
(2015) 05 SHI CK 0132
In the High Court Of Himachal Pradesh
Case No : CWP No. 10568 of 2012

Jagdish Chand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Citation : (2015) 05 SHI CK 0132

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Narender Singh Thakur, Counsel and R.R. Rahi, for the Appellant;
Parmod Thakur, Addl. AG and Neeraj K. Sharma, Dy. AG., Advocates for the
Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.

1. The petitioner was initially engaged in the department of Agriculture on daily wage basis on 22.3.1983. He was regularized w.e.f. 1.4.1995 as Electrician. In sequel to the notification dated 1.9.1998 issued by the Government of Himachal Pradesh, the petitioner was re-designated as Technician Grade-I (Electrician) w.e.f. 1.1.1996 and put in the pay scale of Rs. 4020-7220/- vide a letter dated 20.6.2003. The petitioner's pay was fixed at Rs. 4550/- (at the minimum of the scale) with date of next increment as 1.1.1997, vide office order dated 23.6.2003. The petitioner was served with notice dated 12.10.2012 whereby he was informed that an amount of Rs. 4,68,300/- was wrongly released to him w.e.f. 1.1.1996 to 1.1.2012. On the basis of audit para, his pay was re-fixed as per his entitlement in accordance with the Rules. The petitioner was informed and requested to settle audit para No. 3. He was granted merely 3 days' time to file the reply. The petitioner was served with notice dated 9.11.2012 whereby he was granted opportunity to explain his position before the withdrawal of office order dated 20.6.2003. The petitioner submitted reply vide Annexure P-14 on 24.11.2012 informing that since Sh. Gita Ram did not possess qualification of

ITI, he was not qualified and he also belonged to a different category, though petitioner was possessing qualification of ITI. However, the fact of the matter is that vide office order dated 29.11.2012, the petitioner's placement order made on 20.6.2003 was withdrawn and his pay was re-fixed vide office order dated 6.12.2012. Hence this petition.

2. The petitioner was re-designated as Technician Gr-I (Electrician) and placed in the pay scale of Rs. 4020-7220 w.e.f. 1.1.1996. His pay was fixed at Rs. 4550/- with date of next increment as 1.1.1997. He was also allowed higher pay scale on the recommendation of the DPC and put in pay scale of Rs. 5000-8100 w.e.f. 1.1.2004. The petitioner was informed, as noticed hereinabove, of the audit para No. 3 and he was requested to settle the same vide Annexure P-11 dated 12.10.2012. The petitioner was granted only three days' time to file the reply. According to the averments contained in notice dated 9.11.2012, the petitioner was not eligible to be re-designated as Technician Gr-I (Electrician), whereas his name was at Sr. No. 3 of the seniority list. In the placement orders, it was mentioned that placement along with the scale was subject to the decision of any representation made in that behalf/verification by audit and in case any over-payment was paid, the same would be recovered from the official concerned. It is also stated that the case of the petitioner did not fall in 20% category. The fact of the matter is that the petitioner has neither misrepresented nor concealed any relevant facts at the time of his placement in cadre of Technician on 20.6.2003, which led to fixation of his pay at Rs. 4550/- as per Annexure P-4, dated 23.6.2003. The petitioner has also been put in the higher pay scale of Rs. 5000-8100 w.e.f. 1.1.2004 on the basis of the recommendation made by the DPC.

3. Mr. Parmod Thakur, learned Additional AG has vehemently argued that one Sh. Dila Ram has filed CWP No. 5479 of 2012 in this Court. It is specifically averred in the present petition that Sh. Dila Ram has not challenged the placement of the petitioner as Electrician Gr-I. He has only sought his promotion as Technician Gr-II.

4. Now as far as Sh. Dila Ram is concerned, he does not fulfill even the basic qualification of ITI. The Court has gone through order dated 29.11.2012 with reference to CWP No. 5479 of 2012. It is evident that the CWP filed is still pending and despite that the placement of the petitioner has been withdrawn. There is no final adjudication on the writ petition filed by his senior. There is no tangible material placed on record that the petitioner was heard before the matter was looked into by the Deputy Controller (F&A). If the petitioner had been given an opportunity, he would have narrated the circumstances before the Deputy Controller, the manner in which he was put in the higher pay scale and that too on 20.6.2003. The respondents have further reduced the pay of the petitioner vide Annexure P-16 dated 6.12.2012 on the basis of order dated 29.11.2012. It is not that the petitioner's salary has been reduced but recovery amounting to Rs. 4,68,300/- has also been ordered.

5. Their lordships of the Hon''ble Supreme Court, in a recent judgment, in the

case of State of Punjab and others etc. versus Rafiq Masih (White Washer) etc., reported in JT 2015 (1) SC 95, have laid down the following principles governing the situation where recovery by the employers would be impermissible in law. It has been held as follows:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

6. In the instant case also, the respondents cannot be permitted, at this belated stage, to re-fix the petitioner's pay on the basis of office order dated 29.11.2012 as well as to recover an amount of Rs. 4,68,300/- from the petitioner.

7. The respondents have also not taken into consideration the representation which has already been filed by the petitioner assailing the combined seniority list. The respondents have also overlooked Annexure P-5 whereby the petitioner was granted higher pay scale of Rs. 5000-8100 on the basis of Annexures P-3 and P4 dated 20.6.2003 and 23.6.2003, respectively.

8. Accordingly, the Writ Petition is allowed. Annexure P-11 dated 12.10.2012, Annexure P-13 dated 9.11.2012, Annexure P-15 dated 29.11.2012 and Office Order Annexure P-16, dated 6.12.2012 are quashed and set aside. Pending application(s), if any, shall stand disposed of.