
(2011) 04 SHI CK 0166
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 14399 of 2008

Dr. K.B.L. Srivastava

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0166

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 Memo: at Annexure "PA" dated 18.5.2006 and direct the Respondents to maintain status quo i.e. pay him Rs. 15,100/- (basic pay) w.e.f. 1.1.1996 and not to reduce the same in any manner, as reflected therein;

ii) To direct the Respondents not to make any recovery from the salary of the applicant w.e.f. 1.1.1996 onwards;

2. The brief facts of the case are that pay of the Petitioner was fixed in accordance with the government notification at Rs. 15,100/- with effect from 01.01.1996 vide Office Order dated 26.09.1998. The Respondents without issuing show-cause notice reduced the pay of the Petitioner from Rs. 15,100/- to Rs. 14,300/- with effect from 01.01.1996 vide Office Order dated 13.08.2001. The Office Order dated 13.08.2001 was assailed before the Tribunal in OA No. 2484 of 2001 which was allowed on 29.05.2003. The order dated 29.05.2003 attained finality. The Respondent No. 3 issued another memo dated 18.07.2005 to the Petitioner why his pay should not be fixed at Rs. 14,300/-. The Petitioner submitted reply to the memo dated 17.07.2005 on 05.08.2005 and 29.08.2005. The Respondent No. 3 in violation of order dated 29.05.2003 while rejecting the reply dated 29.08.2005 of Petitioner issued memo dated 18.05.2005 Annexure

PA which is wrong, illegal and liable to be quashed.

3. The petition was contested by Respondents by filing joint reply and defended memo dated 18.05.2006 Annexure PA. The Tribunal disposed of OA No. 2484 of 2001 on the ground that principle of natural justice was not followed. The Tribunal did not debar the Respondents to re-fix the pay of the Petitioner after following the principles of natural justice. After order dated 29.05.2003 of the Tribunal, show-cause notice was issued to the Petitioner vide memo dated 18.07.2005. The reply filed by the Petitioner to the show-cause was considered and thereafter memo dated 18.05.2006 Annexure PA was issued informing the Petitioner that his salary of May, paid in June, would be fixed at Rs. 18,600/- instead of Rs. 19,600/-. The Respondents have prayed for dismissal of the petition.

4. I have heard learned Counsel for the parties. It is the case of the Petitioner that his pay was rightly fixed at Rs. 15,100/- with effect from 01.01.1996 and it has been wrongly re-fixed vide memo dated 18.05.2006 Annexure PA. It has also been submitted that order dated 29.05.2003 in OA No. 2484 of 2001 of the Tribunal had attained finality whereby the order dated 13.08.2001 reducing the pay of the Petitioner from Rs. 15,100/- to Rs. 14,300/- was quashed.

5. The Tribunal vide order dated 29.05.2003 has not decided the dispute on merits, but quashed the order of re-fixation of payscale on the ground of violation of principles of natural justice. There is nothing in the order dated 29.05.2003 that the Respondents were debarred from re-fixing the pay of the Petitioner after following the principles of natural justice. The memo dated 18.05.2006 Annexure PA has been issued after considering the reply dated 29.08.2005 of the Petitioner. The Petitioner has challenged the Annexure PA dated 18.05.2006 on the ground that once Tribunal had set aside the re-fixation of pay of the Petitioner, the pay of the Petitioner could not be again re-fixed by Respondents vide memo dated 18.05.2006. At the time of hearing of petition, no other point was raised to challenge the memo dated 18.05.2006.

6. The government has right to rectify the mistake in financial matters when it comes to the notice of the government that a benefit has been given wrongly to which the employee is not legally entitled. There was no bar for re-fixing the pay of the Petitioner. In these circumstances, no fault can be found in the re-fixation of pay of the Petitioner vide memo dated 18.05.2006.

7. It has been submitted on behalf of the Petitioner 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 fixation of his pay has been raised by the Respondents. The pay of the Petitioner was fixed by 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.

8. The Respondents 1 to 4 were well within their right to re-fix the pay of the Petitioner, but in absence of defence of fraud, misrepresentation on the part of the Petitioner for fixation of his pay by Respondents 1 to 4 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 4 are not entitled to recover the amount already paid to the Petitioner prior to 18.05.2006. The re-fixation of pay of the Petitioner vide memo dated 18.05.2006 Annexure PA is legal. The Petitioner cannot take benefit of interim order dated 22.06.2006 passed by the Tribunal when on merits memo dated 18.05.2006 is found to be valid.

9. In view of above, the petition is partly allowed. The fixation of pay of the Petitioner vide memo dated 18.05.2006 Annexure PA is upheld. However, Respondents are directed not to recover any amount already paid to the Petitioner prior to re-fixation of his pay vide memo dated 18.05.2006 Annexure PA. The interim order dated 22.06.2006 stands vacated.