
(2011) 04 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 14382 of 2008

Dr. Promila Vaidya

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0100

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed for quashing, setting aside memo dated 18.05.2006 Annexure PA fixing the pay of the Petitioner at Rs. 17,250/- instead of Rs. 18,600/-. It has also been prayed that the Respondents 1 to 3 may be directed not to issue any instructions/directions to Respondent No. 4 that the last pay of the Petitioner has been reduced to Rs. 17,250/- instead of Rs. 18,600/- and reduce her pension and retrial benefits. It has also been prayed that the Respondents may be directed not to re-fix the pension of the Petitioner on the basis of pay at Rs. 17,250/- instead of Rs. 18,600/- with further directions to the Respondents not to recover any amount from the pension of the Petitioner.

2. The brief facts of the case are that Petitioner was drawing her basic pay at Rs. 4,375/- plus Rs. 900/- NPA in the pre-revised scale of Rs. 3,700-5,300/- as on 31.12.1995. The pay of the Petitioner was revised in accordance with her option from existing pay scale of Rs. 3,700-5,300/- to the revised pay scale of Rs. 14,300-18,150/-. The pay of the Petitioner in the revised pay scale was fixed at Rs. 15,100/- on 01.01.1996. The Petitioner was drawing her salary uninterruptedly till she received memo dated 08.08.2001 issued by Respondent No. 3 re-fixing her pay to her detriment on 01.01.1996. The pay of the Petitioner as on 01.01.1996 was re-fixed at Rs. 14,300/- instead of Rs. 15,100/-.

3. The order dated 08.08.2000 was assailed before erstwhile Tribunal in OA (M)

No. 359 of 2001, which was decided in favour of the Petitioner on 12.11.2002. The order dated 12.11.2002 has become final, but Respondents have issued memo dated 20.10.2004. The Petitioner filed contempt petition, the Respondent No. 3 tendered unqualified apology and the petition was dismissed as withdrawn.

4. The Respondent No. 3 issued another show-cause to the Petitioner. The show-cause notice was replied on 25.08.2005. The Petitioner retired from government service on attaining the age of superannuation on 31.12.2003. The Respondent No. 4 vide letter dated 20.01.2004 allowed the pension to Petitioner on average emoluments of Rs. 22,744/- with effect from 01.01.2004 and death-cum-retirement gratuity Rs. 3,50,000/- without making any deduction from this amount against alleged excess amount paid on account of alleged fixation of pay from 01.01.1996 to 31.12.2003. The order dated 12.11.2002 in OA (M) No. 359 of 2001 has become final and, therefore, pay of the Petitioner could not be reduced to Rs. 17,250/- with effect from 01.12.2003 instead of Rs. 18,600/-. The Respondent No. 3 was not competent to pass order in view of decision of OA (M) No. 359 of 2001.

5. The Respondents No. 1 to 3 have contested the petition and have stated in preliminary submissions that the Petitioner was required to be fixed at the initial stage at Rs. 14,300/- plus NPA, but the Petitioner was fixed at Rs. 15,100/- thereby granting her two extra increments to which she was not entitled. When this fact came to the knowledge of the government, it was found that doctors have been allowed wrong increments and, therefore, it was ordered that the recovery be made on account of over payment. The Petitioner preferred OA (M) No. 359 of 2001, the order dated 26.07.2001 passed by Respondent No. 3 was set aside by Tribunal in view of violation of principle of natural justice by the Respondents by issuing order dated 26.07.2001. The Tribunal had not debarred the Respondents from effecting the recoveries by following due procedure. The Petitioner under the garb of the Tribunal order cannot take wrong benefit by taking the plea that recovery is wrong.

6. In view of observations of the Tribunal, the Petitioner was served fresh notice, she was heard. The petition is not maintainable. On merits, it has been stated that Petitioner is required to be re-fixed at Rs. 17,250/- as on 01.12.2003 instead of Rs. 18,600/-. The Petitioner was required to be fixed at Rs. 14,300/- on 01.01.1996, whereas, she was fixed at Rs. 15,100/- by Respondent No. 3 wrongly. The recovery on account of wrong fixation is to be made from the Petitioner.

7. The Respondent No. 4 filed separate reply. It has been stated that pension case of the Petitioner was finalized vide C and R dated 20.01.2004 Annexure PE. As per order dated 12.11.2002 passed by Tribunal in OA (M) No. 359/2001 and subsequent recommendations of the department after making revised entries of pay fixation in Service Book, the Respondent No. 4 has not received the pension case of the Petitioner for downward revision of pensionary benefits as yet, as alleged by the Petitioner. The further action will be taken as per decision in the

present case. The Petitioner has filed rejoinder dated 01.01.2007 and reiterated her case. The Tribunal vide order dated 06.06.2006 by way of interim order stayed the recovery, if any, pursuant to notice Annexure PA.

8. I have heard learned Counsel for the parties. The case of the Petitioner is that order dated 26.07.2001 re-fixing the pay of the Petitioner was assailed before the Tribunal on the grounds of violation of principles of natural justice. The learned Additional Advocate General before the Tribunal stated that before reduction of the pay scale, no show cause notice was given to the Petitioner to defend her case. In that view of the matter since the principle of natural justice was not complied with, the petition was allowed and order dated 26.07.2001 was quashed. The Tribunal vide order dated 12.11.2002 has not decided the lis on merits, but quashed order dated 26.07.2001 regarding re-fixation of pay of the Petitioner on the ground of violation of principle of natural justice. There is nothing in the order dated 12.11.2002 that the Respondents were debarred from re-fixing the pay of the Petitioner after following principle of natural justice. The order dated 12.11.2002 cannot be read that the Respondents were debarred from re-fixing the pay of the Petitioner after following the principle of natural justice.

9. It has been pleaded in the petition that fresh show-cause notice was given to the Petitioner which was replied by Petitioner on 25.08.2005. The memo dated 18.05.2006 Annexure PA has been issued after considering the reply of the Petitioner. The Petitioner has mainly challenged the memo dated 18.05.2006 Annexure PA on the ground that once Office Order dated 26.07.2001 was set aside by the Tribunal vide order dated 12.11.2002, the pay of the Petitioner could not have been re-fixed vide memo dated 18.5.2006. At the time of hearing, on behalf of the Petitioner, no other point was raised to challenge the memo dated 18.05.2006.

10. The government has right to rectify the mistake, more particularly, in financial matters when it came to the notice of the government that a benefit has been given to an employee to which he/she is not legally entitled. There was no bar for re-fixation of the pay of the Petitioner. Therefore, no fault can be found in the re-fixation of the pay of the Petitioner vide memo dated 18.05.2006. The Respondent No. 4 in his reply has already stated that further action, if any, will be taken as per decision in the present case.

11. It has been submitted on behalf of the Petitioner that Petitioner is not instrumental in wrong fixation of her pay, nor any plea of misrepresentation or fraud on the part of the Petitioner for fixation of her pay has been raised by the Respondents. The pay of the Petitioner was fixed by Respondents 1 to 3 on 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.

12. In view of legal position, it is clear that Respondents 1 to 3 were well within their right to re-fix the pay of the Petitioner, but in absence of defence of fraud, misrepresentation or Petitioner had the knowledge that she was not entitled to the benefit of wrong fixation, the Respondents 1 to 3 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 06.06.2006 passed by the Tribunal, after the decision of the petition on merits.

13. In view of above, the petition is partly allowed. The fixation of pay of the Petitioner at Rs. 17,250/- on 01.12.2003 instead of Rs. 18,600/- vide memo dated 18.05.2006, Annexure PA is upheld. However, Respondents 1 to 3 are directed not to recover any amount already paid to Petitioner prior to re-fixation of her pay vide memo dated 18.05.2006 fixing her pay at Rs. 17,250/-. The interim order dated 6.6.2006 stands vacated.