

(2010) 02 DEL CK 0159

In the Delhi High Court

Case No : Writ Petition (C) No. 2424 of 2008

Shri M.R. Chawla

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0159

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : N.K. Kheterpal, for the Appellant; Manisha Singh and Mohit Gupta, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The petitioner has retired from the post of Administrative Officer from Shyam Lal College, Shahdara (respondent No. 2 herein). He has reached the age of superannuation of 60 years on 30.11.1998 but continued in service even thereafter till he was relieved from the college w.e.f. 16.11.1999. In terms of the Fifth Pay Commission, he was entitled to the pay scale of Rs. 8,000-275-13,500, pay scale applicable to the post of Administrative Officer w.e.f. 01.01.1996.

2. The petitioner initially was appointed in respondent No. 2 college as Officiating Administrative Officer in addition to his own duties as Senior P.A. w.e.f. 01.09.1994 vide office order dated 01.09.1994 (Annexure P-4 at page 61 of the paper book). He was thereafter regularised on the post of Administrative Officer in the pre-revised pay scale of Rs. 2,200-4,000 w.e.f. 01.09.1994 vide office order of respondent No. 2 college dated 29.03.1996 (Annexure P-5 at page 62 of the paper book). However, the Delhi University (respondent No. 1 herein) vide its letter dated 24.04.1996 addressed to respondent No. 2 college did not agree with the proposal of the college for promoting the petitioner to the post of Administrative Officer on regular basis without conducting the written test from retrospective date (Annexure R-2 to the counter affidavit of respondent No. 1 at

page 211 of the paper book). This letter of respondent No. 1 university stood superseded by its subsequent letter dated 29.01.1997 (Annexure P-11 at page 71 of the paper book), according to which, the period of appointment of the petitioner as Administrative Officer in respondent No. 2 college from 01.09.1994 to 21.05.1996 was ordered to be treated as ad-hoc period. Based upon that, the pay of the petitioner in the pre-revised pay scale of Administrative Officer was fixed at Rs. 3,600/- per month w.e.f. 22.05.1996 in the pay scale of Rs. 2,200-4,000 with benefit of next increment to be given to him on 08.08.1996/01.08.1996 and subsequent increments on 01st August of each year, if otherwise admissible to him, and this was done vide letter of respondent No. 1 university dated 21.02.1997 (Annexure P-12 at page 74 of the paper book). His pay was thereafter re-fixed in the revised pay scale of Rs. 8,000-275-13,500 in terms of the recommendations of the Fifth Pay Commission at Rs. 11,025/- w.e.f. 22.05.1996 vide letter of respondent No. 1 university dated 17/21.12.1998 (Annexure P-14 at page 79 of the paper book).

3. It appears that the Internal Audit Officer of the respondent No. 1 university had raised an objection to the fixation of pay of the petitioner at Rs. 11,025/- w.e.f. 22.05.1996 and based upon that audit objection, the respondent No. 1 university vide its letter dated 17.05.2000 (Annexure P- 16 at page 81 of the paper book) withdrew its earlier three orders of fixation of pay of the petitioner done vide office orders dated 21/24.02.1997, 06/09.11.1998 & 17/21.12.1998 and consequent thereupon, his pay was re-fixed at Rs. 10,750/- w.e.f. 22.05.1996.

4. It is submitted that the respondent No. 2 college has already recovered an amount of Rs. 43,340.50/- from the terminal benefits of the petitioner consequent upon re-fixation of his pay at Rs. 10,750/- w.e.f. 22.05.1996. The respondent No. 2 college also intends to re-fix his pay for the purpose of pension and other terminal benefits inter alia on the ground that the petitioner was not entitled for counting of ad-hoc service rendered by him on the post of Administrative Officer for the period from 01.09.1994 to 21.05.1996.

5. The only question that requires consideration for deciding the relief claimed by the petitioner in the present writ petition is whether he is entitled for counting of ad-hoc service as Administrative Officer in the respondent No. 2 college for the period from 01.09.1994 to 21.05.1996. In case, as per rule, he is entitled for counting of this ad-hoc service, then his pay, as sought to be re-fixed by the respondents, cannot be re-fixed and the pay of Rs. 11,025 that was already fixed w.e.f. 22.05.1996 vide Annexure P-14, is to be restored.

6. Rule 27 of the University Non-Teaching Employees (Terms & Conditions) Rules, 1971 which deals with pay and allowances is relevant and is extracted below:
(27) Service counting for increment: The following service shall count for increment on the timescale of post:

(i) duty in that post or any other post of the same or higher grade, whether

(ii) duty in an equivalent or higher post in foreign service:

(iii) duty on a temporary post and on probation; and

(iv) Leave other than extra-ordinary leave.

Provided that the sanctioning authority may direct that extraordinary leave shall also count for increments, if it is satisfied that such leave was taken on account of illness or for any other cause beyond the control of the employee.

7. A plain reading of Rule 27(i) would show that the petitioner was entitled for counting of ad-hoc service rendered by him on the post of Administrative Officer in respondent No. 2 college for the period from 01.09.1994 to 21.05.1996. This rule does not make any distinction between ad-hoc service and regular service for the purpose of its counting for increments.

8. In the present case, it is not disputed that the respondents themselves have treated the service rendered by the petitioner in respondent No. 2 college on the post of Administrative Officer during the period from 01.09.1994 to 21.05.1996 as ad-hoc service. In fact, the respondents themselves vide Annexure P-14 dated 17/21.12.1998 have counted the ad-hoc service of the petitioner while fixing his pay at Rs. 11,025/- w.e.f. 22.05.1996 in the pay scale of Rs. 8,000-275-13,500. This order fixing his pay at Rs. 11,025/- is sought to be withdrawn by the respondents in view of the audit objection. There is nothing on record to justify the basis of the objection of the audit for fixation of pay of the petitioner at Rs. 11,025/- w.e.f. 22.05.1996 vide Annexure P-14 at page 79 of the paper book.

9. This Court is of the considered view that in terms of Rule 27(i), extracted above, the petitioner was entitled for counting of his ad-hoc service for the period from 01.09.1994 to 21.05.1996. If that benefit is to be given to him, then his pay need not be re-fixed as sought to be done by the respondents vide impugned communication dated 17.05.2000, (Annexure P-16 at page 81 of the paper book). The recovery made from the terminal benefits of the petitioner consequent upon the said impugned office order also cannot stand the test of judicial scrutiny. This amount, which has been recovered by the respondents, has to be returned by them to the petitioner. The petitioner is entitled for all terminal benefits on the basis of fixation of his pay done by the respondents vide Annexure P-14 at page 79 of the paper book.

10. The petitioner, in para 29 of the petition, has stated that though he had worked in respondent No. 2 college till 16.11.1999 but he has not been paid salary by the college for the period from 06.10.1999 till 16.11.1999 and, therefore, he has made a prayer for directions to respondent No. 2 college to make payment of unpaid salary for the said period to him. None of the respondents have refuted this contention in their respective counter affidavits. In fact, respondent No. 2 college, in para 11 of its counter affidavit, has admitted that the petitioner was relieved from its service w.e.f. 16.11.1999 vide office

order dated 12.11.1999. The date of relieving of the petitioner is not in dispute. It is also not disputed that the petitioner was paid salary only up to 05.10.1999. It, therefore, implies that the salary for the period from 06.10.1999 till 16.11.1999 was not paid to the petitioner and, therefore, he is held entitled to salary for the said period.

11. In view of the foregoing, this writ petition is allowed. The impugned communications of respondent No. 1 university which are Annexures P-16 and P-21 at pages 82 & 92 respectively of the paper book are hereby set aside. The pay of the petitioner fixed by the respondents at Rs. 11,025/- per month w.e.f. 22.05.1996 vide office order dated 17/21.12.1998, Annexure P-14 at page 79 of the paper book, is restored and he is held entitled for payment of terminal benefits on the basis of his pay fixed vide said office order. The respondents are directed to pay the unpaid salary to the petitioner for the period from 06.10.1999 to 16.11.1999. They are also directed to return the amount of Rs. 43,340.50 paise recovered by them from the terminal benefits, to the petitioner forthwith.

All financial benefits including pension etc., which the petitioner is entitled pursuant to order passed by this Court today, should be given to him by the respondents within a period of eight weeks from today failing which the arrears would carry interest @ 12% per annum till the date of payment. The parties are left to bear their own costs.

Any other relief claimed in the petition which has not been expressly granted by this order shall be deemed to have been declined since the same is not pressed by Dr. N.K. Kheterpal, appearing on behalf of the petitioner.