

(1975) 04 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 102 of 1972

Sahi Ram

APPELLANT

Vs

The State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 04-04-1975

Acts Referred:

Constitution of India, 1950 — Article 309

Punjab Reorganisation Act, 1966 — Section 82(1), 82(2), 82(6)

Citation : (1975) 4 ILR HP 295

Hon'ble Judges : Chet Ram Thakur, J

Bench : Single Bench

Advocate : M.G. Chitkara, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

Chet Ram Thakur, J.—The Petitioner is an allocated employee from the erstwhile State of Punjab According to him, the Governor of Punjab had sanctioned the grant of hill compensatory allowance at 20 per cent of the basic pay and dearness allowance to the Superior Non-Gazetted establishments of various departments, whose headquarters were located at Dagshai, Sabathu, Solan and Dharampur in Simla district, with effect from 15-8-1947, or any subsequent date on which the Government servant had joined his post at the aforementioned places and was granted compensatory allowance for the period during which the headquarters or the camp offices of the department concerned remained located at these places. Before the 31st October, 1966, which was the appointed day under the Punjab Reorganisation Act, 1966, (shortly called the Act) the Petitioner was posted at Dharampur and was drawing hill compensatory allowance at 20 per cent of his basic and dearness pay per month. After allocation to the Union territory of Himachal Pradesh he continued serving at Dharampur till September, 1968, and was getting the said allowance at the aforesaid rate per month. In September, 1968, he was transferred to the Divisional Forest Office at Solan and he continued getting this allowance till February 1970 when an audit objection

was raised, and clarification was sought by the Conservator of Forests, Nahan circle from the Chief Conservator of Forests, Himachal Pradesh. Vide Annexure C, a reply was sent, in which reference was made to the copy of letter dated 5th July, 1967, from the Deputy Secretary to the Government of India, Ministry of Home Affairs, New Delhi, (Annexure D) in which the Government of India had stated that the employees allocated to Himachal Pradesh on reorganisation of the Punjab shall be entitled to the grant of compensatory allowance on the same rates and conditions which were applicable to them immediately before reorganisation and which are contained in the former Punjab Government letter No. 13556-3 FRI-63/797, dated 27-1-1964, with effect from 1-11-1966. However, further on it had been stated as:

So far as the allocated staff absorbed in Himachal Secretariat are concerned they are to be governed by the same rates and conditions of compensatory allowance as are applicable to other employees of Himachal Secretariat. However, since the work of integration of services and scales of pay admissible to the allocated employees in Himachal Secretariat are yet to be finalised, the Government may for the time being allow compensatory allowance to these employees at Punjab rates till such time the integration of services is completed. These employees will no doubt get ultimately central rates of compensatory allowance from 1-11-1966.

Further, an intimation was sent vide Annexure F by the Conservator of Forests, Nahan, to the Divisional Forests Officer, Solan, that the allocated employees of the Punjab service who were not posted at Solan on 31-10-1966 were not entitled to 20 per cent compensatory allowance but were entitled to 12-1/2 percent. It was thereafter that the excess amount paid over 12-1/2 per cent which was held admissible, was ordered to be refunded. He has also contended that his conditions of service could not be altered without the previous approval of the Central Government, as contemplated under proviso to Section 82(6) of the Act. The Petitioner, therefore, feeling aggrieved filed this writ petition for a direction and order to be issued that the Respondents be directed not to implement the directions for recovery of the excess compensatory allowance of the Petitioner and the instructions contained in Annexure C and F be quashed, further that the Respondent be directed to refund the amount illegally deducted from the dues of the Petitioner, and further that a direction be issued to pay the balance of the compensatory allowance not paid to the Petitioner since February 1970 to the date of the petition and also to pay him 20 per cent compensatory allowance from the date of the petition.

2. This petition was opposed by the Respondents. It was admitted that the Petitioner was due to be paid 20 per cent compensatory allowance upto the period he remained posted at Dharampur (his first place of posting after the reorganisation of the States). However it was averred that after his transfer from that place he was not entitled to get 20 per cent compensatory allowance. It was further stated that compensatory allowance at 20 per cent upto February 1970 was paid to him due to wrong interpretation of the orders. He was entitled to

compensatory allowance at the rate of 12-1/2 per cent from the date he was posted at Solan on his transfer from Dharampur. It was further stated that no protection of compensatory allowance is admissible as is evident from the decision of the Government of India letter No. 3-48/66 HITT, dated 22-5-1967. The Respondents had also filed a supplementary affidavit where in it had been sworn that the contention of the Petitioner regarding the change in the conditions of his service was completely met and belied by notification No. 8/7/67-HMT of the Government of India, Ministry of Home Affairs, dated 4-11-1968, by which the conditions of service applicable to all Government servants allocated from the former State of Punjab were made to conform to the conditions of service as applicable to the employees of Himachal Pradesh Administration before 1-11-1966, and the conditions of the allocated employees were altered by the Central Government so as to bring them at par with the conditions of service applicable to the employees of Himachal Pradesh Administration. The supplementary affidavit was also sought to be controverted by the Petitioner.

3. In this case the only point is whether this compensatory allowance could be changed after the allocation of the Petitioner to Himachal Pradesh. According to the submission of the Petitioner it was a condition of his service and the same could not be altered without the previous approval of the Central Government as envisaged under the proviso to Section 82(6) of the Act. The Government of India issued a notification, Annexure RA, dated 4-11-1968, whereby the rules called the "Himachal Pradesh Allotted Government Servants (Conditions of Service) Rules, 1968", were framed and notified as envisaged by the proviso to Article 309 of the Constitution. The rules relating to conditions of service applicable, from time to time, to those persons, who immediately before the commencement of these rules were employees of the Himachal Pradesh Administration, were made applicable to every person who immediately before such commencement was serving in connection with the affairs of the former State of Punjab and who on or after such commencement had been allotted under the provisions of Sub-section (1) or Sub-section (2) of Section 82 of the Act. The submission of the Petitioner was that this was not a valid approval and the approval was required in individual cases. But this submission of his carries no substance in view of these rules which amount to blanket approval accorded by the Central Government. This point stands already covered by the decision of this Court in C.W.P. 105 of 1968, *Sagli Ram v. The Union of India and Ors.* decided on 31-3-1975 wherein it has been held that the Himachal Pradesh Allotted Government servants (Conditions of Service) Rules, 1968, have been framed by the President and therefore by the Central Government it must necessarily be inferred that they have received the prior approval of the Central Government, and the impugned rules do not contravene the provisions of Section 82(6) of the Act and the same cannot be assailed on that very ground.

4. Moreover the compensatory allowance is only a concession and it cannot be claimed as a matter of right. The Government has got a right to withdraw this concession at any time and it can by no stretch of imagination be said to be a

condition of service. This is also a covered matter by *Agar Singh v. State*, etc. ILR 1972 (H.P.) 284. It would be further obvious from a Full Bench decision of the Andhra Pradesh High Court reported as *State Bank of India Supervising Officials Association and Ors. v. The State Bank of India, Central Office, Bombay*, represented by its Chairman and Anr. 1974 Lab. I.C. 41, wherein it has been held that where the payment of dearness allowance by the State Bank of India to its officers is only a privilege conferred by the Bank by its own volition and it is no part of the service conditions under the law or contract, the officers have no right, whether fundamental or otherwise, to enforce its payment against the Bank. There is also a Supreme Court authority reported as *The State of Madhya Pradesh Vs. G.C. Mandawar*, in which it has been held that grant of dearness allowance at a particular rate is, under R. 44 of the Fundamental Rules, a matter of grace and not a matter of right and hence claim against the Government for the grant of such allowance at a particular rate is not justiciable. Further, it has also been held that mandamus can be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule 44 of the Fundamental Rules confers no right on the Government servants to the grant of dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion. No mandamus can, therefore, issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced.

5. In these circumstances, this petition has got no substance and is, therefore, liable to be dismissed, and which I hereby do. However, I leave the parties to bear their own costs.