(2020) 09 SHI CK 0189

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 754 Of 2020

Roshan Lal — APPELLANT

Vs

State Of H.P. Through Pr. Secretary (I &PH) & Others — RESPONDENT

Date of Decision : 07-09-2020

Acts Referred:

Citation : (2020) 09 SHI CK 0189

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Digvijay Singh, Somesh Raj, Dinesh Thakur, Sanjeev Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. The issue involved in this writ petition is in a very narrow compass. The petitioner superannuated from the service of respondent-department as Pump Operator on 30.4.2019. His grievance is that vide Office Order dated 17.10.2019 (Annexure P-2), while sanctioning his retirement gratuity, an amount of Rs. 1,51,400/- has been arbitrarily deducted by the department, purportedly, on account of excess pay which was paid to the petitioner w.e.f. 1.4.2010 up to 30.4.2019. The contention of the petitioner is that as no proceedings for recovery of any purported excess amount ever stood initiated against him by the department while he was in service, the deduction of an amount of Rs.1,51,400/- from his retirement gratuity, that too, after his superannuation, is not sustainable in the eyes of law as the same is hit by the law laid down by the Hon'ble Supreme Court in State of Punjab & others versus Rafiq Masih (White Washer) & others (2015) 4 Supreme Court Cases , 334.

2. The stand of the State is that the petitioner was initially engaged as a pump operator on daily wage basis and his services were regularized w.e.f. 1.4.1998. After regularization of his service, the category in which the petitioner was regularized, was later-on clubbed in the common category of Junior Technician,

which was provided three tier pay structure in the ratio of 50:30:20 vide notification dated 1.9.1998. Petitioner got the benefit of three tier pay structure benefit of ACP Scheme upon completion of 4-9-14 years of service, inadvertently and this fact did not come to the notice of the department till his superannuation. Thereafter when this fact came to the notice of the department that excess amount stood paid to the petitioner on account of miscalculations that vide office order dated 17.10.2019, the amount as was due to the department from the petitioner, was deducted.

3. I have heard learned counsel for the parties and also gone through the pleadings as well as documents appended therewith.

4. It is not in dispute that as till the date, the petitioner continued to be in the service of respondent-department, no notice at any stage, was issued to him to the effect that there was some over payment made to the petitioner by the department inadvertently therefore why the same be not recovered. The Office Order which stood issued by the department to this effect i.e. Annexure P-2, dated 17.10.2019, also simply mentions therein that while calculating and granting the sanction of retirement gratuity to the petitioner, an amount of Rs.1,51,400/-stood deducted on account of excess payment so made to the petitioner.

5. It is settled law that no order which has civil consequence as far as a person is concerned, can be passed at his back. By no stretch of imagination, it can be said that the order vide which deduction of an amount of Rs.1,51,400/- from the actual gratuity payable to him was made was not having civil consequences as far as petition is concerned. Therefore, in these circumstances before any deduction purportedly on account of excess pay having been paid to the petitioner was actually made by the department, minimum that was required was this that a show cause notice ought to have been issued to the petitioner, detailing therein as to how the petitioner was paid excess pay and on what ground the petitioner was liable to refund the same. The impugned order in fact is liable to be quashed on this account alone as the same stood passed without any show cause. The things do not rest here only. As office order dated 17.10.2019, vide which the deduction of purported excess pay has been done, stood issued after the retirement of the petitioner, the act of the respondent-department of ordering this deduction is otherwise also not sustainable in the eyes of law as the same is hit by the judgment of Hon'ble Supreme Court in State of Punjab & others versus Rafiq Masih (White Washer) & others (2015) 4 Supreme Court Cases , 334 in which the Hon'ble Supreme Court has held that amongst recoveries by the employees which were impermissible, the same includes recoveries from employees belonging to class-III and class-IV services, which incidently includes the petitioner, as he stood superannuated as class-III employee, which is not in dispute as well as recovery from retired employees also, as is clearly stipulated in para 18(II)of the above mentioned judgment.

6. In view of the findings returned here-in-above, this petition is allowed and

Office Order dated 17.10.2019 to the effect it orders deduction of excess pay made to the petitioner to the tune of Rs.1,51,400/- is quashed and set-aside with the direction to the respondent-department to pay said amount also to the petitioner. It is clarified that in case this amount is paid to the petitioner on or before 31.10.2020, then it shall not carry any interest, however, in case the same is not paid within the said period, then the same shall entail interest at the rate of 6% per annum as from the date of issuance of Annexure P-2, dated 17.10.2019 till actual payment.

7. Miscellaneous application (s),if any, also stand disposed of.

