit was conferred upon the Petitioners on their misrepresentation or fraud in any manner. Even otherwise also, the Respondents are not entitled to recover any amount from the Petitioners in view of the dictum of the judgment of the Hon'ble Supreme Court in *Sahib Ram v. State of Haryana* 1994 (5) SLR 753 which has been reiterated by the Full Bench of this Court in *Civil Writ Petition No. 2799 of 2008 title Budh Ram and Ors. v. State of Haryana and Ors.* ILR 2009(2) P&H 445 decided on 22nd May, 2009, which reads as under:

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 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 recipients 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.

13. In view of the above, present petition succeeds and the same is hereby allowed. Impugned order dated 6th May, 2008 (Annexure P-10) is hereby quashed. No costs.