

(2011) 06 SHI CK 0110
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9026 2008

Prem Sagar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Citation : (2011) 06 SHI CK 0110

Hon'ble Judges : Kurian Joseph, C.J;V.K. Sharma, J

Bench : Division Bench

Judgement

V.K. Sharma, J.—The petition has been filed with the following prayers vide para 7 (i) to (v):

(i) That the pension be calculated on the basis of pay deemed to be drawn upto the age of retirement on 21.10.2000 as per increment earned upto the age of 60 years and the pension cannot be calculated on the basis of pay drawn and restricted upto the age of 58 years of age;

(ii) That the Gratuity may also be calculated on the basis of pay deemed to have drawn after the age of retirement i.e. on 31.10.2000 as per increment earned upto the age of 60 years and cannot be restricted upto the pay Whether reporters of Local Papers may be allowed to see the judgment? No. drawn upto the age of 58 years of age;

(iii) That the commutation has also to be drawn on the basis of deemed pay drawn on 31.10.2000 and not restricted upto the age of 58 years;

(iv) That the Leave encashment has also to be drawn and paid on the basis of retirement on 31.10.2000;

(v) That the Commuted leave applied has to be treated as such and the nature of leave cannot be altered by the sanctioning authority and leave encashment has to be paid upto the age of retirement i.e., upto 60 years of age 31.10.2000.

2. In reply, the Respondents have taken the following stand vide paras 3 and 4:

3. That original application No. 2130/1998 titled as Shri Prem Sagar v. State of H.P. pertains to the retirement age of the applicant, as the Central Govt. has raised the retirement age of its employees from 58 years to 60 years. The applicant in this original application has claimed that he is a Central Govt. servant, therefore, he should be retired at the age of 60 years. This original application was listed before this Hon"ble Tribunal on 30-10-1998 when this Hon"ble Tribunal has been pleased to direct the Respondents that the applicant be not retired till further orders. Now keeping in view the interim order passed by this Hon"ble Tribunal in O.A. No. 2130/1998 the applicant has been retired from service after attaining the age of 60 years. Reply to the original application has been filed and the O.A. No. 2130/1998 has been tagged with other similar case for final hearing.

4. That the original application No. (M) 177/2001 titled as Sh. Prem Sagar v. State of H.P. has been filed before this Hon"ble Tribunal for seeking the relief that the pension case of the applicant may be decided on the basis of retirement of the applicant at the age of 60 years in view of the interim order passed by this Hon"ble Tribunal in O.A. No. 2130/1998. Since both these original applicants are pending adjudication before this Hon"ble Tribunal with regard to the retirement age of the applicant and the commutation of pension of the applicant. Therefore, it would be in the interest of justice if the present original application is tagged with O.A. No. (M) No. 177/2001 which is pending adjudication before this Hon"ble Tribunal. Moreover, both these Original Applications No. (M) 177/2001 and (M) 147/2003 can only be decided after the final order in O.A. No. 2130/1998 pertaining to the retirement age of the applicant.

3. The learned Counsel for the Petitioner submits at the very outset that the case of the Petitioner is covered under judgment dated 15.12.2010 rendered by a Single Judge of this Court (Justice V.K. Sharma) in CWP (T) No. 4061 of 2008 with CWP (T) No. 7351 of 2008, Shri Purshotam Singh Mankotia v. State of H.P. and Ors. and N.F.C. Teachers Association v. State of H.P. and Ors., text whereof is as under:

1. Since common questions of law and facts are involved in the above titled two petitions, the same are being disposed of by a common judgment. However, facts of the case in CWP (T) No. 4061 of 2008, which are similar to that of the other case, are being noticed.

2 Whereas, in CWP (T) No. 4061 of 2008, the Petitioner is a retired National Discipline Scheme (NDS) Instructor, CWP (T) No. 7351 of 2008 has been filed by National Fitness Corps (NFC) Teachers Association.

3 Admittedly, NDS Instructors/NFC Teachers were earlier in the employment of the Government of India and later on their services were transferred to the State Governments and ultimately, they were absorbed in the State Service. The petitions have been filed for grant of pay scale in terms of Government of

India, Ministry of Human Resource Development, Department of Youth Affairs and Sports letter dated 19.5.1986, Annexure A-17, on the following prayers, vide para 7 (A) and (B):

7 (A). That the Respondents may kindly be directed to fix the pay of the applicant with reference to his basic pay at Rs. 395/- on 1.6.1973 in the pay scale of Rs. 220-500 (Selection Grade) or in the alternative at Rs. 350/- in the pay scale of Rs. 170-350 and on revision of pay scale w.e.f. 1.1.78 the pay of the applicant is required to be fixed upwards in the pay scale of Rs. 570-1080 with three advance increments after allowing him the benefit of all the increments he has received in the pre-revised scale of Rs. 170-350. Also as per Annexure A/8 the pay of the applicant is required to be fixed in the pay scale of Rs. 700-1580 and then on further revision w.e.f. 1.1.1986 in the pay scale of Rs. 1800-3200. In the alternative, however, the pay of the applicant in the selection grade at Rs. 620-1280 is required to be fixed upwards w.e.f. 1.4.1985 and thereafter on revision of pay scale w.e.f. 1.1.1986 in the pay scale of Rs. 1640-2925. (B). That after the fixation of pay as aforesaid the applicant may kindly be ordered to be paid all the arrears of pay as a result thereof with interest at the penal rate throughout and justice be done.

4. In reply, the Respondents have taken the following stand vide para 2 of the preliminary submissions and paras 3 and 6 (1) to (16) on merits:

Preliminary submissions:

2. That the National Discipline Scheme was started by the Govt. of India. The National Discipline Scheme Instructors were recruited by the Govt. of India. The administrative control of this scheme was transferred to the States (Himachal Pradesh State) w.e.f. 1.6.1973. Consequently, the National Discipline Scheme Instructors (NDSI's) were kept and retained on diminishing/vanishing cadre. The following benefits, as due and admissible, have been allowed in the case of applicant and similarly situated persons of his cadre:

(i). The scale of Rs. 570-1080 allowed to him w.e.f. 1.1.78. This scale was in fact introduced w.e.f. 1.1.78.

(ii). The Selection Grade of Rs. 620-1200 to the 30% strength of NDSI's was released w.e.f. 1.4.85. The applicant has also received this benefit from due date.

(iii). The applicant has also been allowed the benefit of the scale of Rs. 1410-2460 w.e.f. 1.6.87, which is the due date in this case.

(iv). The seniority of applicant has been fixed at Sr. No. 6 of the tentative seniority list of NDSI's.

The due and admissible fixation of pay at various stages has been allowed to the applicant. Hence, no injustice has been done to him, the present application is not maintainable.

On merits:

3. That the present application is not maintainable in the present form. In the above background, it is respectfully submitted that in pursuance of the decision of Govt. of India, Ministry of Education and Social Welfare (Department of Education) transferred the services of NDS Instructors and supervisory staff to the respective State/Union Territory Administrations w.e.f. 1.6.1973 in the event of closing down of National Fitness Corps Directorate. The National Discipline Instructors and other related staff were absorbed in the State services w.e.f. 1.6.1973 and enjoying the pay scales among other things admissible to the State Govt. employees. The National Discipline Instructors and other related staff were given the revised pay scales on the analogy of teaching staff of schools run by Central Govt. or by the Union territory administrations, w.e.f. 1.1.1967. The benefit of these scales was extended only till the date of their absorption in the State service. Thereafter, their pay was to be fixed in the State Scale. In view of these instructions, pay of the applicant was accordingly fixed in the State pay scale of Rs. 170-350 on 1.6.1973 admissible on that relevant point of time. The Hon'ble Tribunal disposing of the earlier OA No. 870/91 in the concluding para has observed as:

"In view of above narration, we find no merit in the application and dismiss the same without any order as to costs. However, if the applicant on calculation, feels that if his pay is re-fixed at Rs. 350/- instead of Rs. 233/- in the scale of Rs. 170-350 on June 1, 1973, his pay now will increase in spite of the revision and grant of selection grade, he is free to approach this Hon'ble Tribunal against on this specific issue." The pay of the applicant has rightly been fixed in the State scale, hence, his contention is wrong and misconstrued. More submissions are being made here-in-below in the succeeding paras.

6 (1 to 16). In reply to this para along with its sub paras, it is respectfully submitted that this Hon'ble Tribunal vide order dated 23.9.1996 passed in O.A. No. 870 of 1991 has given the liberty to the applicant to approach again on the specific issue of pay fixation upto the extent if the applicant on calculations, that his pay is re-fixed at Rs. 350/- instead of Rs. 233/- PM on 1.6.1973. Be it submitted that the applicant had been drawing the following elements of pay as on 31.12.1973 in the pre-revised pay scale of Rs. 165-350:

Basic Pay

Rs. 175/- PM

Dearness Pay

Rs. 99/- PM

Dearness Allowances

Rs. 32/- PM

Interim Relief

Rs. 41/- PM

Add 5% Minimum

Rs. 15/- PM

Rs.15/- and maximum

Rs. 50/-.

Total:

Rs. 353/- (sic 362)

The pay scale of Rs. 165-300 was further revised to Rs. 330-560 w.e.f. 1.1.1973 and the pay of the applicant was fixed at the stage of Rs. 380/-pm with next date of annual increment on 1.3.1973 raising pay to Rs. 395/-P.M. In pursuant to the policy decision, services of the applicant were transferred and absorbed in the State of Himachal Pradesh w.e.f. 1.6.1973 and impliedly, his pay was required to be fixed in the State pay scale admissible to the counter part categories. The applicant's pay on 31.5.1973 was Rs. 395/-PM in the pay scale of Rs. 330/560 and his pay after bringing him at par with the State pay scale of Rs. 170-350 which was admissible to the corresponding categories at that relevant point of time was fixed at the appropriate stage of Rs. 233/-PM after deducting the elements of Dearness Pay 90/-, DA 32/- and IR 41/- which comes total Rs. 163 which do not form part of pay for the determination of Basic Pay. The comparative statement given below will explicit that the applicant in the State pay scale has got the financial benefit tuning to Rs. 34/-PM after pay fixation in the State pay scale on his Scale of Rs. 170/350 on 1.6.1973. absorption.

i) Pay in the Central Pay Scale of Rs. 330/560 on 31.5.1973. Rs. 395/-PM

ii) Pay fixed in the State Pay Rs. 429/-PM

(i) Basic Pay = 233/-

(ii) D.A. = 146/

(iii) I.R. = 50/

429/

(iii) Net Gain/Increase = Rs. 34/-P.M.

In view of this, contention of the applicant for fixation of pay @ Rs. 350/-p.m. instead of Rs. 233/-p.m. in the pay scale of Rs. 170/350 is based on miscalculations and wrong conclusions. Hence, emphatically denied. The pay fixations of all NDSIs along with related staff has been made accordingly and none has objected. However, the applicant is still not satisfied, he may consult Accountant General, Himachal Pradesh or any other expert institution of his choice and communicate the advice to thrash out his grievance.

5. The precise issue involved in these petitions is as to in what manner the service conditions of the Petitioner/members of the Petitioner-Union, particularly

with regard to the emoluments payable to them on absorption in the State service, would be governed. According to the Petitioner/members of the Petitioner-Union, these would be governed by letter dated 19.5.1986, Annexure A-17. However, according to the Respondents, the Petitioner/ members of the Petitioner-Union were getting higher pay while they were in the service of Government of India and the corresponding pay scales payable in the State service are on the lower side. Meaning thereby that according to the Respondents, the pay scales payable to the Petitioner/members of the Petitioner-Union would be the pay scales prevalent in the State service and not those which they were getting while in the service in Government of India. However, the contention on the face of it appears to have been raised simply to be rejected. The reason to arrive at this conclusion is that undoubtedly contentions of service of the Petitioner/members of the Petitioner-Union subsequent to their transfer and absorption in the State service would be governed by letter dated 19.5.1986, Annexure A-17. It is because it was pursuant to decentralization of N.F.C. Scheme at the Center that services of the Petitioner/members of the Petitioner-Union were transferred to the State and they were ultimately absorbed in the State service, meaning thereby that it is in a way contractual arrangement from which the Respondents can not wriggle out and more so for the reason that it is specifically recited in letter dated 19.5.1986, Annexure A-17 "that the Central Government would meet in full the expenditure on pay and allowances of these instructors, if necessary, for so long as they remained in service." Still further as recited therein, the aforesaid letter dated 19.5.1986, Annexure A-17 was issued by the Government of India in the light of judgment dated 11.4.1985 of the Hon'ble Karnataka High Court in Writ Petition No. 5450/80 and judgment dated 20.12.1985 of the Hon'ble Supreme Court in SLP No. 12335/85.

6. In somewhat similar situation, services of P.E.Ts. and D.P.Es. came to be transferred from the Central Government to the State Government and when a dispute regarding their pay scale and emoluments arose, the matter finally reached the Hon'ble Supreme Court in State of Haryana and Anr. v. D.L. Uppal and Ors. 1995 (5) SLR 233, wherein it was held as under vide para 3 of the judgment:

Thus, it would be clear that the Respondents who were hitherto working with the Central Government are absorbed in the service of the State of Haryana in the Education Department as P.E.Ts., or D.P.Es. with effect from July 1, 1976, will be entitled to the pay on par with the State Government employees and allowances, namely, the Dearness Allowance, Interim Relief etc. will be as admissible to the Central Government employees and as on the date of absorption. The expenditure incurred by the State Government in that behalf will be reimbursed by the Central Government till they remain in the cadre of the P.E.T. Only.

7. In view of the above, I am satisfied that the Petitioner/members of the Petitioner-Union are entitled for the relief prayed for. Consequently, the petition is allowed with a direction to the Respondents to fix the pay of the Petitioner/

members of the Petitioner-Union and other similarly situated Instructors/Teachers whether in service or retired, strictly in accordance with letter dated 19.5.1986, Annexure A-17, issued by the Government of India, Ministry of Human Resource Development, Department of Youth Affairs and Sports, within six months from today along with all the consequential benefits along with interest at the rate of 6% per annum, failing which higher interest at the rate of 9% shall be payable.

8. The petitions stand disposed of, so also the pending application(s), if any.

4. In view of the above, if on facts the case of the Petitioner is covered under the judgment dated 15.12.2010 referred to hereinabove in CWP (T) No. 4061 of 2008 with CWP (T) No. 7351 of 2008 and the same has attained finality and has been implemented and he is similarly situated, he shall also be treated similarly without any discrimination and benefit of the said judgment shall be extended to him within three months from the date of production of copy of this judgment by the Petitioner before the Respondents/competent authority, after affording an opportunity of being heard to him/his authorized representative, if so desired.

5. The writ petition is disposed of, so also the pending application(s), if any.