
(2009) 12 SHI CK 0007
In the High Court Of Himachal Pradesh

State of H.P and Others

APPELLANT

Vs

Beli Ram

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Citation : (2009) 12 SHI CK 0007

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This writ petition is directed against the order of the erstwhile H.P State Administrative Tribunal passed in O.A No. (D) 426/2000 on 22.9.2006.

2. The undisputed facts of the case are that the applicant is an ex-serviceman and retired from the Indian Army on 31.7.1987. He was drawing total emoluments of Rs. 1281/- and his basic pay was Rs. 1100/- per month at the time of his retirement. After his retirement he was re-employed as a Carpenter with the respondent-State on 18.12.1988 in the pay scale of Rs. 325-495 which was later revised to Rs. 810-1440. He was however not employed against a post reserved for ex-serviceman.

3. The petitioner filed an Original Application before the Tribunal claiming that his salary should be fixed at Rs. 495/- in the pre-revised scale in view of the orders issued by the State Government on 2.8.1983, 18.12.1991 and the H.P State Civil Services (Fixation of Pay of Re-employed Pensioners) orders, 1988 issued on 1.12.1988 which came into effect from 1.6.1988. The learned Tribunal disposed of the Original Application with a direction to fix the pay of the applicant as Carpenter w.e.f. 16.12.1988 by taking into account the last pay drawn by him at the time of discharge/retirement from the Army, i.e., Rs. 1100/- basic pay and by taking into account the instructions dated 2.8.1983, 18.12.1991 and 1.12.1988. Aggrieved by the said order, the State is before us.

4. It is not disputed before us that the case of the respondent is governed by the H.P State Civil Services (Fixation of Pay of Re-employed Pensioners) Orders,

1988 which came into effect from 1.6.1988. These orders were issued on 1.12.1988 and were made effective from 1.6.1988 before the appointment of the respondent. Under the original order of 2.8.1983, in the case of a re-employed ex- serviceman even if he was not employed against a reserved post though the ex-serviceman was not entitled to the benefit of seniority but he was entitled to get his pay fixed by taking into consideration the last pay drawn by him in the Army. These instructions were modified in the year 1991 on similar lines. However, in the instruction issued in the year 1991, it was clearly laid down that the modified instructions would be applicable only upto 31.5.1988 whereafter the H.P State Civil Services (Fixation of Pay of Reemployed Pensioners) Orders, 1988 would be operative. It is not disputed before us that the respondent is governed by the H.P State Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1988. Clause 4 of the said order reads as follows:

12. Fixation of Pay of Reemployed Pensioners

(a) Reemployed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are reemployed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b) (i) In all cases where the pension is fully ignored, the initial pay on reemployment shall be fixed at the minimum of the scale of the reemployed post.

(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on reemployment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the reemployed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is reemployed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the reemployed post. Similarly, if the minimum of the scale of pay in which a pensioner is reemployed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scale of the pay of the reemployed post. However, in all these cases, the non-ignorable part of pension excluding pension equivalent of gratuity shall be reduced from the pay so fixed.

(c) The reemployed pensioner will in addition to pay as fixed under para (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are reemployed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:

(i) in the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who held posts below Group A posts at the time of their retirement, the entire pension and pension equivalent

of retirement benefits shall be ignored.

(ii) in the case of service officers belonging to the Defence Forces and Civilian pensioners who held group A posts at the time of their retirement, the first Rs. 500/- of the pension benefits shall be ignored.

5. A bare perusal of the aforesaid order clearly shows that this order is applicable to reemployed ex-serviceman also. A bare perusal of Clause 4 also clearly shows that a re-employed pensioner is not entitled to protection of the scale of pay of the post held by him prior to the retirement. It is also apparent that in case the pension being drawn by the employee not taken into consideration then the initial pay on re-employment has to be fixed at the minimum of the scale of pay of the reemployed post. Sub Clause (d) of this Clause also makes it clear that when a person retires before attaining the age of 55 years, the pension is to be ignored for initial pay fixation. It is, therefore, clear that the case of the respondent is covered under sub Clause (b)(i) and sub Clause (d). The learned Tribunal fell in error in assuming that the case of the respondent is covered under sub Clause (b)(ii). We, therefore, set aside the order of the Tribunal and hold that the pay of the respondent has to be fixed in accordance with Clause 4(b)(i) and 4(d) of the H.P State Civil Services (Fixation of Pay of Reemployed Pensioners) Orders, 1988.

6. The writ petition is disposed of accordingly. No order as to costs.