(2013) 07 CHH CK 0015

In the Chhattisgarh High Court

Case No : W.P. (S) No. 4214 of 2005

Smt. Chandravati APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2013) 2 CG.L.R.W. 429

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Manindra Mohan Shrivastava, J.—This petition was originally filed by the petitioner (Shri R.L. Pandey) before the State Administrative Tribunal, Bench at Raipur as Original Application u/s 19 of the Administrative Tribunals Act, 1985. Upon abolition of the Tribunal the petition was received in this Court on transfer. During the pendency of the petition the employee namely Shri R.L. Pandey died on 25-4-2006 and the present petitioner (Smt. Chandravati), who is widow of the deceased employee/petitioner, was allowed to prosecute this petition as legal representative of the deceased employee/petitioner.

2. By this petition, the order dated 31st August, 2001 (Annexure A/1), by which recovery of Rs. 1,26,337/- has been ordered, is under challenge.

3. In short, necessary details of the petition are that the deceased employee, while in the Government service, was granted two advance increments w.e.f. 1-8-1968 under the Government''s circular dated 13-8-1968, as pleaded in the petition. The pay fixation was done on that basis by adding two advance increments.

4. The deceased employee continued in service until the objection was taken in the year 1999, based on the State Government''s notification/clarification dated 8-2-1978 (Annexure R/4) that the petitioner was not entitled to two advance increments in the year 1968 because he was not posted at Tahsil level but at

block level. This resulted in issue of the impugned order directing recovery of Rs. 1,26,337/-, in the manner indicated in the impugned order itself.

5. Representation against the said order did not redress the grievance. Thereafter, this petition was filed. During the pendency of this petition Shri R.L. Pandey retired on 29-2-2004 and thereafter died on 25-4-2006.

6. Assailing the correctness and validity of the action of the respondents, learned counsel for the petitioner contended that the impugned order of recovery is not only illegal, arbitrary but is in utter violation of the principles of the natural justice. It is the submission of learned counsel for the petitioner that the recovery has been ordered mainly on the ground that the deceased employee was not entitled to two advance increments. For this purpose, the employee ought to have been heard and afforded an opportunity to satisfy the authority that the increments which were already granted to him, were not to be withdrawn. The other contention is that the recovery has been ordered on the basis of the circular which was issued on 8-2-1978 (Annexure R/4) after almost 10 years of the grant of increments to the deceased employee. Therefore, the very basis, on which recovery is ordered is illegal in as much as the administrative clarification, made after 10 years, cannot operate retrospectively so as to withdraw the benefit already granted to the deceased employee.

7. On the other hand, learned counsel for the State submits that the Government intended to grant two advance increments, as a matter of policy, to those who had not participated in the strike and was intended to benefit only those employees, who, at the relevant time, were posted at Tahsil level. It was never intended to extend such benefit to other employees, posted at other level, including block level and accordingly, this was clarified by the State Government vide its communication dated 8-2-1978, addressed to the Accountant General. Therefore, it became clear in the year 1978 itself that the deceased employee was not entitled to two advance increments. However, the deceased employee suppressed this circular at the time of submitting the option and at no point of time after 1978, he ever informed the concerned authority that the increments which have been granted to him were not admissible. Therefore, in the matter of fixation of pay under revised pay scales, revised from time to time, this benefit could not be granted. He submits that from various entries made in the service book of the petitioner, it appears that it was on the basis of misrepresentation and suppression that the benefit of two advance increments was granted to the deceased employee. Therefore, the petitioner cannot claim immunity against the action of recovery on the ground that rightly or wrongly the benefit was granted to him in the past. He further submits that in view of the Government circular dated 8-2-1978 it became crystal clear that the petitioner was not entitled to two advance increments. Even if no opportunity of hearing is afforded to the deceased employee, only on that ground the petitioner is not entitled to any relief.

8. The action and order of recovery against the deceased employee is solely

based on the State Government''s communication dated 8-2-1978 (Annexure R/4) made to the office of the Accountant General, Madhya Pradesh, Gwalior. The aforesaid communication shows that the State Government issued a clarification to the effect that the benefit of policy of granting two advance increments to those who had not participated in the strike, was intended to benefit only those employees who were posted at Tahsil level.

9. Learned State counsel could not demonstrate either by placing on record the circular dated 13-8-1968 or any other subsequent order before grant of two advance increments to the petitioner that even before increments were granted to the deceased employee, this clarification was made by the State Government. Therefore, it has to be held that till issuance of the communication dated 8-2-1978 (Annexure R/4) there was nothing to show that the benefit of two advance increments would be confined only to those employees who were posted at Tahsil level and would have no application in respect of those posted and working in other offices, including the block level office. The communication (Annexure R/4) is accordingly an administrative instruction. The administrative instruction cannot be applied retrospectively unless it has statutory sanction behind it. It cannot take retrospective effect so as to withdraw the benefit which has already been conferred on the employee under the policy, in force, when the benefit was granted.

10. Though it was urged by the State counsel that the petitioner is guilty of suppression and misrepresentation, I do not find any material to substantiate such contention. The petitioner is stated to have given an option for higher pay scale and this has been stated to be an act of misrepresentation. The option, as is reflected from the relevant excerpts of the service book, placed on record, was given in the year 1972 to the respondent No. 2. This was much prior to the State Government''s clarificatory communication dated 8-2-1978 (Annexure R/4). After 1978, the petitioner has been granted various pay scales and while making fixation of pay the existing pay of the petitioner, at the relevant time, has been taken into consideration. This fact, by itself, without anything more, cannot lead to inference that this was on account of the petitioner''s misrepresentation. In fact, for the first time, an objection in this regard was taken by the Deputy Director, Treasury and Accounts, in his note dated 14-8-1999. It has also been submitted that even though an objection was noted on 17-3-1991 directing submission of pay fixation papers of 1-1-1972 and 1-1-1986, no such submission was made resulting in suppression. I am not inclined to accept this contention also. It is not clear from the said objection as to what was the nature of objection and as to who was ordered to submit the pay fixation papers. It nowhere appears that it was the petitioner, who was to submit the pay fixation papers. The pay fixation papers are always available in the records of the office. Therefore, the petitioner cannot be blamed when the respondents could not look into the aspect after 1978, till 1999.

11. In view of the above discussion, this Court is of the considered opinion that

the deceased employee could not be blamed of any suppression or misrepresentation. Even otherwise, this Court has found that the clarification of 1978 cannot be made a basis for recovery of the advance increments granted to the deceased employee, way back in 1968. The fact that the petitioner was granted two advance increments in the year 1968 has not been disputed by the respondents. The impugned action is declared illegal, arbitrary and unsustainable in law. Accordingly the same is set aside. Whatever recoveries have been made from the pay or retiral benefits of the deceased employee shall be refunded to the petitioner/widow of the deceased employee, as early as possible and in any case within a period of sixty days from the date of receipt of a copy of this order. If the refund is not made within sixty days, the amount will carry interest at the rate of 12% per annum, till the actual payment is made.

12. In view of the foregoing, the petition is allowed to the above extent. No cost.