
(2010) 12 SHI CK 0185
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 8667 of 2008

Roop Singh Thakur

APPELLANT

Vs

Himachal Pradesh State Electricity Board and Others

RESPONDENT

Date of Decision : 31-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0185

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was drawing pay scale of Rs. 400-650. The same was revised to Rs. 800-1400 on 26.5.1980. Petitioner's pay was fixed at Rs. 1080/- on 27.5.1980. However, the pay of the Petitioner was reduced vide letter dated 30.6.1994 Annexures F and G. A sum of Rs. 20,497/- has been recovered from the Death-cum-Retirement Gratuity of the Petitioner on the basis of Annexure H dated 28.10.1994 on account of over payment of salary. Petitioner filed original application bearing OA No. 454/1997 assailing the decision of the Respondent-Board to deduct a sum of Rs. 20,497/- from his retiral benefits. The same was disposed of by the learned erstwhile Himachal Pradesh Administrative Tribunal by treating the original application as representation to the Secretary of the Respondent-Board. The same was rejected by him on 31.7.1995. The decision to reduce the salary of the Petitioner has been taken very belatedly. Petitioner had been paid pay scale of Rs. 800-1400 with effect from 26.5.1980. Decision to alter the same has been taken unilaterally on 39.6.1994. Petitioner has neither misrepresented nor misled the authorities at the time of grant of pay scale of Rs. 800-1400 and his pay was fixed at Rs. 1080. Decision has been taken unilaterally to reduce his salary. Respondent-Board has recovered a sum of Rs. 20,497/- from the retiral benefits of the Petitioner.

2. Ms. Anjula Khajuria has vehemently argued that the Petitioner himself has admitted that the pay scale granted to him was not in accordance with law.

However, it is equally true that the Petitioner had argued before the Secretary of the Respondent-Board that the recoveries be not effected from his D.C.R.G. The Secretary of the Board should have taken a compassionate view since the Petitioner had already retired from service and the decision to recover an amount of Rs. 20,497/- from his D.C.R.G. was harsh.

3. Their Lordships of the Hon"ble Supreme Court in Union of India and Ors. v. Jagdish Pandey and Ors. 2010 (6) Scale 651 have held that pay scale is a legitimate right of an employee and except for valid and proper reasons it cannot be varied. Their Lordships have held as under:

8. The Respondents in the present appeal had challenged the validity of the above order before the Tribunal on various grounds including that they have always been placed at parity with the goods driver, they have been given similar scales and there was no reason, whatsoever, for altering the pay scale to the prejudice of the Respondents, which was in force for a considerable time. It will be useful for us to notice the findings recorded by the Tribunal. In paragraph 8 of its judgment the Tribunal noticed that both the parties have not placed on record any material to indicate as to what was the pay scale provided for the TWDs pursuant to the various Pay Commission Reports. The Tribunal specifically noticed and recorded the finding that for the last 40 years, i.e. right from 1959 the Respondents were being paid the same pay scale as goods drivers. There was no disparity of pay scales between TWDs and goods drivers after Union of India and Railways had accepted recommendations of the IInd, IIIrd, IVth and even of Vth Pay Commissions. The Tribunal also specifically noticed vague denials of the Union of India and that such denials were hardly substantiated by any cogent material. Reliance was placed upon the judgment of the Calcutta High Court in relation to the grant of running allowance. In that Writ Petition, the only dispute raised by the parties related to the grant of running allowance and the Union of India did not raise the issue of disparity in pay scale. This order of the High Court had attained finality. We have already referred to the findings recorded by the Tribunal where it is specifically noticed that after acceptance of Vth Pay Commission Report by the Government, TWDs were given the salary in the pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 and in the letter dated 15.4.1993 the concerned authorities noticed the disparity created even between the TWDs i.e. in Sealdah division out of 32 TWDs, 24 were getting pay scale of Rs. 1350-2200 (unrevised) and remaining 8 were getting the pay scale of Rs. 1320-2040 and it directed a uniform pay scale of Rs. 1350-2200 should be given to all the TWDs. Another reason that weighed with the Tribunal was that no material has been produced to show as to what were the reasons or material on the basis of which the authorities had decided to discontinue the pay scale of Rs. 1350-2200 to these Respondents. The above reasoning and discussion in the order of the Tribunal clearly shows that the action on the face of it was arbitrary. This order of the Tribunal was confirmed by the High Court and the Respondents made no effort to place anything on record to show that they were different and distinct classes and were entitled to receive different pay scales. Even in the order dated

9th August, 2002 the Tribunal specifically noticed that it was not even averted that eligibility criteria for the post of TWDs was different than that for the goods driver and their duties were substantially different. In other words, either before the Tribunal or before the High Court the Union of India never pleaded the essential basis for justifying payment of different pay scales to two categories of drivers i.e. TWDs on the one hand and goods train drivers on the other. There has to be a substantial difference in method of recruitment, eligibility, duties and responsibilities before substantial disparity in scale can be justified. As far as recording of finding of facts is concerned, factual disputes can hardly be raised before this Court and in any case for the first time. Despite this the Union of India has failed to place any material to substantiate its decision before the Forum/Courts. The judgment of the Calcutta High Court, in relation to running allowances, has attained finality. At that time no other issue was raised by Union of India that they are different and distinct posts with different pay scales and as such identical running allowances could not be paid. In fact, the judgment of the Calcutta High Court has duly been implemented now for years together without objection. Not only this, same pay scale as that of the goods train driver has been paid to these Respondents for years and there appears to be no justification on record for unilateral withdrawal of such a scale. Pay scale is a legitimate right of an employee and except for valid and proper reasons it cannot be varied, that only in accordance with law. None of these justifiable reasons exist in the present case. The impugned order itself does not give any reason. The expression "erroneously" used in the order can hardly justify withdrawal of such an existing right.

4. Accordingly, in view of the observations made hereinabove, the petition is allowed. Annexures A, F, G and H dated 31.7.1995, 30.6.1994 and 28.10.1994, respectively, are quashed and set aside. No costs.