
(2011) 04 SHI CK 0170
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11656 of 2008

Dr. Sohan Lal Sharma

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Himachal Pradesh Civil Services (Revised Pay) Rules, 1998 — Rule 7

Citation : (2011) 04 SHI CK 0170

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed for quashing of Office Order Annexure PA with further prayer that the Respondents may be directed not to make recovery from the salary of the Petitioner on account of alleged overpayment made to him on the basis of Annexure PB.

2. The brief facts of the case are that Petitioner joined Himachal Pradesh Government, Directorate of Health Services on 26.07.1970 as Medical Officer. The Petitioner was drawing his basic pay of Rs. 4,500/- plus NPA in the revised pay scale on 31.12.1995 in the pay scale of Rs. 3,000-4,500/-. The Petitioner was placed in the revised pay scale of Rs. 14,300-18,150/- vide Annexure PB as on 31.03.2000. The pay of the Petitioner in the revised scale was fixed at Rs. 15,100/- on 01.01.1996 and ultimately Rs. 16,800/- plus 25% NPA as on 31.3.2000.

3. The Petitioner continued to draw his salary in accordance with the Annexure PB till he received Office Order Annexure PA issued by Chief Medical Officer whereby previous order in connection with revision of pay scale with effect from 01.01.1996 and consequent upon approval of four tier pay scale, the pay of the Petitioner was re-fixed to his detriment with effect from 01.01.1996 vide Office Order Annexure PA which was conveyed to the Petitioner on 27.09.2004. The pay

of the Petitioner as on 01.01.1996 was re-fixed at Rs. 14,300/- plus NPA instead of Rs. 15,100/- plus NPA. Thus, unilaterally the pay of the Petitioner was reduced vide Office Order Annexure PA.

4. The Petitioner in accordance with the Office Order Annexure PA is shown to have been drawn over payment with effect from 01.01.1996. The Petitioner is not required to refund the amount allegedly paid in excess. The Petitioner should have been given chance to show cause as to why he should not be re-fixed at Rs. 14,300/- plus NPA instead of Rs. 15,100/- plus NPA. The Office Order Annexure PA of recovery is wrong, illegal and against Rule 7 of H.P. Civil Services (Pay Revision) Rules, 1998. The Officer Order Annexure PA was issued without any show-cause notice which is against the spirit of law. The re-fixation done vide Office Order Annexure PA is punitive and, therefore, is not sustainable.

5. The Respondents have contested the petition by filing reply. It has been admitted that Petitioner continued to draw salary in accordance with pay fixation vide Annexure PB. The pay fixation was subject to review in view of instructions dated 23.06.2000 issued by the Finance Department. The pay of the Petitioner was rightly fixed by Respondent No. 3 by granting time scale of Rs. 14,300/- 18,150/-. The Respondents have defended re-fixation of pay of the Petitioner. The Petitioner has filed rejoinder and reiterated his case.

6. I have heard learned Counsel for the parties. The point involved in the petition is very short. It is the case of the Petitioner that his pay was fixed vide Annexure PB and he was drawing the salary accordingly. The Respondents have not denied that the pay of the Petitioner was fixed as per Annexure PB, but they have taken the plea that the pay of the Petitioner was re-fixed in accordance with the instructions dated 23.06.2000 of the Finance Department and no fault can be found with re-fixation of pay.

7. The grievance of the Petitioner is that no show-cause notice was given to him and he continued to draw his salary for quite some time as per pay fixation vide Annexure PB. It is also the case of the Petitioner that he is not instrumental in alleged wrong fixation of pay nor he mis-represented or obtained the fixed pay vide Annexure PB by playing fraud. In these circumstances, the Respondents cannot recover the amount already drawn by the Petitioner from him. In Syed Abdul Qadir and Others Vs. State of Bihar and Others, it has been 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 have right to re-fix the pay of the Petitioner after following principles of natural justice. But, so far as the recovery of the amount already paid to the Petitioner is concerned, unless it is established that the Petitioner was responsible for fixation of his pay by misrepresentation or by playing fraud or the steps for re-fixation were taken immediately after the fixation of the pay or the Petitioner had the knowledge that he was getting undue benefit only then the Respondents in a given situation may recover the amount already paid. In the present case, the Respondents have not projected that re-fixation was done immediately after fixation of pay or fixation of pay was the result of misrepresentation or fraud of the Petitioner or the Petitioner had the knowledge that he was getting undue benefit. Therefore, in the present case, the Respondents cannot recover the pay already paid to the Petitioner after fixing his pay as per Annexure PB.

9. In view of above, the petition is allowed. Annexure PA is quashed. The Respondents are directed not to recover the amount already paid to the Petitioner in pursuance of fixation of his pay, as mentioned in Annexure PB. However, the Respondents are at liberty to re-fix the pay of the Petitioner by following principles of natural justice.