

(2007) 11 MP CK 0020
In the Madhya Pradesh High Court

Haridas Chaudhry

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-11-2007

Acts Referred:

Citation : (2008) 1 MPHT 229

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.

Challenging the order Annexure A-1, dated 9-6-2000, passed by the respondents directing to recovery of one increment granted to the petitioner for having undergone for family planning operation and to recover the proposed amount from the salary of the petitioner, this application has been filed in the year 2000 before the State Administrative Tribunal and after winding up of the Tribunal, the matter stands transferred to this Court.

2. Applicant was holding the post of Asstt. Teacher and in the year 1989, it is stated that his wife had undergone the family planning operation and accordingly, a green card Annexure A-2 was issued to the petitioner recording the fact that after birth of second child, his wife has undergone the operation on 28th August, 1989. On the basis of aforesaid operation undertaken by the petitioner's wife and in view of the policy of the State Government as contained in Annexure A-3, two advance increments were granted to the petitioner. The petitioner continued to draw the aforesaid increments w.e.f. 1989 till date of the passing of the impugned order on 9-6-2000, i.e., for 11 years continuously. The aforesaid benefit is withdrawn on the ground that the petitioner's wife has given birth to a daughter, a third child on 23-6-90. After operation, petitioner has not intimated the fact to the Department and has obtained the benefit of two increments illegally.

3. It is the case of the petitioner that after family planning operation had undergone on 28th August, 1989 because of mistake committed by the doctor in conducting the operation, petitioner's wife again conceived and became pregnant and when the fact was brought to the knowledge of the petitioner, the petitioner immediately vide Annexure A-6, dated 24-1-90 and Annexure A-6/A, dated 28-6-90 brought this fact to the notice of Competent Authority and also submitted a certificate Annexure A-7 issued by Block Medical Officer, Primary Health Center, Satanwada, District Shivpuri certifying failure of family planning operation. It is the case of the petitioner that in spite of intimation being given, the benefit is withdrawn retrospectively and action is being taken for recovery of the amount paid continuously for a period of 10 years.

4. Shri Anil Agrawal, learned Counsel for the petitioner argued that as there was no malafide intention on the part of the petitioner and as the petitioner has brought all facts to the notice of the Competent Authority but the authority did not take any action for more than 10 years, and action for recovery after a period of 10 years cannot be ordered.

5. Inter alia contending that the petitioner has not committed any default in seeking the amount of increments and he is not responsible for erroneous grant of increments, interference in this petition is sought for and in support thereof, reliance is placed in the following judgments: (I) Kailash Narayan Gupta and Anr. v. The State of M.P. and Ors. 1996 (2) S L R 404. In support of the contention, that increments even if erroneously given, cannot be withdrawn after a long period of time and even if withdrawn, the recovery of excessive amount cannot be recovered. (II) Nand Kishore Sharma and Ors. v. State of Bihar and Ors. 1995 (3) SCC 722, in support of the contention, that benefit of pay fixation illegally granted, may be withdrawn but payment erroneously made, cannot be recovered if delinquent employee is not found to be the defaulter. Sahib Ram Vs. State of Haryana and Others, also to the same effect.

6. Shri Praveen Niwaskar, learned Counsel for the State refuted the aforesaid contentions and submitted that the petitioner having failed to intimate birth of third child in the year 1990, has received the second increment illegally by suppression of fact is not entitled to any indulgence from this Court. It is stated that respondents have not committed any error in taking action.

7. Shri Praveen Niwaskar, learned Dy. Govt. Advocate submitted that so-called application and information given by the petitioner on 29-1-90 is not received by the respondents and, therefore, no relief can be granted to the petitioner.

8. I have heard learned Counsel for the parties and perused the record.

9. From the entries made in the green card, Annexure A-2, and the Registrar Annexures A-4 and A-5, it is clear that the petitioner's wife had undergone operation on 28th August, 1989 and thereafter she gave birth to a girl child on 23-6-1990. The certificate Annexure A-7 issued by the Block Medical Officer of Primary Health Centre, Satanwada, District Shivpuri indicates that the

petitioner's wife was operated on 28-8-89 and due to failure of operation, she again conceived. Annexures A-6 and A/6-A are two letters issued by the petitioner on 24-1-90 and 28-6-90 intimating the Competent Authority with regard to failure of family planning operation, birth of a child to his wife on 23-6-90 and petitioner has enclosed certificate Annexure A-7 with his representation Annexure A-6 and Annexure A/6-A. Both these letters are received in the Office of the Block Education Officer as per endorsement made and acknowledgment stamped on these documents. From these documents, it is clear that the petitioner had intimated the authorities about the failure of operation and in spite of intimation being given in the year 1990, no action was taken for about 10 years and it was only after 10 years, vide Annexure A-8 on 22-5-00 that action was taken. Petitioner again pointed out this fact in his reply Annexure A-9 and again submitted that he had already intimated this fact earlier by representations to the authorities. It is, therefore, clear from these documents that the petitioner cannot be held responsible for suppressing any material.

10. Contentions of the respondents that the intimation Annexure A-6, and Annexure A/6-A was not given, is not correct. Endorsement of the Competent Authority acknowledging the receipt of these letters on 29-1-90 and 30-6-90 are available in the bottom, left corner of the documents. Respondents contended that these documents are not submitted only on the basis of letter Annexure R-1, 31-8-2000 issued by Block Educational Officer, Shivpuri. A perusal of this letter indicates that it was issued on 31-8-2000 and it only says that the documents were not traceable now. This letter only shows that now the records are not available in the office. Naturally, after gap of 10 years, the record would not be available and, therefore, it cannot be held that the petitioner has suppressed information and did not submit the information vide Annexure A-6 and Annexure A/6-A as contended by the petitioner.

11. The petitioner having acted fairly and having received the benefit for more than 10 years cannot be held responsible, if any error is committed in the office of the respondents. Records indicate that the petitioner had bonafidely taken the benefit of two increments and was under impression that he was entitled for increments once granted even after birth of third child as his information and representations Annexure A-6 and Annexure A/6-A were not acted upon and no adverse action has been taken.

12. That being so, the petitioner cannot be held responsible for suppressing any fact or giving incorrect information to the department. Respondents are entitled only to correct the mistake by stopping one increment prospectively. The increments already granted for a period of 10 years prior to passing the order Annexure A-1 cannot be recovered from the petitioner as it was not given to the petitioner or received by him by misrepresentation, fraud or use of any unfair method. Petitioner has acted bonafidely and has not committed any error in the matter for which he can be penalized by recovery of increments already granted.

It is only the respondents who are to be blamed for not having acted in time for the default committed in the office of the respondents. Petitioner cannot be put the loss.

13. Keeping in view, the principle laid down in the judgments as referred to hereinabove as canvassed by Shri Anil Agrawal, learned Counsel for the petitioner, this Court is of considered view that the respondents are not entitled to recovery the amount of increments already paid to the petitioner and to that effect Annexure A-1, dated 9-6-2000 is quashed. The petition is allowed, so far as the direction for recovery of increments already granted, respondents are directed not to effect any recovery from the increments already paid to the petitioner and any amount recovered during pendency of this petition, be refunded back to the petitioner within a period of two months. Accordingly, petition is allowed and stands disposed of without any order so as to cost.