(2021) 12 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 4314 Of 2020

P.N. Chauhan — APPELLANT

Vs

Himachal Pradesh University Summer Hill — RESPONDENT

Date of Decision : 01-12-2021

Acts Referred:
Contract Act, 1872 — Section 23

Citation : (2021) 12 SHI CK 0014

Hon'ble Judges : Tarlok Singh Chauhan, J;Satyen Vaidya, J

Bench : Division Bench

Advocate : C.N. Singh, Surender Verma

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The petitioner was appointed as Assistant Director, Physical Education and Youth Programme in the respondent-University in the year 1975 and thereafter in the year 1982, he was promoted to the post of Deputy Director. Vide order dated 30.6.1990, the petitioner was given the charge of the post of Director, Physical Education and Youth Programme. The respondent fixed the pay of the petitioner on the post of Director w.e.f. 10.1.1996. Vide order dated 28.6.2003 the post of Deputy Director held by the petitioner w.e.f. 1.7.1990 was upgraded by the respondent- University to the post of Director in the pay scale of 16400-450-20900-500-22400 (UGC) w.e.f. 10.1.1996 as a measure personal to the petitioner.

2. The petitioner retired from the post of Director on 30.6.2006 and the respondent-University granted him provisional pension and other retiral benefits on the lower post, i.e., Deputy Director, Physical Education and Youth Programme constraining the petitioner to make various representations but to no avail.

3. Ultimately, the petitioner preferred CWP No.6967 of 2010 titled as P.N. Chauhan Vs. Himachal Pradesh University before this Court and the same was

disposed of by this Court vide judgment dated 29.11.2010 by directing the Vice Chancellor of the University to look into the representation of the petitioner and take appropriate action in accordance with law after affording an opportunity of hearing to him within a period of three months from the date of production of the copy of the judgment and in case the petitioner is found eligible to the benefits then the same should be disbursed within another one month.

4. However, the requests made by the petitioner were turned down by the respondent-University constraining him to file the instant petition for grant of following reliefs:-

i) Issue direction to the respondent-University to count period w.e.f. 1.7.1990 to 9.1.1996 during which the applicant worked as Director, Physical Education and Youth Programme towards his regular service as Director, Physical Education and Youth Programme and accordingly give all financial benefits to the applicant for holding the post Director, Physical Education and Youth Programme w.e.f. 1.7.1990 till 9.1.1996 for all intents and purposes.

ii) In the event of grant of relief No.1, accordingly issue directions to the respondent-University to refix his pay etc. as well as other service benefits, increments, allowances etc. and pay the arrears within a time bound manner.

iii) That accordingly issue a direction to the respondents to fix the pension of the applicant and pay the difference/arrears in time bound manner.

iv) The arrears, in view of the above, be paid to the applicant @ 12% p.a.

5. The respondent-University has contested the petition wherein the factual matrix of the case has not been denied. However, it has been averred that since the petitioner was holding the post of Deputy Director till 9.1.1996, therefore, for such period he has been correctly released the amount, as it is only on 10.1.1996 that the post of Deputy Director being held by the petitioner was upgraded to the post of Director that too as a measure personal to the petitioner.

6. In addition thereto, it is being averred that the respondent- University had assessed the admissible retiral benefits of the petitioner and prepared the calculation chart which had been duly concurred in by the finance department of the respondent- university and also vetted by the State Audit Department and the same stands released in favour of the petitioner vide office order dated 19.12.2006.

7. It is also averred that consequent upon the upgradation of post of Deputy Director held by the petitioner to the post of Director in the pay scale of Rs.16400-450-20900-500-22400 (UGC), the pay of the petitioner was fixed in this grade vide office order dated 6.10.2003. On retirement of the petitioner, w.e.f. 30.6.2006, his pension case, after taking into account the average emoluments/last emoluments drawn by him as Director was submitted for concurrence/vetting of Finance Department of the respondent-University and the State Audit Department on 10.8.2006.

8. However, pursuant to the observations of the State Audit Department, the proposal for release of retiral benefits was revised and sanctioned retiral benefits in favour of the petitioner on the basis of emoluments drawn by him as Deputy Director vide office order dated 19.12.2006. It is averred that the State Audit Department had made certain observations with regard to the retrospective upgradation of the petitioner as Director and the respondent-University even filed its reply but the said audit para remained unsettled on the part of the State Audit Department.

9. I have heard learned counsel for the parties and gone through the material placed on record.

10. At the outset, it needs to be observed that it is settled law that if a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post more particularly if it is for a long period of time as the same cannot be treated to be a stop-gap arrangement.

11. In this context, we need only to refer to the judgment rendered by Three Hon'ble Judges of the Hon'ble Supreme Court of India in Secretary-cum-Chief Secretary Vs. Hari Om Sharma 1998 (5) SCC 87, wherein in paras 6 and 8, it was observed as under:-

"6. Xxxxx xxx xxx. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.

7. xxx xxx xxx

8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872."

12. The principle postulated in the aforesaid case is of immense significance, for it refers to the concept of public policy and the conception of unconscionability of contract.

13. To similar effect is the judgment earlier delivered by the Hon'ble Supreme Court in P. Grover Vs. State of Haryana, 1983 (4) SCC 291. Both these decisions have thereafter been followed by the Hon'ble Supreme Court by another Bench of Hon'ble Three Judges of the Hon'ble Supreme Court in 2017 (9) SCC 395 titled State of Punjab and another Vs. Dharam Pal.

14. Thus, what can be taken to be settled is that a person, who performed duties of a higher office especially for a long period of time and his services thereafter regularized on the said post or is otherwise appointed to the said post must get the salary of the same post. They cannot waive fundamental/legal right to get higher salary even if an endorsement was made in the office order that the petitioner will not get mandatory benefits. This was held by a learned Single Judge of this Court in CWP(T) No. 7099 of 2008 titled Shiv Dayal Kataria Vs H.P University and another and the said judgment in turn has been upheld by this Court in LPA No.100 of 2010 in case titled as Himachal Pradesh University Vs. Shiv Dayal Kataria and another decided on 27.10.2015. Admittedly, the said judgment has attained finality and we see no reason to take a different view.

15. In addition to the aforesaid, it is failed to understand as to how the University could have denied the benefit of the pay to the petitioner merely on the basis of queries raised by the Audit Department. Admittedly, such queries are not brought to the notice of the petitioner and in such circumstances, the benefits to the petitioner could not have been withheld solely on the basis that the audit para remained unsettled on the part of the State Audit Department.

16. We find merit in this petition and the same is accordingly allowed. Consequently, the respondent-University is directed:

(1) to count the period w.e.f. 1.7.1990 to 9.1.1996 during which period the petitioner worked towards regular service as Director and accordingly grant all financial benefits to him for this period.

(2) The respondent is also directed to re-fix the pay of the petitioner as well as grant all other service benefits, and not limited to the increments, allowances etc.

(3) The respondent is further directed to re-calculate the pension of the petitioner and pay the difference/arrears. The entire exercise be completed within three months, failing which the respondent-University shall be liable for not only the amount but even the interest @ 6% from the date when the amount was due till the payment.

17. The petition is disposed of in the aforesaid terms leaving the parties to bear their own costs. All pending application(s), if any shall stand disposed of accordingly.

18. For compliance, to come up on 5th March, 2022.

