

(1976) 06 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : C.W.P. No"s. 10 and 11 of 1976

Sri. Lal Singh

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 04-06-1976

Acts Referred:

Citation : (1977) ShimLC 123

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : P.N. Nag, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—The Petitioners in this and the connected writ petition are teachers in the service of the State of Himachal Pradesh. They entered employment some years before the year 1966.

2. On September 30, 1970 the Himachal Pradesh Government issued an order revising the pay scales of the teaching personnel in Government Schools in Himachal Pradesh in order to bring them in line with the pay scales in Punjab. The pay scales were revised with effect from November 1, 1966. Para 2(ii) of the order declared that "the employees concerned will have the option to retain their existing pay scales and allowance provided that the conditions of pay and allowances shall remain the same as previously". The option to retain the old scales was to be communicated to the prescribed authority within four months from the date of issue of the order. It was provided that the option once exercised would be final and if an officer did not exercise the option he would be deemed to have elected the revised pay scales on the expiry of the aforesaid period of four months.

3. The Petitioners decided to avail of the existing pay scales until September 15, 1968 from which date they expressed a preference for the revised pay scales. Payment of the salaries was made accordingly.

4. Subsequently, on an audit objection being raised that it was not open to the Petitioners to avail of the revised pay scales from a date later than November 1 1966, it was found that the Petitioners had been paid in excess. Accepting that view, the State Government found it necessary to recover the overpayments made. Overpayments made upto August 31, 1973 were waived, and proceedings were taken to recover subsequent overpayments.

5. By these two writ petitions the Petitioners challenge the action taken by the State Government in attempting to recover the overpayments.

6. Learned Counsel for the Petitioners, contends that Para 2(ii) of the order dated September 30, 1970 confers an option on the Petitioners to retain the existing pay scales and a further option is conferred under Fundamental Rule 23 which provides that "the holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment on the old scale....". Learned Counsel says that the Petitioners enjoyed under the order dated September 30, 1970 the option to retain the old pay scales and under Fundamental Rule 23 the option to retain those pay scales upto a specified day with the result that the revised pay scales would automatically apply thereafter. I find myself unable to accept the contention.

7. The revised pay scales came into force from November 1, 1966. The option conferred was an option to retain the old pay scales. In the absence of anything else, the option would operate from the date from which the revised pay scales came into effect. It was clearly contemplated that on exercising the option, the employee would continue to be governed by the existing pay scales from November 1, 1966 onwards. There was no provision for a subsequent change over to the revised pay scales. A perusal of Fundamental Rule 23 shows that the scope of that provision is inconsistent with what is contemplated by the terms of the order dated September 30, 1970. Fundamental Rule 23 contemplates an option to retain the old pay scales for a limited period and thereafter to have the revised pay scales applied. No such enlarged option is intended by the order of September 30, 1970. In this view of the matter the petitions must fail.

8. The writ petitions are dismissed, but with no orders as to costs.