(2023) 07 SHI CK 0071

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4200 Of 2020

Ranjeet Singh APPELLANT

Vs

State Of H.P & Ors RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

Citation : (2023) 07 SHI CK 0071

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Anil Kumar God, Anup Rattan, Y.P.S. Dhaulta, Karun Negi

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. After petitioner’s retirement, the respondents moved to recover an amount of Rs.59,196/- from him on account of alleged excess payment made to him under an additional increment. This has compelled the petitioner to institute the present writ petition.

2. Facts

2(i) Petitioner was engaged as a daily wage helper on 01.04.1984. His services were regularised on 01.01.1994. The respondents circulated an office memorandum on 31.07.2012, whereunder it was decided to grant additional increment to all Class IV employees subject to terms and conditions contained therein. One of the conditions was that additional increment would be admissible w.e.f. 01.08.2012 @ 3% of the basic pay at the relevant stage on completion of 20 years continuous regular service. Another office memorandum was circulated on 15.12.2012 clarifying that additional increment on completion of 20 years of regular service would be given to all class-IV employees irrespective of the fact that some of them might have been promoted within Class-IV category. The benefit, however, was to be made admissible only to those Class-IV category employees who remained as such in the pay scales of Class-IV notified vide Finance Department office memorandums/notifications dated 03.05.2001, 26.08.2009 and 27.09.2012.

2(ii) Respondents released additional increment to the petitioner w.e.f. 01.01.2014 under order dated 13.08.2014.

2(iii) In continuation to earlier office memorandums dated 31.07.2012 & 15.12.2012, another office memorandum was issued by the respondents on 28.02.2019 clarifying the previous office memorandums dated 31.07.2012 and 15.12.2012 on the subject of grant of one additional increment to Class-IV employees on completion of 20 years of regular service. As per new office memorandum, Class-IV employees of the State Government in the pay band of Rs.5910-20200 with grade pay of Rs.1900/- who had completed 20 years of continues regular service were eligible to get additional increment.

2(iv) The petitioner who was in receipt of additional increment on completion of 20 years of his regular service in terms of order dated 13.08.2014 retired on 30.6.2020 on attaining the age of superannuation. Subsequent to his retirement, respondents issued an office order on 13.08.2020 withdrawing the additional increment given to the petitioner w.e.f. 01.04.2014 and refixed his pay. The petitioner was held entitled to additional increment w.e.f. 01.04.2019. Recovery of Rs.59,196/- was accordingly sought to be effected from the petitioner on account of alleged over payment of additional increment for the period 01.04.2014 to 01.04.2019. This recovery has been questioned by the petitioner in the instant petition.

3. Heard learned counsel for the parties and considered the case record.

4. Observations

4(i) The respondents have not disputed the factual position of the case. According to the respondents, as per notification that exisited prior to 26.08.2009, the pay scales granted to the category of Class-IV employees were Rs.2520-4140, Rs.2720-4260 and Rs.2820-4400, which were revised to pay band of Rs.4900-10680 with grade pay of Rs.1300/-, 1400/-and 1650/-, respectively. As per reply, grade pay of Rs.1900/- is allowed to Class-III category in the pay scale of Rs.3120-5160 now revised to Rs.5910-20200 with grade pay of Rs.1900/-. Reply further pleads that the petitoner had already been drawing the Grade Pay of Rs.1900/- at the time of completion of 20 years of service as on 01.01.2014, therefore, he was not entitled to additional increment w.e.f. 01.04.2014. According to the respondents, it was only on 28.02.2019 that the Government allowed additional increment to Class-IV employees having Grade Pay of Rs.1900/- w.e.f. 01.04.2019. As per respondents, the additional increment, therefore, was to be granted to the petitioner w.e.f. 01.04.2019 and not on 01.01.2014. This error was rectified and petitioner has been granted additional increment w.e.f. 01.04.2019. Pay has already been revised. Accordingly, in this manner, recovery for the period in question i.e. 01.01.2014 to

01.04.2019 has been ordered to be effected from him.

4(ii) It is not in dispute that the petitioner retired as Class-IV employee. It is also not in dispute that the petitioner never misrepresented to the respondents for getting the benefit of additional increment. Respondents on their own interpreted office memorandums dated 31.07.2012 and 15.12.2012 in a particular manner and granted the additional increment to the petitioner w.e.f. 01.01.2014 under order dated 13.08.2014. The petitioner enjoyed the benefits of additional increment till his retirement dated 30.06.2020. At this stage, it would be apt to refer to a judgment rendered by the Hon'ble Division Bench of this Court in CWPOA No.3145/2019 (S.S. Chaudhary Vs. State of H.P. & Ors.), wherein after considering the various precedents following was held:-

"35. In view of the aforesaid discussion, as held by Hon'ble Supreme Court in Rafiq Masih's case (supra), it is not possible to postulate all situations of hardship, where payments have mistakenly been made by the employer, yet in the following situations, recovery by the employer would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

(vi) Recovery on the basis of undertaking from the employees essentially has to be confined to ClassI/Group-A and Class-II/Group-B, but even then, the Court may be required to see whether the recovery would be iniquitous, harsh or arbitrary to such an extent, as would far overweigh the equitable balance of the employer's right to recover.

(vii) Recovery from the employees belonging to Class-III and Class-IV even on the basis of undertaking is impermissible.

(viii) The aforesaid categories of cases are by way of illustration and it may not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible gudielines or rigid formula and to give any exhaustive list of myriad kinds of cases. Therefore, each of such cases would be required to be decided on its own merit.”

The case of the petitioner is squarely covered under situations No.(i),(ii), (iii) and (v) of above judgment. The petitioner had retired from service on attaining the age of superannuation on 30.06.2020. Recovery order was issued on 13.08.2020, whereby his pay was re-fixed and additional increment was allowed to him w.e.f. 01.04.2019. However, petitioner had already been granted the additional increment w.e.f. 01.04.2014. In these circumstances, when he had not made any misrepresentation to the respondents or concealed any material particulars from them, recovery of Rs.59,196/- from the petitioner, a retired Class-IV employee, would be harsh and iniquitous as it is the respondents, who had earlier held the petitioner entitled to additional increment from 01.04.2014 & released the benefits to him accordingly.

5. For the foregoing reasons, the present petition is allowed. Respondents are directed not to effect any recovery from the petitioner on account of alleged excess payment made to him on account of additional increment for the period w.e.f. 01.04.2014 to 01.04.2019. Pending miscellaneous applications, if any, shall also stand disposed of.

