
(2012) 08 SHI CK 0054
In the High Court Of Himachal Pradesh
Case No : CWP No. 1008 of 2011

Shri Rajeshwar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2012) 08 SHI CK 0054

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : G.R. Palsra, for the Appellant; A.K. Bansal, Additional D.A.G. for Respondents No. 1 and 2 and Mr. P.S. Chandel, Advocate, for the Respondent

Judgement

Surinder Singh, J.—By means of present petition, the petitioner, who retired from the office of respondent No. 3, has challenged Annexure PE whereby the recovery of Rs. .49,000/- was held to be correct because of wrong fixation of his pay and also seeks to re-fix his pay as Rs. .6200/- on and with effect from 1.1.2005 till his retirement on 31.5.2005 and fixing of his pension accordingly. Heard and gone through record.

2. In the year 1970, the petitioner was appointed as Sweeper in Municipal Council, Sundernagar. Thereafter, he was promoted as "Jamadar" (Safai Karamchari) and superannuated from the said post on 31.5.2005. It is alleged that his service book entries were duly verified/checked from time to time, but no irregularity was found therein. The respondent-Department on his retirement sought the recovery of Rs. .49,663/- from his retiral benefits alleged to be on the basis of wrong fixation of his pay without issuing any show cause notice. Accordingly he filed OA in the erstwhile Tribunal to seek the redressal which was later transferred to this Court on its abolition and registered as CWP (T) No. 16442 of 2008. Vide judgment dated 3.8.2010, it was observed that such a recovery without any show cause notice based upon the audit objection could not have been done except after affording an opportunity to the employee concerned. Thus, the petition was disposed of, with the direction to the petitioner

to file objection with regard to the withheld amount within a period of one month from that date, if not already filed, which was ordered to be considered by the competent authority with notice to the petitioner within another period of three months. The petitioner was ordered to be granted provisional pension and it was made clear in the judgment aforesaid that in case the pension has not been fixed, the same shall be done within a period of one month from the date of production of the copy of the judgment and arrears in that regard shall be disbursed to the petitioner within another two months, failing which it shall carry interest at the rate of 7% per annum w.e.f. 1.6.2006 and the Officer responsible for the delay shall be personally liable for the same.

3. Pursuant to the aforesaid directions the petitioner submitted his representation for the redressal of his grievance and releasing the withheld amount.

4. Vide order Annexure PE sent to the petitioner his claim was rejected precisely specifying therein that before passing the order the Department had worked out the pay fixation as per the details given therein, after hearing the petitioner in accordance with rules, but the petitioner felt not satisfied, as such filed the present petition.

5. The respondents resisted and contested the claim of the petitioner justifying the recovery and fixation of pay in the light of the HP Civil Services (Revised Pay) Rules, 1998 and other relevant documents and I also do not find any wrong in the impugned order of fixation except its recovery after retirement.

6. It is a fact that in the fixation of pay neither the petitioner had misrepresented nor committed any fraud. It appears that excess payment was made to the petitioner during his service by applying wrong principle on wrong interpretation of the rule which was detected by the audit. There are several precedents of the Apex Court where the relief has been granted against the recovery of excess payment of emoluments if the excess amount was not paid on account of any misrepresentation on the part of the employee and if such excess payment was made by the employer by applying a wrong principle for calculating the pay or on the basis of a particular interpretation of rule, which is subsequently found to be erroneous. The relief against such recovery has been granted by the Courts not because of any right in the employee, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered, as held in Syed Abdul Qadir and Others Vs. State of Bihar and Others,

7. There is nothing on record to show that the payment was made wrongly to the petitioner on his misrepresentation. Rather, the error crept in could also not be detected/corrected immediately. The petitioner on his retirement is also entitled for due and admissible retiral benefits.

8. The petitioner was a Class-IV employee and withholding of this amount certainly has caused great hardship to him. Therefore, keeping in view the above facts and circumstances of this case that the matter fell within the realm of

judicial discretion thus the withheld amount is ordered to be paid to the petitioner within a period of two months from the date of production of the authenticated copy of this judgment to respondent No. 3 and finalize his pension on the basis of his salary to which he was held entitled, as per Annexure PE on the date of his retirement. Thus the petition is disposed of accordingly, so also pending application, if any.