

(2011) 05 SHI CK 0046
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11601 of 2008

Manohar Lal and Another	Vs	APPELLANT
The State of H.P. and Others		RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 39
Government of Himachal Pradesh (Allocation) Rules, 1971 — Rule 34, 9

Citation : (2011) 05 SHI CK 0046

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide para 7(i) and (ii):

7 (i) That the impugned order dt. 22/10/2003 already placed at Annex A/1 may kindly be quashed and set aside which being arbitrary, illegal, ultravires, malafide and discriminatory in-as-much as the same has been passed against the applicants without affording an opportunity of being heard whereby the applicants subjected to recurring financial loss and mental agony and financial harassment and the same is not sustainable in the eye of law and the initial pay of Rs. 5480/- per month which was given to them in view of Govt. letters dt. 23/05/2003 and dt. 02/08/2003 already placed at Ann A/2 & A/3, is restored.

(ii) That the Respondents may further be directed to produce the entire record pertaining to the case for the perusal of this Hon. Tribunal.

2. In reply, on behalf of Respondents No. 2 and 5, the following stand has been taken vide paras 3 (i to iv) and 6 (a to g):

3(i to iv) It is denied that any illegal & unjustified order has been passed by the replying Respondents for reduction in pay and recovery thereof in respect of the applicant. However, it is admitted that letter No. Fin-F-I(C)14-Vol-III dated 14.10.2003 (Annexure-R2/A) was issued by the replying Respondent No. 2 vide

which the Education department was required to withdraw its letter No. Shiksha-II Kha (12)2/99 dated 23.05.2003 and letter of even No. dated 30.07.2003 as the same was issued without prior concurrence of the Finance Department which is mandatory under relevant provision of Rules of Business of Govt. of H.P., 1971 and as a consequence the status obtaining before 23.05.2003 was to be maintained with regard to the wage structure of the said category of the contractual appointees. This letter was further circulated by the Special secretary (Finance)-cum- Director, Treasury Officers/Treasury Officers in the State for information and necessary action vide its letter No. Fin (TR) B (7)-14/2003 dated 22.10.2003 (Annexure A-1). The said letter at Annexure R2/A is justified, legal and is within competent jurisdiction as same has been issued in light of the relevant provisions of the Rules of Business of Govt. of Himachal Pradesh, 1971.

6(a to g)

The facts regarding the qualification and eligibility of the applicant for the post of TGT (Science) relates to Education Department, hence no comments. However, it is denied that revised pay scale w.ef. 01.01.1996 automatically applied to the applicant or similarly situated other employees. In this regard, H.P. Civil Services (Revised Pay) Rules, 1998, as providing for grant of new pay scales to the State Government employees, clearly prescribe that these rules shall not apply to the persons employed on contract basis (Annexure R2/B). Hence it is wrong to claim that applicant was also entitled for new pay scales like the regular government employees, unless specific orders to this effect were/are issued by the State Government. As such, the letter No. Shiksha -II-Kha (12) 2/99 dated 23.05.2003 & letter of even No. dated 30.07.2003 was contrary to the provisions of the H.P. Civil Services (Revised Pay) Rules, 1998 and was issued by the Respondent No. 1 in contravention and without prior concurrence of the Finance Department of H.P. as is mandatory under Rule-9 and Rule-34 of the Rules of Business of Govt. of H.P. 1971, which read as under:

Rule-9:(1) No department shall, without previous consultation with the Finance Department, authorize any orders (other than orders pursuant to any general delegations made by the Finance Department) which:

(a) Either immediately or by their repercussions, will affect the finances of the State or which, in particular-

(i) Involve any grant of land or assignment of revenue or concession, grant, lease, or licence of mineral or forest rights or a right to water power or any assessment or privilege in respect of such concessions; or

(ii) In any way involve any relinquishment of revenue, or

(b) Relate to the number or grading or cadre of posts or the emoluments or other conditions of service of posts;

(c)(i) Involve the delegation of financial powers to subordinate authorities; and refer to reports of financial irregularities made by the Accountant General or

administrative authorities; and (ii) Relate to audit reports of the Examiner of Local Fund Accounts when the reports mention serious irregularities or when the Administrative Department differs from the Examiner of Local Fund Accounts or when the Examiner of Local Fund Accounts specifically requests that the reports should be seen by the Finance Department also:

Provided that no orders of the nature specified in Clause (b) shall be issued in respect of the Finance Department without the previous concurrence of the Department of Personnel.

(2) Subject to the general provisions of these Rules, no proposal, which requires the previous consultation of the Finance Department under this rule but in which the Finance Department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council.

(3) No re-appropriation shall be made by any department other than the Finance Department except in accordance with such general delegations as the Finance Department may have made.

(4) Except to the extent that power may have been delegated to the department under rules approved by the Finance Department, every order of an Administrative Department conveying a sanction to be enforced in audit, shall be communicated to the audit authorities by the Finance Department.

(5) Nothing in this rule shall be construed as authorizing any department including the Finance Department, to make re-appropriation from one grant specified in the Appropriation Act to other such grant.

Rule-34:

The Finance Department shall be consulted before the issue of orders upon all proposals which affects the finances of the State and in which its previous concurrence is necessary under these Rules.

The said instructions dated 23.05.2003 & 30.07.2003 have now been withdrawn by Secretary (Education) vide letter No. Shiksha-II-Kha (12) 2/99 dated 05.11.2003 (Annexure-R2/C). The applicant being an employee on contract basis cannot claim the salary & allowances at par with the regular employee under rules and also in light of original contract agreement. It is denied that the Respondents have exploited the applicants as alleged. Rather, the applicants cannot claim a benefit, which was wrongly given to them and is not permissible under the rules. The Respondents are within their rights rectify a mistake and the applicants do not get any vested right due to the same. It is denied that there is any violation of Article 14 and 39(d) of Constitution of India. As provided under Rule 9 & 34 of rules of Business of the Govt. of H.P., 1971, prior consultation of the Finance Department is mandatory in all such cases, which affect the finances of the State. The revised pay-scales allowed under H.P. Civil Services (Revised Pay) Rules, 1998 are not applicable to the contract employees like the applicant unless provided otherwise. The Finance Department of the State, which is

enjoined upon with the subject of revision of scales of pay and in matters of emoluments of government employees under the provisions of the govt. of Himachal Pradesh (Allocation) rules, 1971, has never decided to extend new/ revised pay scales to the contract employees. The contract employees, by nature of their employment as such cannot as a matter of right claim the pay scales & allowances at par with regular employees. It is also denied that replying Respondent No. 2 has withdrawn the pay scales given to the applicant. In fact the applicant being on contract employment with government of Himachal Pradesh was not automatically entitled for revised pay-scale to the regular employees unless it is/was allowed so by the Finance Department of State Government. Hence the erroneous release of new/revised pay-scales to the application or similarly situated employees by any State Government functionary other than Finance Department does not entitle the applicant/such employee for legal protection. As only the erroneous instructions/clarifications were withdrawn, hence there was/is no justifiable ground and necessitating reason for affording specific opportunity to the individuals in the present case.

Hence it is wrong to say that the action of the replying Respondents is unjustified, arbitrary or violative of law or principles of natural justice.

3. There is no reply on behalf of the remaining Respondents. However, at the time of hearing, the learned Deputy Advocate General has adopted the reply filed on behalf of Respondents No. 2 and 5.

4. The learned Counsel appearing on behalf of the Petitioners submits at the very outset that the case of the Petitioners is covered under judgment dated 30th November, 2010, rendered by this Court in CWP(T) No. 6037 of 2008, titled H.P. Rajkiya Prathmik Anubandh Adhyapak Sangh v. State of H.P and Anr.. Paras 5 and 6, being relevant, are extracted below for ready reference:

5. Office order dated 31.3.1998, Annexure A-3 is the appointment letter of one of the members of the Petitioner-Union. However, admittedly the terms and conditions mentioned therein govern each and every member of the Union. It is more than clear on perusal of office order, Annexure A-3 that the members of the Petitioner-Union were appointed in the pay scale of Rs. 1200 (fixed) plus allowances as admissible under the rules from time to time subject to the rider that they were not entitled for any increments. Thus, as a natural corollary as also on the basis of specific mention in office order, Annexure A-3 the appointees would be entitled for the said pay scale plus allowances "as admissible under the rules from time to time". Meaning thereby that though members of the Petitioner-Union were initially appointed in the pay scale of Rs. 1200-2100 and were fixed at the lowest level of the pay scale, i.e. Rs. 1200, they were entitled for grant of the revised pay scales as applicable from time to time albeit the fact that they were to be fixed at the lowest level of the revised pay scales as admissible from time to time. Once the pay scale of Rs. 1200-2100 was initially revised to Rs. 4020-6200 and finally to Rs. 4550-7220, members of the Petitioner-Union were entitled to be fixed at the lowest level of the finally revised pay scale, i.e. at Rs.

4550 plus allowances admissible from time to time. However, since it was not done and there is no reasonable and plausible explanation coming forth for the same, the members of the Petitioner-Union are entitled for the grant of relief prayed for and more so when admittedly similarly situate employees of the State Government appointed on contract basis have already been granted this benefit.

6. In view of the above, the petition is allowed with a direction to the Respondents to grant to the members of the Petitioner-Union the revised pay scale of Rs. 4550-7220 by fixing them at the lowest level, i.e. at Rs. 4550 plus allowances as admissible from time to time along with consequential benefits within six months from today, failing which interest at the rate of 9% shall also be payable. Needless to say that salary for the period of vacations shall also be payable to the members of the Petitioner-Union in the light of this judgment within the same time as above.

5. In view of the above, if on facts, the case of the Petitioners is covered under the judgment referred to hereinabove, in CWP(T) No. 6037 of 2008, and they are similarly situate, they shall also be treated similarly without any discrimination and the benefit of the said judgment shall be extended to them within three months from the date of production of copies of this judgment and the judgment referred to hereinabove by the Petitioners, after affording an opportunity of being heard, if so desired.

6. Needless to say that consequential benefits, if any, shall ensue the decision on the representation, failing which, interest @ 9% per annum shall be payable.

7. The petition stands disposed of, so also pending CMP(s), if any.