
(2014) 07 SHI CK 0156
In the High Court Of Himachal Pradesh
Case No : CWP No. 901 of 2014

R.C. Lakhanpal

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Citation : (2014) 07 SHI CK 0156

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Advocate : Ranjana Parmar, Advocate for the Appellant; Sharwan Dogra, Advocate General, Ravinder Thakur and H.K.S. Thakur, Additional Advocate Generals, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Sharma, J.—The petitioners, who are retired officers of the Department of Horticulture, Himachal Pradesh, being aggrieved by orders of deduction of different sums of money from their Death cum Retiral Gratuity (DCRG), one of which is at Annexure P-10, ostensibly on the ground that the benefit of higher pay scales on completion of 8 and 18 years service were wrongly granted in their favour albeit the fact that they had not passed the departmental examination uptill the age of 50 years, where after passing of such examination was not a mandatory pre-requisite.

2. The petition has been filed on the following substantive prayer:-

i) That communications dated 22nd October, 1997, 26th September, 2011 and dated 7th November, 2013 may kindly be quashed and set aside and respondents may very kindly be directed to pay all retiral benefits to the petitioners alongwith interest at the rate of 24% per annum.

That the respondents may kindly be burdened with costs.

3. On revision of pay scales with effect from 1.1.1991 vide notification Annexure

P-1, Class-III Gazetted Services, whose existing entry level pay scale was Rs. 2000-3500 was revised as Rs. 2200-4000. Similarly on pay revision, Class-II Services with existing pay scale of Rs. 2100-3700 were granted higher pay scale of Rs. 3000-4500 and Rs. 3700-5300 after completion of 8 years and 18 years service, respectively.

4. Consequently, benefit of higher scale was extended in favour of petitioner No. 3, Sh. K.S. Katoch vide pay fixation statement Annexure P-2, dated 31.5.1993. Similar pay fixation statements qua other petitioners have also been brought on record. The controversy arose when the benefit of higher pay scales already granted in favour of the petitioners were sought to be withdrawn on the aforesaid ground of non passing of departmental examination before attaining the age of 50 years. Being aggrieved, the petitioners along with some other similarly situate officers approached the then Himachal Pradesh Administrative Tribunal by way of an Original Application (OA) No. 2042 of 1997, which on abolition of the said Tribunal came to be transferred to this Court and registered as CWP (T) No. 4664 of 2008, which was disposed of vide judgment dated 24.6.2010 on the ground that while withdrawing the benefits already granted to the petitioners therein, many out of whom are also before this Court in the present writ petition, were neither put to notice nor heard in the matter and thus resulting in violation of the principles of natural justice, with a direction that before the impugned order of withdrawal of benefit dated 22.10.1997 was implemented, opportunity shall be afforded to the affected officers and only thereafter the respondent authorities shall take action to recover the amount in accordance with law. Liberty was granted to the petitioners to approach the Court, if need so arose.

5. In compliance of the above direction issued vide judgment dated 24.6.2010 in CWP (T) No. 4664 of 2008, the matter was considered by respondent No. 2, Director of Horticulture, Himachal Pradesh, who passed order dated 26.9.2011, Annexure P-7/R-5, after affording an opportunity of being heard to the affected officers, but again sticking to the stand of the department that since the petitioners had not passed the departmental examination before attaining the age of 50 years, the benefit of higher pay scales in terms of Annexure P-1 had been wrongly granted to them.

6. I have heard the learned counsel for the petitioners and learned Additional Advocate General and gone through the record, including letter dated 7.11.1994 referred to in letter dated 28.2.1995, Annexure P-13 addressed to the Director of Horticulture, Himachal Pradesh, Shimla by the Under Secretary (Horticulture) to the Government of Himachal Pradesh, produced by the respondents at the time of hearing, a copy of which is taken on record as Annexure C1. Since this letter is in Hindi, Registrar Judicial is directed to get it translated into English and the same be also placed on record along with the letter as Annexure C1/T.

7. Consequent upon revision of pay scales vide notification Annexure P-1, dated 24.4.1993, certain clarifications, inter alia, whether benefit of revised pay scale

was also extendable in favour of those officers, who were yet to clear the departmental examination, were sought. While seeking those clarifications, it was specifically stated that as per existing Recruitment and Promotion Rules (R & P Rules), there was no requirement of passing of departmental examination for the petitioners and other similarly situate officers, who at that time were holding non-gazetted post of Assistant Development Officers. In response to letter dated 7.11.1994, Annexure C1, it was clarified that "the next higher scale after 8/18 years of service may kindly be released strictly in accordance with procedure prescribed for the crossing of E.B. excluding imposition of passing the Departmental examination at least for the present." (emphasis supplied). It shall be pertinent to notice that benefit of revision of pay scales in terms of notification Annexure P-1, dated 24.4.1993 had already been granted in favour of petitioner No. 3, Sh. K.S. Katoch vide pay fixation statement Annexure P-2, dated 31.5.1993, whereafter vide letter dated 28.2.1995, Annexure P-13, it was clarified that such benefit could be given to him and other similarly situate officers without imposing the condition of passing of departmental examination "at least for the present." The situation with regard to other petitioners is also not different. Furthermore, it is not in dispute and rather it is the admitted position that all the petitioners had thereafter passed the Departmental examination in 2001, vide certificates, copies of which along with typed copies of some of them have been brought on record as Annexure PR-1 (Colly). Thus then the requirement of passing departmental examination was relaxed "at least for the present" and thereafter the petitioners were permitted to appear in the departmental examination, which they have successfully cleared, the respondents are precluded on the principle of estoppel to say that since the petitioners had not cleared departmental examination before attaining the age of 50 years, they were not entitled for grant of revised pay scales in terms of notification Annexure P-1 and such benefit was wrongly granted in their favour and thus liable to be withdrawn.

8. In view of the above, the petition is allowed. Consequently, order dated 26.9.2011, Annexure P-7/R-5 and 7.11.2013, Annexure P-9 are quashed and set aside with a direction to the respondents to release the respective amounts of DCRG deducted from the retiral benefits of the petitioners and deposited in the government treasury vide challan which forms part of letter dated 2.9.2013, Annexure P-10 and is at page 47 of the paper book, within three months from the date of production of a copy of this judgment by the petitioners or their duly authorized representative before respondent No. 2, Director of Horticulture, Himachal Pradesh, Shimla, failing which interest at the rate of 9% per annum shall also be payable on the respective amounts qua each petitioner from the due date.

The petition stands disposed of in the above terms.