

(2011) 04 SHI CK 0071
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 12288 of 2008

Naresh Kumar Prashar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2011) 04 SHI CK 0071

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 impugned order Annexure A-4 dated 30.9.2005 may very kindly be set aside with further directions to the Respondents to consider and grant change of option as forwarded to Respondents No. 1 and 2 vide Annexure A-3 and decide the same and decision so taken may very kindly be taken on record along with their reply and if the decision is contrary to the interests of the applicant the same may very kindly be set aside with directions to the Respondents to allow the applicant to change the option in accordance with the provisions of the fundamental rules in the interest of law and justice.

7(ii) That Respondents may very kindly be directed to calculate and pay the arrears to the applicant and also fix the pay of the applicant in view of new option exercised by the applicant with all consequential benefits of arrears, interest etc. etc. without any further delay.

2. In reply on behalf of the Respondents, the following stand has been taken vide para 6 (iii):

6(iii). That in reply to this para it is submitted that the revised pay fixation rules are promulgated under Article 309 of Constitution of India by the Govt. of Himachal Pradesh G.I.O. (5) under FR-23 of FRSR Part-I General Rules as

complied by P. Muthu Swamy clearly state that the option under FR-23 as stated above shall be available to Government servant irrespective of the fact whether the revision of pay scale is in the upward or equivalent or downward directions. It is submitted that in pursuance of H.P. Finance notification No. Fin(c) B (7)6/88 dated 23.3.89 and Director of Education Himachal Pradesh letter No. EDN-H(III)B(1)2/89-Pay Scale/selection grade dated 20.12.2000, the C & v. teachers who have awarded selection grade prior to 31.12.87 are hereby awarded 8 and 18 years senior/selection grade dated i.e. 1800-3200 and Rs. 2000-3500 on or after 1.1.1986, the applicant was posted in Govt. Middle School Baruhi Under Complex Govt. High School Choukiminar Distt. Una and sent his case for fixation of pay vide letter dated 10.1.2002 but he did not exercise his option due to reason best known to him. As such his pay was fixed at the minimum of the pay scale i.e. Rs. 2000/- as per his earlier option dated 1.11.1987 which fact has been admitted by him in the present original application with the next date of increment 1.11.1988.

3. It is further stated as under vide para 2 of the supplementary affidavit filed on behalf of the Respondents in compliance of order dated 30.12.2010:

That it is submitted that in pursuance of H.P. Finance notification No. Fin (C) B (7)6/88 dated 23.3.89 and Director of Education letter No. EDN-H(III)B (1)2/89-Pay Scale/Selection dated 20.12.2000, the C&V teachers who had awarded selection grade prior to 31.12.87 were awarded 8 and 18 years senior/selection grade i.e. Rs. 1800-3200 and Rs. 2000-3500 on or after 1.1.1986. The Petitioner opted the revised pay scale w.e.f. 1.11.1987 and his pay was fixed in the year 2002 and at the relevant time he did not exercise his option and as such his earlier option w.e.f. 1.11.87 was taken into consideration which is correct. The department cannot change earlier option until or unless one exercises fresh option which the Petitioner failed to exercise. The Petitioner represented his case on 3.7.2003 and 22.8.2005 after his retirement which cannot be considered and rightly rejected at such a belated stage.

4. It need not be emphasized that rules and regulations are made for advancement of substantial justice and not to thwart the same. In the present case, the Petitioner was indisputably entitled for grant of new pay scale effective from 1.1.1986. As is the common experience that such scales though relate back to a particular year, in fact, are released much later. In this case also, it appears that the pay scales effective from 1.1.1986 were released much later. In such situation, it may be that the Petitioner could not exercise the requisite option well within time and resultantly her earlier option was taken into consideration. Be as it may be the Petitioner cannot be denied the benefit of the revised pay scale for this procedural lapse.

5. Admittedly the Petitioner has since retired from service.

6. In view of the above, the petition is allowed with a direction to the Respondents/competent authority that subject to the Petitioner exercising the

requisite option along with copy of this judgment within two months from today, the Respondent/competent authority shall consider the same and take a final decision in the matter within further two months and pay the consequential benefits, if any, to the Petitioner within the same time, failing which interest at the rate of 9% per annum shall also be payable.

7. The petition stands disposed of in the above terms, so also pending application(s), if any.