

(2001) 07 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 211 of 2001

Shri D.C. Thakur

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2001) 3 ShimLC 289

Hon'ble Judges : C.K. Thakker, C.J.; A.K. Goel, J

Bench : Division Bench

Advocate : C.B. Singh, for the Appellant; Vivek Thakur, Assistant A.G. for Respondent Nos. 1 and 2 and Abhilasha Kumari, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—This petition is filed by the Petitioner against the order passed by Central Administrative Tribunal on 17th of November, 2000 in Original Application No. 238/HP/2000.

2. The Petitioner was IFS Officer who retired as Chief Conservator of Forests, State of Himachal Pradesh, Shimla. His case in the Original Application was that he was posted as Divisional Forest Officer (Working Plan) with its headquarter at Sundernagar, District Mandi, H.P. on 14th of May, 1981. He had worked for 524 days in the field and 1101 days in the office. He submitted a Draft Working Plan to Conservator of Forests, Dharamshala on 11th of March, 1987 which was subsequently approved by the Chief Conservator of Forests. The applicant/Petitioner on the basis of said work claimed Special Pay/Working Plan Allowance at the rate of Rs. 150 per month as was admissible at the time when he had worked. The State of Himachal Pradesh, Respondent No. 1 had also conveyed sanction to grant of Special Pay to six Dy. Conservators of Forests (Working Plan) at the rate of Rs. 150 per month. Since the prayer of the applicant was not granted, he made representation, but finally, his request was turned down on

23rd of September, 1999. That compelled the applicant/Petitioner to approach the Tribunal.

3. Written statement was filed by the Respondents inter alia contending that the Working Plan Allowance was granted to the officers/ officials prior to 1st of October, 1966, but thereafter it was discontinued. A contention was raised on behalf of the Respondents that the application was barred by time. It was, therefore, prayed that the application was liable to be dismissed.

4. The Tribunal, after considering rival contentions of the parties, rejected the application on the ground that it was barred by time. The Tribunal observed that the claim of the applicant/Petitioner was rejected by the Respondents on October 12, 1993, hence, the cause of action arose in favour of the applicant/Petitioner in 1993, but he approached the tribunal in 2000. Since an application could be preferred within a period of one year and was filed after more than six years, it was time barred. Accordingly, the application was dismissed.

5. Being aggrieved by the said order, the Petitioner has filed the present writ petition.

6. Several contentions are raised on behalf of the Petitioner.

7. It was submitted that the prayer of the Petitioner was rejected only in 1999 and that was the material date which ought to have been taken for the purpose of limitation by treating the application within time and the Tribunal has committed error which deserves to be corrected by this Court. It was also submitted that one Mr. R.C. Sharma whose case was similar to that of the Petitioner was granted similar benefit by the Tribunal in O.A. No. 655/HP of 1988, decided on 28th of June, 1989. The order is also on the record of the case. Finally, it was submitted that it is not true that the said allowance had been stopped. Only nomenclature was changed and instead of Special Working Plan Allowance, it had been known as special pay and, hence, the Petitioner is entitled to the benefit.

8. Mr. Thakur, learned Assistant Advocate General appearing for Respondents No. 1 and 2, on the other hand, submitted that the Tribunal was right in dismissing the application on the ground of limitation. The Petitioner was informed in 1993 as well as in 1995 that he was not entitled to the allowance. He could have approached the Tribunal within a period of one year from then. He also submitted that as was clear from the written statement filed by the authorities, no such Special Working Plan Allowance was given after 1966 and it was categorically mentioned that with effect from 1st of October, 1966, it was stopped. Hence, no such prayer can be granted. Regarding the case of Mr. R.C. Sharma, it was submitted that the tribunal in that case had committed an error in granting the prayer. Since no proceedings were taken by the authorities against that order, payment was made to him. But if the Petitioner is not entitled to such allowance, obviously he cannot claim it and the Tribunal was right in rejecting the prayer of the Petitioner.

9. Ms. Abhilasha Kumari, learned Additional Central Government Standing Counsel appearing for Respondent No. 3 stated that she has no instructions in the matter.

10. Having heard learned Counsel for the parties, in our opinion, it cannot be said that the Tribunal has committed any error of law in dismissing the application.

11. From the affidavit-in-reply, it is clear that as per the findings recorded by the Tribunal, the Petitioner was informed in 1993. If it is so, obviously, the provision of Section 21 would apply and since the petition was not filed within a period of one year, the same was liable to be dismissed on the ground of limitation.

12. Even otherwise, after looking to the affidavit-in-reply filed by Respondents No. 1 and 2 before the Tribunal as well as before this Court, Special Working Plan Allowance was stopped by the Respondents with effect from 1st of October, 1966. If it is so, this Court cannot hold that it must be paid to the Petitioner and such benefit should be granted in his favour. True it is that in case of R.C. Sharma, such an order was passed and he was held entitled by the Tribunal, but looking to the order passed by the tribunal in that case, it appears that in the written statement, it was the contention of the Respondents that the matter was under consideration of the Department and the Tribunal observed that since no decision was taken by the Department, the Petitioner would not suffer and accordingly the order was passed directing the Respondents authorities to make payment.

13. Assuming that an order was passed after hearing the parties and after considering the contention raised on behalf of the Respondents that the Working Plan Allowance was stopped and yet a direction was issued to pay the allowance, can it be said that an order which was unlawful or contrary to law in one case can be cited as a precedent and the Court must follow it in other case and issue directions to the authority to pay such allowance? The answer to the said question would obviously be in the negative. In our opinion, the law is well settled on the point that a wrong decision in one case cannot be a precedent and wrong cannot be allowed to be perpetuated. That is not the sweep of Articles 14 and 16 of the Constitution of India.

14. Finally, if the Working Plan Allowance is stopped, this Court in exercise of powers under Articles 226 and 227 of the Constitution of India cannot direct the authorities by observing that there was a change in the nomenclature and the person who was allowed Working Plan Allowance will be entitled to special pay considering such Special Pay as one and the same as Working Plan Allowance. Hence, even if the Petitioner was working from 1983 in Plan Division, no Special Pay could be awarded to him. We cannot pass the order as stated in the earlier part of the judgment for Special Pay and no such prayer can be granted.

15. For the foregoing reasons, the petition deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there

is no Order as to costs.