(2022) 10 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 208 Of 2020, CWPOA Nos. 107, 129, 201, 240, 244, 268, 270, 273, 275, 279, 289, 291, 313, 319, 408, 427, 1511, 1519, 1523, 1532, 1609, 2635, 2640, 2642, 2657, 2982 Of 2020, Civil Writ Petition No. 3607 Of 2022

Durga Ram And Others — APPELLANT

Vs

Himachal Pradesh University And Others — RESPONDENT

Date of Decision : 18-10-2022

Acts Referred:

Citation : (2022) 10 SHI CK 0018

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Radhey Shyam Gautam, Surender Verma, Desh Raj Thakur, Narender Thakur

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. All these petitions are being decided together as common questions of facts and law are involved. However, for the sake of convenience, the facts of lead case i.e CWPOA No. 208 of 2020, titled as Durga Ram Vs. H.P. University and Anr., are being taken into consideration.

2. The common grievance of the petitioners in all the petitions is against exclusion of Secretariat Pay while calculating their pension and other retiral benefits.

3. Brief facts necessary for adjudication are as under:-

(a) Petitioner is retired employee of respondent No.1. Initially, respondent No.1 allowed Secretariat allowance to the petitioner and similarly situated employees which subsequently came to be termed as Secretariat Pay.

(b) Respondent No.1-Univeristy follows the rules of the State Government for the purpose of grant of pay, allowances and other benefits including pension etc. to its employees. The Finance Committee of respondent No. 1 in its meeting held on 08.10.1971 allowed grant of pay scales and allowances to the Non-Teaching Staff on the pattern of H.P. Secretariat. The Executive Council of the University in its meetings held on 08.11.1971 and 23.04.1977 had approved the aforesaid recommendations of Finance Committee. The decision so taken by the Executive Council of University was conveyed by the Registrar of the University to the Secretary (Education) to the Government of H.P., vide communication dated 19.07.2012.

(c) The Government of H.P., vide its notification dated 23.04.2012 allowed the Secretariat Pay to its employees working in the Secretariat and equivalent offices. It was specifically notified that the Secretariat Pay would be treated as part of the basic pay for calculation of various types of allowances and pensionary benefits. Respondent No. 1 adopted the notification dated 23.04.2012 issued by Government of H.P., vide its notification dated 08.06.2012. The Executive Council of the University in its meeting held on 08.04.2013 decided that notification of Secretariat Pay dated 08.06.2012 shall be permissible to various categories of employees/ officers of the University and shall also be applicable to the retirees so far as the retiral benefits are concerned and, in this regard, a separate notification dated 20.04.2013, was issued.

4. Respondent No.1 in its reply has admitted the entire factual position. Its specific stand is that a proposal for retiral benefits in favour of the petitioners including Secretariat Pay was moved for its concurrence/vetting by the Finance Wing of the University/ Local Audit Department of the State Government of H.P. according to the decision(s) already taken by the Executive Council, but the Local Audit Department had objected/deducted at its own a component of Secretariat Pay for grant of pension and other pensionary benefits.

5. Respondent No. 2 in its separate reply has submitted that since the matter pertains to the H.P. University and the University being an autonomous body has to take its own decisions keeping in view its resources and financial condition.

6. I have heard learned counsel for the parties and have gone through the record.

7. The facts detailed above restrict the controversy in a narrow compass. The relevant extract of communication dated 23.04.2012 issued by Principal Secretary (Finance) to the Government of H.P. reads as under: -

"The Governor, Himachal Pradesh, after careful consideration is pleased to order that the certain categories of employees working in the Himachal Pradesh Secretariat and its above stated equivalent offices will be given Secretariat Pay at the rates mentioned in Annexure "A" enclosed to this letter with effect from 01.12.2011. The Secretariat Pay admissible under these orders will be treated as part of basic pay for calculation of various types of allowances and pensionary benefits. This Secretariat Pay shall substitute the Secretariat Allowance admissible to all such categories/posts as per letter No. Fin(PR)-B(7)-4/98, dated

14th January 1999 and subsequent letters issued on the subject from time to time and this allowance shall stand abolished as on 30.11.2011."

8. The aforesaid decision of the State Government was adopted by respondent No.1, vide notification dated 08.06.2012 in respect of grant of Secretariat Pay for implementation in the H.P. University. The Executive Council in its meeting dated 8. 04.2013 further decided that the notification of Secretariat Pay dated 08.06.2012 issued by Registrar shall be permissible to the various categories of employees/officers of the University and shall also be applicable to the retirees as far as retiral benefits

9. Thus, undisputedly, the highest decision-making body of respondent No. 1 had taken a conscious decision to adopt the decision of State Government communicated vide communication dated 23.04.2012, as noticed above. No reservation was kept in implementation of such decision in respect of employees of respondent No.1. That being so, the Secretariat Pay was to be treated as part of basic pay for calculation of various types of allowances and pensionary benefits.

10. Once, the decision making body of respondent No. 1, in exercise of powers vested in it, had decided to grant particular service benefit to its employees, the Local Audit Department could not sit over the decision of the Executive Council that too by withholding only a part of benefit flowing from said decision. The objection of Local Audit Department could have been ignored or superseded by respondent No .1 and inaction of said respondent in this behalf needs to be remedied by intervention of this Court as the legal vested rights of the petitioners have been adversely affected thereby.

11. Resultantly, all these petitions are allowed. Respondent No. 1 is directed to include the Secretariat Pay as part of basic pay of petitioners for calculation of all types of permissible allowances and pensionary benefit and thereafter to re-fix the pension of the petitioners, accordingly. The entire exercise including payment of arrears, if any, to the petitioners shall be done by respondent No.1-University, within three months from the date of passing of this judgment.

12. All writ petitions stand disposed of in the above terms, so also the pending miscellaneous application(s), if any.