(2011) 03 SHI CK 0345

In the High Court Of Himachal Pradesh

Case No : C.W.P. (T) No. 7390 of 2008

Sobha Sood — APPELLANT

Vs

State of Himachal Pradesh and others — RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:
Central Civil Services (Conduct) Rules, 1964 — Rule 16, 6

Citation : (2011) 2 ShimLC 99

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldip Singh, J.—The petitioner has challenged the threatened recovery of about Rs. 35,000/- by respondents from petitioner starting from March, 2001 on account of alleged wrong payment of annual increments for the period 16.06.1988 to 16.06.1995. The petitioner has also prayed a direction to respondents for releasing annual increments to petitioner for the period 16.06.1996 onwards and to pay interest at the rate of 18% on arrears accruing on account of annual increments.

2. The facts, in brief, are that petitioner was appointed as Steno-typist in Education Department on the recommendation of Himachal Pradesh Public Service Commission (for short Public Service Commission) on 28.02.1987. The petitioner has placed on record her appointment letter dated 28.02.1987 along with its Annexure-A. The condition No.6 of Annexure-A provides that the candidate was required to qualify Hindi type test within six months from the date of joining, failing which the candidate would not be entitled for annual increments and his/her services were liable to be terminated. The condition No. 19 in Annexure-A of the appointment letter of the petitioner provides that she was to clear the test in Shorthand/typewriting in 18 months from the date of her appointment, failing which her services were liable to be terminated.

3. The petitioner in pursuance to her appointment letter dated 28.02.1987 joined as Steno-typist in the Office of Deputy District Education Officer at Palampur on 16.06.1987. The petitioner appeared in Hindi type test before the Public Service Commission, the result was declared on 28.01.1988. As per corrigendum dated 26.03.1990, the petitioner was declared successful in typewriting and shorthand test in Hindi. The delay in declaration of the result in no way was attributable to petitioner. The petitioner was eligible and was given annual increments after completion of one year of service on 16.06.1988, thereafter every year in the month of June till 16.06.1995 by Deputy District Education Officer, Palampur where the petitioner was working.

4. In September, 1995, the petitioner was transferred from Palampur to Dharamsala. The petitioner was legitimately expecting annual increments on 16.06.1996 and thereafter, but the respondent No. 3 with-held the same illegally and without following the principles of natural justice. The action of with-holding increments for the period 16.06.1996 to 16.06.1999 is illegal.

5. On inquiry made by the petitioner, she was told that annual increments for the period 16.06.1996 to 16.06.1999 are not admissible to petitioner as the petitioner was required to pass typewriting and shorthand test in English. The annual increments would be given from the date of passing of said test. This stand of the respondents was contrary to Rules. The petitioner passed typewriting and shorthand test in English on 31.07.1999 which is clear from the communication dated 16.09.1999.

6. On passing typewriting and shorthand test in English, the petitioner was entitled and eligible for annual increments with effect from 31.07.1999 and thereafter every year in the month of July. The petitioner believed that respondent No. 3 had prepared arrears bill on account of release of annual increments with effect from July, 1999, July, 2000 till February, 2001, amounting to Rs. 26,029/- in March, 2001, but respondent No. 3 had adjusted aforesaid arrears bill of Rs. 26,029/- on account of alleged over payment of annual increments given to the petitioner from 16.06.1988 to 16.06.1995. The respondent No. 3 has also orally directed bill Clerk to recover alleged over payment of Rs. 8,950/- on account of annual increments from 16.06.1988 to 16.06.1995 from the salary of the petitioner of March, 2001 payable in April, 2001 and thereafter.

7. The action of respondents in effecting the recovery of about Rs. 35,000/- from the salary of the petitioner amounts to imposing penalty and same could not be effected without complying with the provisions of Rules 16 of Central Civil Services (Conduct) Rules, which has not been complied with and, therefore, recovery is illegal. It has also been stated that the respondents have allowed similar increments to other similarly situated Steno-typists, but no recovery has been effected from them like Smt. Veena Devi and Tara Chand. The threatened action of the respondents for recovering about Rs. 35,000/- from the salary of the petitioner is thus discriminatory.

8. The respondents contested the claim of the petitioner by filing reply. It has been stated that petitioner was appointed as Steno-typist vide order dated 28.02.1987. The appointment order of the petitioner clearly stipulates that newly appointed Steno-typists would clear shorthand/typewriting tests in English and Hindi within the stipulated period of 18 months, otherwise their services would be terminated. Many Steno-typists could not clear the requisite tests. The Public Service Commission informed the government that as many as 61 candidates, had to qualify shorthand and typewriting tests in Hindi and 228 candidates in English. On receipt of the information from the Public Service Commission, the Government reviewed the situation and modified existing Recruitment and Promotion Rules for recruitment of Steno-typists. According to modified Recruitment and Promotion Rules, the speed of shorthand and typing in both the languages was revised. The Government after modification of Recruitment and Promotion Rules afforded final opportunity to the Steno-typists, who had not qualified the requisite tests after coming into force of the amended Rules. The candidates who fail to avail the golden opportunity, would be entitled to annual increments from the dates of passing the requisite tests in both the languages. The petitioner qualified the prescribed test on 31.07.1999 and, therefore, the petitioner became eligible for annual increment on 31.07.1999 in terms of her appointment.

9. The petitioner while her posting in the office of Deputy District Education Officer, Palampur herself was responsible for preparation of pay bills of the Establishment including her, as well as maintenance of accounts. The petitioner got the undue benefit of receiving annual increments at her own pushing aside all norms and sanctity of the Rules. She committed financial irregularities and caused loss to the State Exchequer to the tune of Rs. 33,527/- in violation of the Conduct Rules.

10. The petitioner was given notice vide letter dated 15.03.2000. This is not a case where even a notice was required to be given to petitioner inasmuch as the petitioner acted in an unwarranted manner and committed grave error.

11. The condition No. 6 in the appointment letter of the petitioner is general and applicable to the Clerks and not to the Steno-typists. The condition No. 19 is relevant in the case of the petitioner. The petitioner did not qualify the prescribed tests within the stipulated period and her services were liable to be terminated, but the government took lenient view by affording opportunity to petitioner for qualifying the requisite tests. The sympathetic attitude of the government has been treated by the petitioner as weakness of the government. The petitioner is not an exception, one Smt. Uma Minhas has been allowed the benefit of annual increments from the date of qualifying the tests. It has been ultimately stated by the respondents that recovery of Rs. 24,577/- has already been effected.

12. The petitioner has filed rejoinder wherein she has stated that the respondents have recovered an amount of Rs. 33,527/- from petitioner and the petitioner has prayed for refund of Rs. 33,527/-. It has been stated in the

rejoinder that the respondents have committed illegality in reopening past cases on the basis of letter dated 07.07.2000.

13. I have heard learned Counsel for the parties. The petitioner has placed on record office order dated 28.02.1987 vide which petitioner and others were appointed as Steno-typists. The office order dated 28.02.1987 is subject to the condition that appointees will have to clear tests in shorthand/typewriting in English and Hindi within 18 months from their appointments, failing which their services will be terminated, in addition to the terms and conditions mentioned in enclosed Annexure-A. The condition No. 6 of Annexure-A provides that he/she shall have to qualify Hindi type test at the speed of 25 words per minute within six months from the date of his/her joining services, failing which he/ she shall not be entitled for annual increments and his/her services will also be liable to be terminated. The condition No. 19 further provides that he/she shall have to qualify the test in shorthand/typewriting in Hindi within 18 months from the date of appointment, failing which their services will be terminated. The respondents have not placed on record Rules which were applicable at the relevant time nor amended Rules, as pleaded in the reply. In absence of that material, the appointment of petitioner as Steno-typist and, more particularly, her earning of increment as Steno-typist is to be considered in the light of office order dated 28.02.1987.

14. The learned Counsel for the petitioner has relied F.R. 24 which provides that an increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment will be withheld from a government servant by the government or by any authority to whom the government may delegate this power under Rule-6, if his conduct has not been good or his work has not been satisfactory, In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing of future increments. It has been submitted that in the light of F.R. 24, the petitioner is entitled to increments and those were rightly given to her/ but, later on, wrongly withdrawn for the period 16.6.1988 to 16.06.1995 and wrongly refused on or after 16,06.1996 till the increments were given to the petitioner.

15. The stand of the respondents is that since petitioner had not qualified the shorthand/typing tests as per her appointment letter, therefore, the petitioner was not entitled to increments for the period 16.06.1988 to 16.06.1995 onwards till the petitioner qualified the shorthand/typing tests in English and Hindi.

16. The condition No. 6 of Annexure-A of appointment letter dated 28.02.1987 provides that petitioner shall not be entitled to annual increments in case she fails to qualify requisite type test in Hindi within six months from the date of her joining and her services shall be liable to be terminated. There is no condition in the appointment letter that petitioner shall not be entitled to increments in case she would not qualify shorthand/type tests in English in six months. There is, however, a condition in the appointment letter that in case petitioner would not

qualify the tests in shorthand/typewriting within 18 months, then her services shall be liable to be terminated. It appears that respondents found that several candidates in terms of office order dated 28.02.1987 had not qualified shorthand/ typing tests in Hindi and English and, therefore, the respondents did not press, rather waived, the condition of termination of services of the petitioner and others for want of qualifying short hand/typing tests both in Hindi and English. It is too late for respondents to take stand that government took lenient view in not terminating the services of petitioner and others who did not qualify both the tests in 18 months.

17. The Public Service Commission on 28.01.1988 declared the result of shorthand/typewriting tests in English and Hindi of the departmental examination held on 22-23rd December, 1987. The corrigendum dated 26.03.1990 issued by Public Service Commission is to the effect that petitioner has qualified the departmental Steno-typist shorthand/typing tests in Hindi, instead of Mehar Chand at serial No. 100 in the result dated 18.01.1988. There is nothing on record to show that department conducted shorthand/typing tests within six months from the date of joining of the petitioner on 16.06.1987. Therefore, department cannot take benefit that the petitioner could not qualify shorthand/ typing tests in Hindi within six months from the date of her joining. The petitioner qualified the shorthand/ typewriting tests in Hindi vide result dated 28.01.1988 and corrigendum dated 26.03.1990 when opportunity was given to the petitioner for appearing in the tests.

18. There is no condition in the appointment letter dated 28.02.1987 that for want of qualifying shorthand/typewriting tests in English, the petitioner will not be entitled to annual increments. The letter dated 07.07.2000 cannot be given retrospective effect for denying increments to the petitioner. It has come on record that petitioner, later on, qualified even shorthand/ typewriting tests in English also. The withdrawal of increments in these circumstances amounts to reduction of pay, which is not possible except by following due process of law. The respondents have wrongly withdrawn annual increments earlier granted to the petitioner. It is not the case of the respondents that for want of satisfactory work, the petitioner is not entitled to annual increments. Thus, seen from any angle, the petitioner is entitled to annual increments with effect from 16.06.1988 onwards. The respondents have wrongly deducted an amount of Rs. 33,527/- from the petitioner on account of alleged over payment of this amount to the petitioner of annual increments.

19. No other point was urged.

20. The result of above discussion, the petition is allowed. The petitioner is held entitled to annual increments from 16.06.1988 onwards and respondents are directed to fix her pay accordingly. The respondents have wrongly recovered Rs. 33,527/- from the petitioner. The respondents are directed to refund Rs. 33,527/- to the petitioner within a period of three months from the date of supply of copy of this judgment by the petitioner to the competent authority,

failing which the respondent shall be liable to pay interest to petitioner at the rate of 9% per annum on Rs. 33,527/-

