

(2015) 05 SHI CK 0113

In the High Court Of Himachal Pradesh

Case No : Ex. Petition No. 7 of 2015 in CWP No. 224 of 2006

Sada Ram

APPELLANT

Vs

Chief Secretary Govt. of H.P.

RESPONDENT

Date of Decision : 27-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2016) LabIC 248

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Dilip Sharma, Senior Advocate and Nishi Goel, for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, Anup Rattan, Addl. A.Gs. and J.K. Verma, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.

1. It is for the second time that the petitioner has approached this Court for executing the judgment dated 14.5.2010 passed in CWP No. 224 of 2006 in case titled State of H.P. v. Sada Ram and another whereby the judgment of the learned H.P. State Administrative Tribunal dated 7.12.2005 in TA No. 545 of 1986 was affirmed.

The brief facts of the case may be noticed.

2. The petitioner initially filed CWP No. 134 of 1982 before this Court. However, after constitution of the Administrative Tribunal, it was transferred and registered as TA No. 545 of 1986. The same was allowed by the learned Tribunal vide judgment dated 7.12.2005 and the respondent No. 1 was directed to constitute Review Departmental Promotion Committee within eight weeks of the passing of the order and place the cases of the petitioners before such committee for consideration of their promotion with effect from 27.2.1980, the date from which their juniors were promoted. In case the petitioners on such consideration are

ordered to be promoted they would be entitled for all consequential benefits and the same would be paid to them.

3. Admittedly, the order passed by the Tribunal has attained finality inasmuch as CWP No. 224 of 2006 filed before this Court challenging the order of the Tribunal was affirmed vide judgment dated 24.3.2006. Though, the same was initially set aside by the Hon''ble Supreme Court vide order dated 18.3.2009 with a direction to hear the same afresh, even thereafter, this Court vide judgment dated 14.5.2010 has again affirmed the judgment passed by the learned Tribunal.

4. When the judgment was not fully implemented, the petitioner alongwith co-petitioner filed Contempt Petition which was treated as Execution Petition (T) No. 29 of 2012 and was disposed of by this Court vide judgment dated 9.9.2013 by directing the respondent to comply with the judgment within three months, failing which the amount was to carry 9% interest.

5. Even before the aforesaid Execution Petition had been disposed of, the respondent themselves on 4.8.2011 issued a notification whereby the petitioner was promoted as Senior Assistant from 27.2.1980 to 15.12.1982 and Superintendent from 29.11.1994 to 29.8.1997 and further Section Officer from 2.2.1998 to 31.3.2002 on notional basis.

6. The petitioner complains that in terms of the judgment of the learned Tribunal as affirmed by this Court, he was entitled to all consequential benefits. Therefore, the arrears of salary becoming due cannot be denied to him by treating his promotion as notional without arrears. The petitioner has been promoted as Under Secretary on notional basis w.e.f. 31.1.2003 to 31.5.2004 vide notification dated 9.12.2013. Thereafter, vide notification dated 21.12.2013, the pay of the petitioner as on 31.1.2003 on promotion as Under Secretary was fixed at Rs. 11660/-. His pay as Section Officer on promotion to the said post w.e.f. 2.2.1998 was fixed at Rs. 9200/-.

7. The precise grievance of the petitioner is that once his Army service has been ordered to be counted for extending all benefits and he has been treated to be in service in the year 1965 as against one Karam Singh Thanta, who was appointed as Clerk on 26.3.1966, his pay cannot be less than him. It is alleged that Karam Singh Thanta was appointed as Section Officer on 31.1.2003 and his pay was fixed at Rs. 11660/-, on promotion as Under Secretary on 31.1.2003 his pay was fixed at Rs. 12375/-. While on the contrary, when the petitioner was promoted as Section Officer on 31.1.2003 his pay has been shown to be Rs. 10300/- and upon promotion to the post of Under Secretary on 31.1.2003 he had been fixed at Rs. 11660/-. Similarly, on promotion of Karam Singh Thanta as Superintendent Grade-II on 29.11.1994, his pay was fixed at Rs. 2775/-. He got next increment on 1.7.1995 raising his pay at Rs. 2925/-. It is conceded by the petitioner that he was given promotion pursuant to the judgment in his favour with reference to Karam Singh Thanta, but on promotion as Superintendent Grade-II on 29.11.1994 his pay has been fixed at Rs. 2440/- + 50 AP which was

less than Karam Singh Thanta. The petitioner furnished the comparative details of his pay fixation vis-?-vis Karam Singh Thanta and the same are reproduced below:

8. It is alleged that despite the directions of this Court, the respondent has not cared to fully implement the judgment. Though, the petitioner in order to give quietus to the matter had himself made a statement to confine the benefits from 1994 i.e. with respect to his pay fixation at par with Karam Singh Thanta, who was promoted as Superintendent on 29.11.1994. But despite this, the respondent till date has not given the benefit of such pay fixation from 29.11.1994.

9. The respondent-judgment debtor, in the reply has stated that the judgment as passed by the learned Tribunal has been implemented both in its letter and spirit and the main reason of difference of pay of both the retired officers i.e. the petitioner and Karam Singh Thanta is on account of their different dates of appointment. The petitioner joined the cadre on 4.8.1979 and within seven months he was promoted as Assistant w.e.f. 27.2.1980, in the pay scale of Rs. 600-1120/- and as per Fundamental Rule 22, his pay was fixed at Rs. 600/- at the initial of pay of the post, whereas Karam Singh Thanta joined the cadre on 26.3.1966 and was promoted as Assistant on 4.9.1973 and his pay as Assistant was fixed at Rs. 225/-. However, due to revision of pay scale w.e.f. 1.1.1978 and by allowing annual increments, his pay as on 27.2.1980 was arrived at Rs. 750/-.

10. It is further contended that the dates of promotion of both as Superintendents and Section Officers are identical, yet as per Rule, the pay of the petitioner cannot be fixed at par with the pay of Karam Singh Thanta. The reason as to why the pay of the petitioner cannot be fixed at par with the pay of Karam Singh Thanta is that Karam Singh Thanta was stagnated on the post of Senior Assistant for 21 years and as per instructions of Finance Department issued on 14th June, 1989, two proficiency increments were allowed to him on completion of 8 and 18 years service on the same post. Secondly, Karam Singh Thanta got 28 regular annual increments upto 1994, whereas the petitioner remained on the post of Senior Assistant for 14 years and got one proficiency increment on completion of 8 years service on the same post and got 14 regular annual increments upto 1994. Further under FR 22(I)(a)(1) the junior officer/official can draw higher pay than the senior if the junior officer/official draws from time to time higher rate of pay than the senior by virtue of grant of advance increments. Karam Singh Thanta against whom the parity of pay is being claimed, has always drawn higher pay to the petitioner. Therefore, the pay of the petitioner cannot be fixed at par with Karam Singh Thanta w.e.f. 29.11.1994.

11. Sh. Dilip Sharma, learned Senior counsel assisted by Ms. Nishi Goel, has vehemently argued that the defence taken by the respondent has already been negated by the erstwhile Tribunal and also by this Court on more than one occasion and therefore, the respondent has no option but to implement the judgment not only in its letter but also in spirit.

12. On the other hand, Mr. Shrawan Dogra, learned Advocate General would contend that the reason why the petitioner cannot be fixed at par with the pay of Karam Singh Thanta is because Karam Singh Thanta had stagnated on the post of Senior Assistant for 21 years and therefore, had been extended the benefit of notification dated 14th June, 1989 whereby two proficiency increments were allowed to him on completion of 8 and 18 years service on the same post. In this way, Karam Singh Thanta got 28 regular annual increments upto 1994, whereas the petitioner remained on the post of Senior Assistant for 14 years and got one proficiency increment on completion of 8 years service on the same post and got 14 regular annual increments upto 1994.

13. We have heard learned counsel for the parties and have gone through the records of the case carefully.

14. Indisputably, the petitioner while filing CWP No. 134 of 1982 had claimed the following substantive reliefs:

"(a) That the promotion of respondents No. 2 to 88 be quashed.

(b) That the petitioners be considered for the purpose of promotion to the post of Assistant and be eventually promoted w.e.f. 27.2.1980 i.e. from the dates the respondents 27.2.1980 were promoted.

(c) The petitioners may also be paid arrears of pay allowances and allied benefits ensuing from quashing of the promotion."

15. The learned Tribunal vide order dated 7.12.2005 allowed this petition in the following terms:

"In view of the above, this TA is allowed to the extent that the respondent No. 1 is directed to constitute Review Departmental Promotion Committee within 8 weeks of the passing of this order and place the cases of the applicants before such committee for consideration of their promotion w.e.f. 27.2.1980, the date from which their juniors were promoted. In case the applicants on such consideration are promoted they will be entitled for all consequential benefits and the same shall be paid to them."

16. For arriving at the aforesaid conclusion, it was observed by the learned Tribunal that while allotting seniority to the petitioner it had not been shown that the same had been worked out after taking into account his military services and therefore, the same was illegal or irregular because the benefit of such seniority could not be denied to the petitioner for the purpose of eligibility for consideration for promotion.

17. The order passed by the learned Tribunal was upheld by a learned Division Bench of this Court vide judgment dated 14.5.2010. The petitioner thereafter filed Execution Petition (T) No. 29 of 2012 and this Court on 12.6.2013 passed the following order:

"In the judgment dated 07.12.2005 passed by the learned Tribunal in O.A.

TA-545/86 (Sada Ram and another Versus the State of Himachal Pradesh and others), it has been indicated in paragraph 17, which reads thus:--

"In view of this, this TA is allowed to the extent that the respondent No. 1 is directed to constitute Review Departmental Promotion Committee within 8 weeks of the passing of this order and place the cases of the applicants before such committee for consideration of their promotion w.e.f. 27.2.1980, the date from which their juniors were promoted. In case the applicants on such consideration are promoted they will be entitled for all consequential benefits and the same shall be paid to them."

The said observation of the learned Tribunal has also been affirmed by this Court (DB) vide judgment dated 14.05.2010 passed in CWP No. 224 of 2006 (State of Himachal Pradesh Versus Sada Ram and Another). From the affidavit of the respondent/alleged contemnor, it appears that the Departmental Promotion Committee so constituted to review the earlier recommendations of the DPC, considered and recommended the case of the petitioners for promotion w.e.f. 27.2.1980, the date when juniors to petitioners were considered in its meeting held on 11.7.2011 and the petitioners were shown to have been promoted vide Notification dated 04.08.2011. According to the petitioners, nothing has been indicated in the affidavit as to how the consequential benefit has been given to the petitioners and how the review DPC has considered the case of the petitioners vis a vis their juniors for further promotion.

In the aforesaid facts and circumstances, the respondents are directed to file better affidavit within three weeks from today and the records of the review DPC be also produced before this Court on 3rd July, 2013."

18. The respondent in response to the execution petition had filed their reply-affidavit wherein it was averred that the petitioner while filing CWP No. 134 of 1982 had impleaded 87 persons as respondents over whom he had claimed seniority/promotion w.e.f. 27.2.1980, but out of 87 respondents, respondents No. 2 to 48 were appointed as Clerks between 1966 to 1974. They were further promoted as Assistants in the year 1980 and were working as such at the time of filing the initial petition in the year 1982. But subsequently, on the representations made by the respondents and on the directions of the Tribunal, these respondents were given promotions as Assistants from back dates between the period 4.9.1973 to 7.3.1979, prior to the dates of joining of the petitioners as Clerks. It was further contended that the petitioners therein had joined as Clerks against the post reserved for Ex-Serviceman category on 4.8.1979 and 18.8.1979, respectively. Therefore, the respondents No. 2 to 48 who were promoted as Assistants prior to 7.3.1979 could not be said to be juniors to the petitioners who had been appointed as Clerks on 4.8.1979 and 18.8.1979.

19. This Court however rejected the aforesaid stand of the respondents and held that the petitioners could not be said to be juniors to respondents No. 2 to 48. As per the judgment, the petitioners were entitled to the benefit of the past service

in the Army and, therefore, ranked senior to respondents No. 2 to 48 and accordingly the following order was passed:

"14. Since the petitioners as well as private respondents stand already retired from the service, now they are required to be considered for promotion as Under Secretary notionally from the date, it fell due as Shri Karam Singh, who was at Sr. No. 78 below petitioner No. 1 at Sr. No. 77-A, was promoted as Under Secretary on 31.1.2003, which is clear from list of Section Officers, Annexure E-4. Similarly, Shamsheer Singh, who was at Sr. No. 88, below petitioner No. 2 at Sr. No. 87-A in the seniority list of Clerks, was promoted as Under Secretary w.e.f. 4.4.2003, whereas petitioner No. 1 stood retired on 31.5.2004 and petitioner No. 2 on 31.7.2005 as Section Officers. Therefore, it is clear that the petitioners were to be considered as senior to the aforesaid persons. Hence, the impugned judgment is not fully complied with as the consequential benefits of pay fixation etc. are also to be given to the petitioners at par with their juniors consequent upon their promotions notionally, as stated above."

20. It would be seen from the judgment passed by the erstwhile Tribunal that the petitioner was held entitled to be considered for promotion w.e.f. 27.2.1980, the date when his juniors were promoted and in case on such consideration he was found eligible for promotion, he would be entitled for all consequential benefits.

21. The respondents in their reply have clearly stated that Karam Singh Thanta was drawing more pay only because he stagnated on the post of Senior Assistant for 21 years and was then given two proficiency increments on completion of 8 and 18 years service respectively on the basis of the instructions of the Finance Department dated 14.6.1989. The petitioner in fact had joined the services of the respondent only w.e.f. 4.8.1979 and had been granted the benefit of his services rendered in the Army.

22. The difference in pay is only on account of fortuitous circumstance which is not uncommon in service. If a junior gets a higher pay that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of higher pay to a junior. Equal protection means the rights of equal treatment in similar circumstance. Different treatment does not per se, amount to discrimination violative of Article 14. It denies equal protection only when there is no basis for differentiation.

23. The petitioner admittedly has not suffered the pain and pangs of stagnating on one post for more than 21 years and cannot therefore claim the benefit similar to those of Karam Singh Thanta because no such benefit has been granted to the petitioner either by the Tribunal or by this Court. It is also not established on record that the contentions as have now been raised by the respondents had already been adjudicated in the earlier litigation, particularly while adjudicating the Execution Petition (T) No. 29 of 2012. Rather this question

was never in issue and has cropped up only at the stage when the petitioner has been promoted to the post of Under Secretary.

24. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed, so also the pending application(s), if any.