
(2011) 04 SHI CK 0050
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11506 of 2008

Nek Raj Bhatt

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0050

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed that the Respondents may be directed to give the benefit of approved military service to the Petitioner towards his seniority as per Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972. The order dated 5.3.2004 Annexure A-5 denying the TTA/joining time to the Petitioner may be set aside and the Petitioner be held entitled to TTA/joining time. The Respondents may be directed to release the salary of the Petitioner from the months March, April, 2004 continuously. The Respondents may be directed to allow medical reimbursement claim of about Rs. 6,000/- submitted by the Petitioner to Respondent No. 4 between January, 2002 to March, 2004. Abrupt stoppage and withholding of sterilization increment from March, 2004 may be declared illegal and the Respondents may be directed to release sterilization increment to the Petitioner from 7.6.2000 to May, 2000 and from March, 2004 onwards along with arrears.

2. The brief facts of the case are that the Petitioner was enrolled in the Navy on 30.7.1984 and was discharged on 31.7.1999 after rendering 15 years of approved military service. The Petitioner while in Navy passed course in physical education, namely, C.P.Ed. in March, 1985. The Petitioner got himself registered with ex-servicemen cell, Hamirpur for the post of Physical Education Teacher (PET). The name of the Petitioner was sponsored by ex-servicemen cell,

Hamirpur on 9.3.2000 for the post of PET in the pay scale of Rs. 5000-8100 on 27.5.2000 in Government Senior Secondary School, Thill. On 6.6.2000, the Petitioner was posted in Government Middle School, Ghanata under Government High School, Darang. The Petitioner joined as PET in Government Middle School, Ghanata on 7.6.2000.

3. The Petitioner was appointed as PET against the reserved post meant for ex-servicemen, the Petitioner was entitled to the benefit of approved military service of 15 years for purposes of pay fixation and seniority as per Rules 3 and 5 of the Demobilized Armed Forces Personnel (Reservation of Vacancies in the Himachal State Non-Technical Services) Rules, 1972 (for short the "Rules"). The Respondents No. 1 and 2 gave the benefit of 15 years of approved military service to the Petitioner for the purpose of pay fixation. The pay of the Petitioner was fixed at Rs. 5,000-8100 on the date of joining on 7.6.2000. After giving the benefit of Rules, the Petitioner was fixed at Rs. 7,880/- in the pay scale of Rs. 5000-8100 from 7.6.2000 vide order dated 30.11.2002. The Respondents have not given the benefit of approved military service for the purpose of seniority to the Petitioner. The actual date of joining of the Petitioner on 7.6.2000 was to be related back by 15 years and, therefore, from 7.6.1985 the Petitioner is to be treated as having been appointed as PET for the purpose of seniority. The Respondents have thus denied the benefit of seniority to the Petitioner as per the Rules.

4. The Petitioner was transferred from Government Middle School, Ghanata under complex Government High School Darang to Government Middle School, Multhan under complex Government Senior Secondary School, Lohardi on 28.2.2004 without any request for transfer by the Petitioner. The Respondent No. 4 on 5.3.2004 relived the Petitioner for Government Middle School, Multhan without TTA/joining time. The action of Respondent No. 4 in passing the order dated 5.3.2004 denying TTA/joining time to the Petitioner is unfair, unjust and illegal. The Petitioner was also entitled to joining time in pursuance of transfer even if joining time which was admissible was not allowed to the Petitioner at the time of transfer. The joining time which was not availed by the Petitioner, should have been treated as earned leave in his favour. The denial of joining time, earned leave to the Petitioner is illegal. In any case, the Petitioner joined his duty in Government Middle School, Multhan on 5.4.2004. The action of the Respondents in denying the salary to the Petitioner for the months of March and April, 2004 is unfair, unjust, illegal and arbitrary.

5. The Petitioner while working as PET submitted medical reimbursement claims between January 2002 to March, 2004 amount to about Rs. 6,000/-, but the Respondents have not released the medical reimbursement claims of the Petitioner which is wrong and illegal.

6. The Petitioner (sic) while serving Navy underwent Tubectomy sterilization operation at Naval Hospital, Bombay on 30.4.1998. In view of sterilization, vide Annexure A-6 the Petitioner was allowed Rs. 125/- per month by the Navy

Authorities. The Petitioner was eligible and entitled for the sterilization increment from the date of joining civil employment as PET on 7.6.2000 but such benefit was given to the Petitioner belatedly in June, 2001. However, the Head Master, Government High School, Darang has abruptly withheld the sterilization increment of the Petitioner in March, 2004 without following the principle of natural justice. The action of the Respondents in denying the arrears of said increment from 7.6.2000 to June, 2001 and then w.e.f. March, 2004 onwards is wrong, illegal and arbitrary. In these circumstances, the Petitioner has filed the petition.

7. The Respondent No. 2 has filed reply and it has been stated in the reply that proper seniority has been assigned to the Petitioner vide letter dated 29.3.2004 under Rule 5. The TTA/joining time has been allowed to the Petitioner vide letter dated 17.5.2004. The case of the Petitioner for salary for the period April, 2004 to June, 2004 is being taken up with the Government for necessary approval. The salary, in question, could not be paid due to the fact that one Naresh Verma had filed O.A. No. 933/2004 which was directed to be treated as a representation to Respondent No. 2 and the same was decided on 22.6.2004. The status quo was ordered to be maintained by the Tribunal till the decision of the representation hence, the salary for the period in question was paid in favour of Naresh Verma, para teacher. The medical reimbursement bills of the Petitioner are lying pending for want of funds and shall be paid as and when the funds are available.

8. The wife of the Petitioner had undergone sterilization operation on 30.4.1988 when the Petitioner was in active service of Navy. The Petitioner was granted family planning incentives, which is clear from Annexure R/3. The Petitioner on release from Navy, joined civil service as PET on 7.6.2000 and the benefit of approved military service has already been granted to the Petitioner by sanctioning 15 increments in the pay scale of Rs. 5000-8100. The Petitioner is not entitled to the incentive of adopting small family norms in view of clarification given by the Department of health vide letter dated 11.2.1992 circulated vide letter dated 14.1.1999 of Directorate of Education. The Respondent No. 2 has prayed for dismissal of the petition.

9. I have heard the learned Counsel for the parties. At the time of hearing of the petition, learned Counsel for the Petitioner has stated that the salary claimed in the petition has been paid to the Petitioner and, therefore, the Petitioner does not press the claim of salary. The Respondent No. 2 in the reply has stated that while fixing the seniority of the Petitioner benefit of Rule 5 has been given. The TTA/joining time has been allowed to the Petitioner. There is nothing on record to contradict the stand of Respondent No. 2 taken in the reply to this extent. There is no reason not to believe the stand of Respondent No. 2 that the seniority has been given to the Petitioner after giving the benefit of Rule 5 and TTA/joining time has been allowed to the Petitioner. Thus, the reliefs of salary claimed by the Petitioner in the petition, benefit of seniority under Rule 5 and the claim of TTA/

joining time raised by the Petitioner in the petition are no more in dispute since these reliefs have already been given to the Petitioner.

10. The Respondents have not denied the medical reimbursement claim of the Petitioner. The only stand taken in the reply is that the medical reimbursement bills of the Petitioner could not be paid to the Petitioner for want of funds. The Respondents cannot be permitted to take this stand for indefinite period. The medical reimbursement bills of the Petitioner are of the period from January, 2002 to March, 2004. Therefore, now the Petitioner is entitled to payment of medical reimbursement bills, if already not paid till now to the Petitioner.

11. The Petitioner in the petition has pleaded that he joined the employment as PET on 7.6.2000, but the benefit of sterilization increment was given to him in June, 2001, which was abruptly withdrawn in March, 2004 without prior notice. In the reply, it has not been denied that the Petitioner was given the benefit of sterilization increment in June, 2001 and without notice this benefit was withdrawn in March, 2004. The Petitioner continued to get the benefit of sterilization increment from June, 2001 to March, 2004. The Respondents have taken the plea that sterilization increment granted to the Petitioner has been withdrawn in view of clarification dated 11.2.1992 given by the Department of Health, which was circulated on 14.1.1999 by the Directorate of Education.

12. In the clarification dated 11.2.1992 reference of the letter dated 10.12.1991 has been stated, but the letter dated 10.12.1991 has not been placed on record. The clarification is that the employees who had undergone sterilization operation before regularization will not be entitled to sterilization increment even from the date of regularization. The Rule 5 provides the benefit of approved military service towards fixation of pay and seniority. The Petitioner in Navy was given the family planning incentives but not sterilization increment, which is clear from Annexure R-3. The wife of the Petitioner had undergone Tubectomy operation on 30.4.1998.

13. The Respondents have taken the plea that proper seniority has been assigned to the Petitioner under Rule 5 and his deemed date of appointment has been taken as 31.12.1986, which is reflected in the office order dated 29.3.2004 Annexure R-1. Once the deemed date of appointment of the Petitioner is taken as 31.12.1986, then Tubectomy operation of the wife of the Petitioner on 30.4.1998 shall be deemed to have taken place during the civil employment of the Petitioner as PET.

14. The clarification dated 11.2.1992 circulated on 14.1.1999 was very much in existence when the Petitioner was given sterilization increment in June, 2001. The withdrawal of special increment of the Petitioner due to sterilization operation has civil consequences. There is nothing on record that before the withdrawal of special increment on account of sterilization operation any notice was given to the Petitioner. Thus, the withdrawal of special increment, which was earlier given to the Petitioner on account of sterilization operation of his wife, is

against the principle of natural justice and, therefore, is not sustainable. The Petitioner is entitled to restoration of special increment on account of sterilization operation of his wife from the date it was withdrawn.

15. In view of above, the petition is partly allowed. The Respondents are directed to pay the medical bills submitted by the Petitioner between January, 2002 to March, 2004, if not already paid to the Petitioner and restore the special increment of the Petitioner on account of sterilization operation of the wife of Petitioner and pay the arrears to the Petitioner within a period of two months from the date of supply of copy of the judgment by the Petitioner to the competent authority.