
(2004) 01 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5118 of 1995

Sh. V.P. Dubey, IAS (Retired)

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:

Member Punjab Public Service Commission (Condition of Services) Regulations, 1958
— Regulation 5

Citation : (2004) 136 PLR 666

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : D.D. Gupta, for the Appellant; S.S. Behl, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

K.C. Gupta, J.—The petitioner retired as IAS Officer from Punjab Cadre on 31.10.1990. On 18.11.1990, he obtained a licence from the Bar of the Punjab and Haryana High Court, Chandigarh to practice as an Advocate. On 1.12.1990, he was appointed as Member of the Punjab Public Service Commission and retired as such on 12.10.1994. On appointment as Member of the Punjab Public Service Commission, pay of the petitioner was fixed @ Rs.6300/- as basic pay plus Dearness Allowance in addition to the pension which the petitioner was getting before his appointment and continued to get the same till he retired as a Member of the said Commission i.e., on 12.10.1994. A copy of the order dated 2.12.1990, vide which his pay was fixed is annexed as Annexure P3. Later on, vide letter Annexure P-5 dated 25.1.1995 pay of the petitioner was re-fixed and thereby it was reduced. The said letter reads as under:-

PUNJAB PUBLIC SERVICE COMMISSION, PATIALA OFFICE ORDER

2. This is in continuation of this office order No. 1 B.F.104/90CAG/20048-52 dated 20.12.1990. The pay of Dr. V.P. Dubey, [AS (Retd.), Member Punjab Public Service Commission, Patiala is hereby re-fixed under Regulations No.5(i) of the

Member Punjab Public Service Commission (Condition Of Services) Regulations 1958 in the pay scale of 5900-200-6700 as under:-

S.No. Dated Refixation of Pay 1. 1.12.1990 as 6300 PM Deductions (i) Pension Rs. 3341-250 3091.00 (Benefit of first 250/-) (iii) P.E.G. 797.00 ----- Total 3888.00 Net payable = 6300-3888=Rs.2412/-PM

He is also entitled to get such other allowances as may be admissible from time to time to Govt. servants similar pay.

2. 1.12.1991. Rs. 6500/-PM (by annual; increment) Deductions. (i) Pension Rs. 3341-250 3091.00 (benefit of first 250/-) (ii) P.E.G. 797.00 ----- Total 3888.00 Net payable=6500-3888=Rs. 26127- P.M.

He is also entitled to get such other allowances as may be admissible from time to time to Govt. servants similar pay.

3. 1.12.1992 to 1.3.1993 Rs. 6700/- PM (by annual; increment) Deductions, (i) Pension Rs. 3341-250 3091.00 (benefit of first 250/-) (ii) P.E.G. 797.00 Total 3888.00 Net payable=6700-3888=Rs. 2812/- P.M.

He is also entitled to get such other allowances as may be admissible from time to time to Govt. servants similar pay.

4. 2.3.1993 to 30.11.1993 Rs. 6700/- PM

Deduction, (i) Pension Rs. 3341-500-2841/-

(Benefit of first 500/ according to Punjab Govt. Notification) No. GSR 19/Contd/ Amd/(22)/93 dated 26.2.1993).

Net payable=6700-2841=Rs. 3859/- P.M.

He is also entitled to get such other allowances as may be admissible from time to time to Govt. servants similar pay.

5. 1.12.1993. Rs. 6700/-PM

Deductions.

(i) Pension Rs. 3341-500-2841/-(benefit of first 500/-) Net payable=6700-2841=Rs. 3859/-P.M.

He is also entitled to get such other allowances as may be admissible from time to time to Govt. servants similar pay.

2. Accordingly, recovery of Rs. 1,60,088/- was sought from the petitioner. The counsel for the petitioner contended that his main grievance is that he was not instrumental in getting his pay fixed and no fraud was played by him and once the pay had been fixed and if some excess payment had been made by some mistake on the part of the department of the Government, then the Government is competent to reduce the pay but it cannot recover the amount which had

already been paid. In support of this contention, he placed reliance on the authorities of Hon"ble Apex Court in Sahib Ram v. The State of Haryana and Ors. 1994 (5) SLR 753 and Shyam Babu Verma and Ors. v. Union of India and Ors. 1994 (1) S.L.R. 827. It is held in the said authorities that if higher pay scale had been allowed to the employee by mis-interpreting the instructions and further if the same is not on account of any mis-representation made by the employee and lateron it is found that the employee was not entitled to benefit of higher payscale, then the amount paid till date could not be recovered from the employee. The same view has been taken by a Division Bench of this Court in Tej Singh Retired Superintendent v. State of Punjab and Ors. (2003) 123 PLR 492. Thus, it is held that the order, Annexure P-5, is wholly illegal, violative and against the principles of natural justice. Consequently, this petition is allowed and the order dated 25.1.1995. Annexure P5 is set aside. However, the respondents are at liberty to refix the pay of the petitioner but cannot recover the amount paid in excess for the past period. The petitioner, if entitled, may be allowed other benefits as per rules.