
(2022) 03 SHI CK 0061

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.2890 Of 2011

Jai Dev Sharma (Since Deceased) And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 21-03-2022

Acts Referred:

Citation : (2022) 03 SHI CK 0061

Hon'ble Judges : Mohammad Rafiq, CJ;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Arun Kumar, Lokendar Paul Thakur, Ashok Sharma, Ritta Goswami

Final Decision : Allowed

Judgement

Mohammad Rafiq, CJ

1. This writ petition was originally filed by late Sh. Jai Dev Sharma. Upon his death on 28th December, 2015, he has been substituted by his legal heirs by condoning the delay and setting aside the abatement. The writ petition was originally filed for directions to the respondents to forbear from acting upon the orders dated 22.12.2009 and 12.1.2010 and treat it as nonest and desist from reducing the pay scale and recovery and also with a prayer for quashment of the aforesaid orders.

2. Learned counsel for the petitioners submits that several identical writ petitions of same Department i.e. Agriculture Department were filed in the years 2019, 2010 and 2011 and nine such identical writ petitions were partly allowed by the Principal Division Bench of this Court vide its order dated 16th April, 2012, passed in CWP No.2655 of 2010 and connected matters, titled Roop Lal Prashar vs. The State of H.P. & another. The dispute in the present matter is even identical to those writ petitions which were decided by the aforesaid order. However, the present writ petition somehow was not decided alongwith the aforesaid identical writ petitions. Even though, the learned Additional Advocate General did not oppose the said fact, but submits that she was not in a position

to contend that the dispute in the present matter is identical to that of the aforesaid writ petitions decided by the Principal Division Bench of this Court.

3. The aforesaid batch of writ petitions were decided by the following order:-

"4. Proficiency Step Up, for which the petitioners were not entitled, has been wrongly granted to them and the moment it was found out, steps were taken to correct the same. The petitioners were given an opportunity and their representations were considered and they have been informed that only a mistake has been rectified in re-fixing the pay and the consequential pension.

5. As far as the people who have retired from service are concerned, it would be harsh and unreasonable to make recovery from the pension. Situation would have been different had steps been taken while they were in service and mistake detected within a reasonable time, in which case, without much hardship recovery could have been made, either in affordable instalments or from the pensionary benefits. But recovery shall not be made in the case of pensioners, who count only on the pension for their livelihood. Therefore, while the State is justified in re-fixing the pay and the pension by correcting the mistakes, there shall not be any recovery of the amounts of pension, already paid to them while they were in service. We make it clear that it will be open to the State, if so advised, to take steps to recover the same from any erring official, who might have made the wrong fixation intentionally."

4. We are satisfied that the issue raised in the present matter is identical to that of the aforesaid batch of writ petitions. Therefore, the present writ petition is also allowed and disposed of in terms of the aforesaid directions which shall be treated as mutatis mutandis to the present writ petition.

5. Pending application(s), if any, also stand(s) disposed of.