
(2004) 06 UK CK 0001

In the Uttarakhand High Court

Case No : Writ Petition No. 479 (S/B) of 2003

Dr. N.N. Srivastava

APPELLANT

Vs

Principal Sainik School and Others

RESPONDENT

Date of Decision : 01-06-2004

Acts Referred:

Citation : (2004) 3 UPLBEC 115

Hon'ble Judges : Rajesh Tandon, J;M.M. Ghildiyal, J

Bench : Division Bench

Advocate : B.C. Pandey, B.D. Kandpal, for the Appellant;

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri B.C. Pandey, learned Counsel:--for the petitioner and Sri B.D. Kahdpal, learned Standing Counsel for the State.

2. By means of this writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to pay the retiral benefits to the petitioner on the basis of his emoluments calculating the pay of the petitioner plus 25% thereof as NPA and corresponding DA without making any deductions from the salary or retirement benefits of the petitioner and to refund the deductions already made to the petitioner.

3. Brief facts giving rise to the present writ petition are that the petitioner initially served as a Doctor in Army Medical Core and his rank was Major. Being a short service officer, the petitioner served only for 10 years and he was released thereafter. The petitioner was appointed on 1.3.1983 as School Medical Officer in Sainik School, Chorakhal in the pay-scale-650-3-800 Rs. 40-1200 and was confirmed in the said post w.e.f. 1.3.1984. The teaching and non-teaching staff of the school is entitled to pay-scale of corresponding Central Government employee. The petitioner has stated that the petitioner was granted revised pay-scale of Rs. 2000-75-2800-E-100-4000 alongwith non-practicing allowance. It has been further stated that as per recommendations of 5th Central Pay

Commission, the pay-scale of the petitioner was revised to Rs. 8000-275-13,500 and it included grant of D.A. on the basis of pay drawn in the prescribed pay-scale and stagnation increment and non-practicing allowance at the uniform rate 25% of the basic pay subject to the condition that pay plus NPA shall not exceed to Rs. 29,500/-. Accordingly, the petitioner has been paid NPA @ 25% of his salary and dearness allowance calculated on the basis of his pay plus NPA till November, 2000.

4. The grievance of the petitioner is that by a letter dated 7th May, 2000/9th May, 2000 issued on behalf of the Hony. Secretary of Sainik School Society, the Principals of all Sainik Schools including the respondent No. 1 were directed to pay Non-Practicing Allowance to the Medical Officers at reduced rates and to recover the excess paid. However, the same relates to part time Medical Officers and not to the whole time Medical Officers because all other recommendations have been superseded by issuance of recommendations of 5th Pay Commission. In this connection the petition has made representations and the respondents did not consider the same. The School authorities now intend to calculate retirement benefits on the basis of emoluments now being drawn by the petitioner and also are deducting sum of Rs. 1,46,764/- therefrom, which according to them is the excess amount paid to the petitioner. A correct statement of NPA and DA amounting to Rs. 1,17,487/- was wrongly deducted from the salary of the petitioner.

5. On the other hand counter affidavit has been filed by the respondent No. 1 stating therein that recommendation of 5th Pay Commission was made applicable in the Sainik School Society w.e.f. 1.1.1996 vide circular dated 4.3.1998. In the counter affidavit, it has been stated that due to enhancement in the non-practicing allowance to the petitioner and similarly situated other doctors extra-financial burden was being suffered by the institutions which are being run on no loss no profit basis. Moreover, the salary to the staff employed and working in the Sainik Schools is being paid from the fees received from the students, therefore, keeping in view the increasing financial burden on the parents, it was not possible to enhance non-practicing allowance to the petitioner and other doctors, accordingly the Honorary Secretary vide his letter dated 9.5.2000 directed the respondent No. 1 to pay non-practicing allowance to the petitioner in reduced rate. It is stated that vide letter of Board of Governors of Sainik School Society dated 9.5.2000 it has been directed that the non-practicing allowance of full-time medical officers is to be made as per direction, the same is applicable even after implementation of recommendations of 5th Pay Commission. The representation of the petitioner are under active consideration of Executive Body of the Sainik School Society and since no final decision has been taken regarding revision of non-practicing allowance and payment of the same as per relates as previously fixed as such, the representation of the petitioner could not be disposed of. The petitioner has retired on 30.9.2003 and the deduction of overpayment has not been made from the retiral dues of the petitioner. It has also been stated that in view of the direction of Board of Governors, Sainik

School Society dated 9.5.2000, an amount of Rs; 1,46,764/- has been overpaid to the petitioner on account of non-practicing allowance since 1.1.1996 as such, the same was proposed to be deducted from the retiral dues of the petitioner. However in compliance of the Hon"ble Court"s Order the same has not been deducted so far. The respondents are legally entitled to recover the same from the petitioner.

6. Petitioner has .referred the Notification dated 30th September, 1997 issued by the Ministry of Finance (Department of Expenditure), New Delhi to the following effect:-

"In the case of medical officers who are in receipt of, non-practicing allowance, the pay in the revised scale shall be fixed in accordance with the provisions of clause (A) above except that in such cases the term "existing emoluments" shall not include NPA and will comprise only the following :-

(a) the basic pay in the existing scale;

(b) dearness allowance appropriate to the basic pay and non- practicing allowance admissible at index average 1510 (1960-100) under the relevant orders; and

(c) the amounts of first and second instalments of interim relief admissible on Hie basic pay in the existing scale and non- practicing allowance under the relevant orders.

And in such cases, non-practicing allowance at the new rates shall be drawn in addition to the pay so fixed in the revised scale."

7. Counsel for the petitioner has referred the scale as mentioned in the Government Order dated 9th May, 2000 by which non-practicing allowance has been provided accordingly to the following effect :-

"After through perusal and examination the records/information regarding payment of NPA and Honorarium received from the Sainik School Authorities, it has been observed that the instructions/directions issued on the matter by the Sainik,School Society vide letter dated 2.9.1988 and 5.1.1993 referred above, are not being complied with by the School Authorities and various Sainik Schools are making payments of NPA as well as Honorarium at different rate without consulting the Sainik School Society. This act of non-compliance with the Sainik School Society, Ministry of Defence instructions/directions has been viewed very seriously. In this regard, you are once again requested to strictly comply with the instructions issued by Hie Society vide letter dated 2.9.1988 and 5.1.1993 with the further following directions:-

(a) The Non-Practicing Allowance to the full time Medical Officers be paid as per table below:-

PAY Range in the revised scale Rate of NPA per Month of pay (w.e.f. 1.1.1996)
Below 600/- Rs. 9100/- Rs. 9101/- and above but 800/- below Rs. 11,575/- Rs.

11,576/-and above 900/-

8. In Para-8 of the writ petition, it has been stated by the petitioner as under:-

"That thereafter the petitioner has been paid NPA @ 25% of his salary and Dearness Allowance calculated on the basis of his pay plus NPA till November, 2000. His basic pay at present since 1st March, 2003 is Rs. 13,225/-."

9. In Para 9 of the writ petition, the petitioner has referred about 5th pay Commission. The same reads as under :-

"That subsequently after accepting the recommendations of 5th Pay Commission and making payments of pay, DA and NPA in accordance thereof in terms of Annexure-5, by a letter No. 12(4)/97/D(SCC) Vol VI, dated 7th May 2000 19th May, 2000 issued on behalf of the Hon'y. Secretary of Sainik School Society the Principals of all, Sainik Schools including the Respondents No. 1 were directed to pay Non-Practicing Allowance to the Medical Officers at reduced rates and to recover the excess paid. A copy of said letter is Annexure-6:"

10. In para 11 of the counter affidavit it has been stated by the respondents as under :-

"That the contents of Paragraph 9 of the writ petition are admitted however, it is stated that due to enhancement in the non-practicing allowance to the petitioner and similarly situated other doctors extra-financial burden, was being suffered by the institutions which are being run on no loss-no profit basis, and the institutions are not in a position to bear the same. Moreover, the salary to the staff employed and working in the Sainik School is being paid from the fees received from the students, and since the schools under the Sainik School Society are being run on no profit no loss basis as such, keeping in view the increasing financial burden on the parents, it was not possible to enhance non-practicing allowance to the petitioner and other doctors, accordingly the Honorary Secretary vide his letter dated 9.5.2000 directed the respondent No. 1 to, pay non- practicing allowance to the petitioner in reduced rate vide Annexure 6 to the writ petition."

11. The five Judges Bench of Hon'ble the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), , has held as under :-

".....Having set Out clearly the Society which we propose to set up, the direction in which the State action must move, the welfare State . which we propose to build up, the constitutional goal of setting up a Socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pensions as a retirement benefit if in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a Welfare State because by pension the Socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in

the fall of life....."

12. In *Kapila Hindograni v. State of Bihar* 2003 (7) AIC 18 (SC) the Apex Court has observed as under :

"This Court in *Chameli Singh and others etc. Vs. State of U.P.* and another, referring to Article 11 of the International Covenant, on Economic, Social and Cultural Rights, 1966 held that the State Parties recognize "the right to everyone to an adequate standard of living for himself and for his family including food, clothing, housing and to the continuous improvement of living conditions". Indisputably, the State parties were to take appropriate steps to ensure realization of this thought."

13. Justice Holmes expressed the following view in *Missouri v. Holland* 252 US 416 :

"When we are dealing with words that also are a constituent act like the constitution of the United States, we must realise that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realise or to hope that they had created an organism, it has taken a century and has cost their successors sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago."

14. Justice Frankfurter elucidated the interpretive role in "Some Reflections on the Reading of" Statutes":

"There are varying shades of compulsion for Judges behind different words, differences that are due to the words themselves, their setting in a text, their setting in history. In short, Judges are not unfettered glossators. They are under a special duty not to overemphasize the episodic aspects of life and not to undervalue its organic processes-its continuities and relationship."

15. In *Jagdish Saran and others v, Union of India*, it is stated:

"Law constitutional law is not an omnipotent abstraction or distant idealization but a principled, yet pragmatic value laden and result oriented, set of propositions applicable to and conditioned by a concrete stage of social development of the nation and inspirational imperatives of the people. India that is the inarticulate major premise of our constitutional law and life."

16. It is also well settled that statute should be interpreted in the light of the International Treaties and Conventions. In *Chairman Railway Board and others v. Mrs. Chandrima Das and others*, this Court stated the law thus :

"24. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those rights. The applicability of the Universal

Declaration of Human Rights and the principles thereof may have to be read, if need be into the domestic. jurisprudence."

17. In "Human Rights and Indian Values", Justice M. Rama Jois notices the Ancient Indian Texts in the following words :

SAM ANI PRAPA SAHA VONNBHAGA SAMANE YOKTRAN SAHA
WOYNISMARAHNABHIMIVABHITE:

"All have equal rights in articles of food and water. The yoke of the chariot of life is placed equally on the shoulders of all. All should live together with harmony supporting one another like the spokes of a wheel of the chariot connecting its rim and the hub, (Atharvanaveda-Samjanana sukta)."

18. Thus, the right to equality of all human beings has been declared in the Vedas, which are regarded as inviolable, In order to emphasise the dignity of the individual, it was said that all are brothers as all are the children of God. No one is inferior or superior. Similarly, the Artharvanaveda stressed that all have equal right over natural resources and all were equally important like spokes in a wheel, Both the Rigveda and Arharvanaveda declared that cooperation between individuals is necessary for happiness and progress. It is also of utmost importance to note that Tight to equality was made a part of "Dharma" long before the State came to be established.

19. It is equally interesting to refer to the contents of Articles I and 7 of the Universal Declaration of Human Rights (1948), which read :

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should, act towards one another in a^spirit of brotherhood."

"All are equal before law and are entitled without any discrimination tb equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement of such discrimination."

The declaration is similar to the declaration of equality made in the Rigveda.

20. After the establishment of the State, the obligation to protect the right to equality was cast on the Rulers. It was, made a part of the Rucls of Raja Dharma, the Constitutional law.

YATHA SWARIN BHUTANI DHARA DHARYETE SAMAM TATHA SWARIN BHUTANI
BIBHARTE PARTHIVM VARTAM

"Just as the mother earth gives equal support to all the living beings, a king should give support to all without any discrimination."

"This also meant that the kings were required to afford equal treatment to all the citizens in the same manner in which a mother treats all her children."

21. In view of the aforesaid observations the writ petition is allowed. The respondents are directed to pay the retiral benefits to the petitioner on the basis of his emoluments calculating the pay of the petitioner plus 25% thereof as NPA and corresponding DA without making any deductions from the salary or retirement benefits the petitioner and to refund the deductions already made to the petitioner? No order as to costs.