(2024) 11 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : CWP No.5658 Of 2023

Manorma Devi APPELLANT

Vs

Himachal Pradesh State Electricity Board Ltd. & Ors RESPONDENT

Date of Decision : 13-11-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 300A
Central Civil Services (Pension) Rules, 2021 — Rule 50, 52(4), 54(2), 54(3), 55(A), 55(A)(ii)

Citation : (2024) 11 SHI CK 0022

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Dhiraj Thakur, Ravinder Thakur, T. R. Sharma

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner seeks interest on Dearness Allowance of Rs.23,62,082/- released to her by the respondents in September, 2022 for the period 08.02.2007 to 31.07.2022.

2. Case as pleaded by the petitioner is that: -

2(i) Petitioner’s husband Sh. Man Chand Thakur was appointed as Junior Engineer (Electrical) in the respondent-Himachal Pradesh State Electricity Board Ltd (HESEBL) on 01.01.1978 on regular basis. He died in harness while posted as Additional Assistant Engineer on 07.02.2007 at the age of 55 years.

2(ii) Petitioner was independently employed as Central Head Teacher in the State Education Department at the time of death of her husband.

2(iii) Petitioner, as wife of late Sh. Man Chand Thakur, started receiving family pension w.e.f. 08.02.2007. Though family pension was being paid to the petitioner, yet, the component of Dearness Relief did not accompany it.

2(iv) Petitioner visited office of respondents many times. She was assured that her case would be examined and if found entitled, Dearness Relief shall be paid to her as part of family pension. She sent representation/application to the respondents-Board through e-mail on 06.08.2022, seeking release of Dearness Relief and all arrears thereof w.e.f. 08.02.2007.

2(v) Respondents released a sum of Rs.23,62,082/- to the petitioner on 01.09.2022 as arrears of Dearness Relief for the period 08.02.2007 to 31.07.2022. Interest on delayed release of arrears of Dearness Allowance was not paid. Petitioner sent a representation to the respondents on 02.09.2022 (Annexure P-4), seeking interest on the delayed payment of Dearness Allowance. The respondents did not respond. Petitioner sent another representation to the respondents on 08.08.2023, praying for release of interest on Dearness Relief. Failing to get any positive response, petitioner instituted this writ petition on 21.08.2023, seeking interest on Dearness Relief for the period 08.02.2007 till 31.07.2022.

3. I have heard learned counsel for the parties and considered the case file.

4. For the sake of brevity the submissions made by the learned counsel for the parties and discussions thereupon are being deliberated hereinafter: -

4(i)The stand taken by the learned counsel for the respondents as also pleaded in their reply is that: -

4(i)(a) Petitioner was herself a regular employee in the Education Department. She retired on 31.01.2021 as Central Head Teacher from Government Primary School Alampur, District Kangra.

4(i)(b) Petitioner's husband Sh. Man Chand Thakur was an employee of the respondent-Board. He died in harness on 07.02.2007. After his death, family pension was authorized and was released in petitioner's favour w.e.f. 08.02.2007. Dearness Allowance was not given to the petitioner owing to her employment in the Government Department. Dearness Allowance was not paid to the petitioner alongwith family pension w.e.f. 08.02.2007 till 31.07.2022 in view of an office memorandum dated 22.01.2001, issued by the Finance Department (Pension Cell) Government of Himachal Pradesh (Annexure RA-3) as clarified on 20.01.2017 (Annexure RA-2).

4(i)(c) It was only on receipt of petitioner's representation on 10.08.2022, that her case was examined by the respondents in light of office memorandum dated 22.01.2001. The said office memorandum provided that pensioners, who are re-employed under the State Government will be eligible for Dearness Relief on pension subject to submission of certificates. Accordingly, arrears of Dearness Allowance on pension disbursed to the petitioner were computed at Rs. 23,62,082/- for the period 08.02.2007 to 31.07.2022 and the same were credited in petitioner's bank account in September,2022.

4(i)(d) Respondents paid Dearness Allowance arrears to the petitioner for the entire period i.e. 08.02.2007 to 31.07.2022 even though they were not obligated in law to pay her all the arrears. Petitioner had raised the dispute regarding the non-payment of arrears of Dearness Allowance only in August 2022. Hence, in light of law laid down in Jai Dev Gupta Vs. State of H.P. AIR 1998 SC 2819 petitioner was entitled to arrears only for three years preceding her representation. Reliance in this regard was also placed upon notification of the State of H.P. issued on 15.12.2011 (Annexure RA-4).

4(ii) Respondents' stance does not hold much water. Admittedly, petitioner was in regular employment of the Education Department prior to death of her husband. It is also not in dispute that being wife of late Sh. Man Chand Thakur, she was entitled to family pension. It is a matter of record that family pension was sanctioned in petitioner's favour w.e.f. 08.02.2007, which she continues to receive till date. It is also an admitted fact that the family pension paid to the petitioner did not include component of Dearness Allowance w.e.f. 08.02.2007 to 31.07.2022. Respondents have tried to take shelter of office memorandum dated 22.01.2001 for not paying the Dearness Allowance to the petitioner w.e.f. 08.02.2007. It is relevant to note the contents of the office memorandum dated 22.01.2001, which reads as under: -

"NO. F'in-C-D (1)-1/2000

Government of Himachal Pradesh

Finance Department (Pension Cell)

Dated Shimla-171002, the 22nd January, 2001.

OFFICE MEMORANDUM

Subject: Grant of Dearness Relief on Pension to re-employed

Pensioners/Family Pensioners.

The undersigned is directed to say that as per extant orders on the subject, Dearness Relief to pensioners and family pensioners remains suspended during the period they remain re-employed/employed under the Central State Government, in a Public Sector Undertaking/Board/Autonomous Body/Bank in India or abroad. Similar is the position in regard to pensioners/family pensioners permanently absorbed in a Public Sector Undertaking/Autonomous Body/Bank under the Central or State Government.

The question of allowing dearness relief to re-employed pensioners was engaging the attention of the Government for quite some time past: After a careful consideration the Governor, Himachal Pradesh, is pleased to order that:

1. Such re-employed pensioners will be entitled to Dearness Relief on their pension in whose case the entire pension admissible is ignored for fixation of pay on re-employment and their pay is fixed at the minimum of the pay scale of the civil post to which they are re-employed

2. The dearness relief on pension will, however, not be admissible to those Ex-servicemen in whose case the pay is fixed above the minimum of the pay scale of the civil post on their re-employment or in whose cases the entire amount of pension is not ignored for fixation of pay on re-employment to the civil post.

3. This concession will also not be admissible to employed/re-employed family pensioners who have been given appointment on compassionate grounds. Payment of dearness relief in these cases shalt become admissible only from the date they cease to be re-employed. The Pension Disbursing Authority shall require such a pensioner to produce a certificate of cessation of re-employment from the office in which he had been re-employed.

4. In case of pensioners who are re-employed under the State Government or under any PSU/Board/Autonomous Body of the State Government or Bank, and are covered for the grant of dearness relief on pension in accordance with the decision of the Government referred to in the preceding paragraph, a certificate indicating the following shall have to be issued to them:

(i) The re-employed pensioner retired from a civil or military post and was holding a post not included in classified as group A or a post below the rank of Commissioned Officer in the Armed Forces.

ii) The entire amount of pension sanctioned by the Government was ignored for fixation of the pay on re-employment i.e. no part of the pension was taken into account in such fixation of pay in the pay scale of the post in which the pensioner was re-employed/absorbed

iii) The pay of the re-employed pensioner or absorbee is/was fixed at the minimum of the pay scale of the post in which he had/has been initially re-employed after his retirement.

All the Departments/Organizations are requested to bring these orders to the notice of all concerned pensioners who happened to be re-employed by them and are presently covered for the grant of dearness relief on pension. The requisite certificate as referred to above will be issued after verification of the details from the relevant record of the re-employed pensioner.

The Pension Disbursing Authority shall release Dearness Relief on pension to those re-employed pensioners who submit the certificate referred to above.

While implementing the decisions aforesaid orders issued by he Finance (Regulations) Department, vide Office memorandum Nos. Fin-C-B 7)-10/84 dated 1st ' December, 1988 and Fin-C-B (7)-10/98 dated 8' September, 1999 regarding fixation of pay of re-employed pensioners shall be duly kept in view.

This order shall come into force with immediate effect.

Sd/-

(R.N. Batta)

Additional Secretary (Finance) to

the Government of Himachal Pradesh.

To

All the Administrative Departments,

Government of Himachal Pradesh."

The above office memorandum is about those situations, existence of which pose a bar for release of Dearness Allowance. Clause-1 of the above extracted office memorandum pertains to the reemployed pensioners. It is not applicable to the petitioner as she was not re-employed pensioner. She was an employee in her own capacity prior to the death of her husband and she is not a pensioner but a family pensioner. Clause-2 of the office memorandum is also not applicable to the petitioner as it pertains to ex-servicemen. Clause-3 of the office memorandum concerns re-employed family pensioners, who have been given appointment on compassionate grounds etc. Petitioner was not employed on compassionate grounds, therefore, this clause does not apply in her case. Similarly, Clause-4 of the above extracted office memorandum is about those pensioners who are re-employed under the State Government. Petitioner was not a pensioner to begin with and she was certainly not re-employed under the State Government. Petitioner was independently employed prior to the death of her husband and became a family pensioner after death of her husband in harness, therefore, office memorandum dated 22.01.2001, restricting the grant of Dearness Relief in four eventualities, had no applicability to her case. Dearness Allowance could not be withheld from the petitioner. Respondents had wrongly withheld the Dearness Allowance from her for the period 08.02.2007 to 31.07.2022.

4(iii) Clarification dated 20.01.2017 (Annexure RA-2) relied upon by the respondents for not releasing the Dearness Allowance to the petitioner from the due date is also misplaced. The said clarification reads as under: -

"Subject:

Clarification regarding admissibility of dearness allowance to the employed/re-employed family pensioners appointed on compassionate grounds.

Sir,

Kindly refer to your letter dated 7th October, 2016 on the subject cited above. It is intimated that the matter was referred to the Finance (Pension) Department. Finance(Pension) Department has clarified that in terms of Para- 2(3) of the Govt. O.M No. Fin-C-D(1)-1/2000 dated 22-1-2001, the dearness relief on family pension shall not be admissible to the spouse where other member i.e son/ daughter of the deceased Government servant is simultaneously, given an appointment on compassionate grounds in Government department without any competition. You, may therefore deal with the matter accordingly.

Yours faithfully,

Sd/-

Additional Director

Treasuries, Accounts and Lotteries, H.P.”

It is not the case of the respondents that son/daughter of late Sh. Man Chand Thakur was given appointment on compassionate grounds in Government Department with or without any competition. Hence, the above clarification also cannot justify the action of the respondents in withholding Dearness Allowance from the petitioner as component of her family pension w.e.f. 08.02.2007 to 31.07.2022.

4(iv) It would also be appropriate to note Rule 55 (A) of the CCS (Pension) Rules, as it stood prior to the amendment of Rules on 20th December 2021: -

“55A. Dearness Relief on Pension / Family Pension

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/ Company / Body /Bank under them in India or abroad including permanent absorption in such Corporation /Company /Body /Bank, he shall not be eligible to draw Dearness Relief on pension /family pension during the period of such re-employment.”

Petitioner does not fall under Rule 55(A)(ii) of the Rules, as she was not a pensioner, who was re-employed, hence, respondents could not have denied the Dearness Allowance to the petitioner in view of her being in regular service of the Education-Department. After amendment of the CCS (Pension) Rules on 20th December 2021, payment of Dearness Allowance to an employed family pensioner provided under Rule 52(4) of the CCS (Pension) Rules, 2021 is as under: -

“52. Dearness Relief on Pension and Family Pension .-

(1) Relief against price rise may be granted to the pensioners, including the persons drawing compassionate allowance under rule 41 and family pensioners, in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(2) If a pensioner drawing pension or compassionate allowance under these rules is re-employed under the Central Government or State Government or a Corporation or Company or Body or Bank under them in India or abroad including permanent absorption or immediate absorption in such Corporation or Company or Body or Bank, he shall not be eligible to draw dearness relief on the pension or compassionate allowance during the period of such re-employment or

permanent absorption or immediate absorption:

Provided that the dearness relief shall continue to be payable to a pensioner on re-employment or on permanent absorption or immediate absorption if:-

(i) before such re-employment, including permanent absorption or immediate absorption, he was not holding a post included or classified as Group 'A'; and

(ii) in accordance with the relevant rules or orders, his pay was fixed at the minimum of the scale of pay of the post in which he was so re-employed or absorbed and such minimum of the scale of pay was less than the pay which he was drawing immediately before his retirement or absorption; and

(iii) while fixing his pay in the post in which he was so re-employed or absorbed, the entire amount of pension sanctioned by the Central Government was ignored.

(3) For claiming dearness relief on pension or compassionate allowance, a pensioner who is re-employed, including permanent absorption or immediate absorption, under the Central or State Government or a Corporation or Company or Body or Bank under them in India or abroad, shall be required to obtain a certificate from the said Central or State Government Department or office or the Corporation or the Company or the Body or the Bank to the effect that:-

(i) the re-employed pensioner or absorbee pensioner was holding a civil post not included or classified as Group 'A' in the Central Government before such re-employment; and

(ii) the pay of the re-employed pensioner or absorbee pensioner was fixed at the minimum of the pay scale of the post in which he is so re-employed or absorbed and such minimum of the pay scale is less than the pay which the pensioner was drawing immediately before his retirement or absorption; and

(iii) the entire amount of pension or compassionate allowance sanctioned by the Central Government was ignored in fixation of the pay on re-employment or absorption and no part of the pension or compassionate allowance was taken into account in such fixation of pay in the pay scale of the post in which the pensioner is reemployed or absorbed.

(4) Nothing in sub-rule (2) or sub-rule (3) shall be applicable in the case of a family pensioner who is employed under the Central or State Government or a Corporation or Company or Body or Bank under them in India or abroad and is eligible to draw a family pension from the Government in respect of a deceased member of his family in accordance with rule 50 and such family pensioner shall continue to be eligible to draw dearness relief on family pension during the period of such employment in accordance with sub-rule (1)".

Rule 52(4) of the CCS (Pension) Rules, 2021 clearly makes out that restrictions on release of Dearness Allowance imposed under Sub Rules 2 and 3 of Rule 54 would not be applicable in case of family pensioner, who is employed under the Central or State Government and is eligible to draw a family pension from the

Government in respect of deceased member of the family in accordance with Rule 50 of the Rules.

4(v) Respondents' explanation that petitioner had represented for release of dearness allowance only in August 2022, which led to delay in examining her case, is an argument of desperation. Respondents were the employers of petitioner's late husband Sh. Man Chand Thakur. They were responsible for releasing due and admissible retiral benefits including, family pension and Dearness Allowance to the petitioner in accordance with law. It was for them to examine the case of the petitioner at the relevant time i.e. 08.02.2007, when the family pension was sanctioned in her favour. Had the respondents examined the case of the petitioner in accordance with law with proper comprehension of the office memorandum dated 22.01.2001, it would have been apparent to them that Dearness Allowance on family pension could not have been denied to her. A family pensioner, who is employed in independent capacity be it before or after the death of the government servant in harness, is entitled to Dearness Allowance on the family pension. Such, employment of family pensioner cannot be construed to be a case of re-employed pensioner/appointment of family pensioner on compassionate ground/ appointment of kith and kin of the deceased government servant without any competition on compassionate grounds, in order to deny Dearness Allowance.

Union of India Vs. Justice S.S. Sandhawalia (retd.) and others and connected matter (1994) 2 SCCC 240 holds that once it is established that an amount legally due to a party was not paid, the party responsible for withholding the amount must pay interest at a rate considered reasonable by the Court.

In S.K. Dua Vs. State of Haryana and another (2008)3 SCC 44, Hon'ble Supreme Court held that if there are statutory rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The grievance voiced by the appellant that he would be entitled to interest on delayed payment was held to be well founded.

In Dr. A Selvaraj Vs. C.B.M. College and Others (2022)4 SCC 627 there was delay in payment of retiral benefits and settling the dues, for which the employee was not responsible. He was held entitled to the interest on the delayed payment. R. Sundaram Vs. The Tamil Nadu State Level Scrutiny Committee and others (2023) 4 Scale 385 reiterated the law laid down in State of Jharkhand Vs. Om Jitendra Kumar Srevastava and another (2013) 12 SCC 210 that not only right to receive pension is a right in 'property' but attempt of employer to take away a part of pension or gratuity or leave encashment without any statutory provision and under the umbrage of administrative instruments cannot be countenanced. Such right which is a constitutional mandate in Article

300 A of the Constitution cannot be taken away without authority of law.

The mere fact that upon a representation of the petitioner made on 06.08.2022, the respondents examined her case and released arrears of Dearness Allowance to her in September, 2022 is a clear indicator that withholding Dearness Allowance from the petitioner from 08.02.2007 till 31.07.2022 was an illegal act of the respondents. It was for this reason the respondents released the withheld arrears of Dearness Allowance to the petitioner. It was for the respondents to examine the case of the petitioner as on 08.02.2007 for considering her entitlement not only to family pension, but also to the Dearness Allowance component thereof. Performance of respondents' (employer) obligations in law do not depend upon petitioner's (employee) representation. Respondents cannot escape their liability by saying that they did not pay the Dearness Allowance in time since the applicable office memorandum and Government instructions were misconstrued by them and further by wrongly placing the onus upon the petitioner for not claiming the Dearness Allowance. It cannot be expected from welfare employer to defend not releasing retiral dues to the petitioner, (a family pensioner) on the count that since she did not represent, she did not claim Dearness Relief, hence they did not release the same. It was for the respondents to have examined the matter in accordance with law. Release of retiral benefits viz GPF, Pension, Leave encashment, Family Pension etc. are solemn duties, which the employer owes towards its retired employees and their dependents. Employer is not supposed to wait for beneficiary's (pensioner/family pensioner) making claim for release of the aforesaid benefits. If the records are clear, these benefits are to be released as per law. Sine this recourse was not adopted by the employer in this case, therefore, to offset equity, petitioner's claim of interest upon delayed payment is justified. An amount of Rs. 23,62,082/- due to the petitioner (w.e.f. 08.02.2007 to 31.07.2022) towards Dearness Allowance remained with the respondents and was released to her only in September 2022. In the given facts and circumstances of the case, petitioner is certainly entitled to interest from due dates over the aforesaid amount.

5. The result of above discussion is that this writ petition succeeds. Respondents, therefore, are directed to pay interest to the petitioner on withheld amount of Dearness Allowance on the family pension paid to the petitioner @ 5 % per annum from the due dates till actual payment. This exercise be carried out within a period of five weeks from today, failing which interest rate will become 6% per annum from due dates.

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