
(2009) 11 P&H CK 0026
In the Punjab And Haryana At Chandigarh

Surinder Kaur

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 11 P&H CK 0026

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajai Lamba, J.—This petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondents not to effect recovery from Family Pension of the petitioner on account of excess payment of Dearness Allowance on Family Pension.

2. It has been pleaded that Hardev Singh, husband of the petitioner was serving the respondents as Deputy Superintendent of Police. Hardev Singh died on 13.12.1999 while in service. Family Pension was released in favour of the petitioner alongwith Dearness Allowance on Family Pension.

3. Balwinder Singh, son of the petitioner was given appointment on compassionate ground on 12.1.2001. Under the instructions issued by the respondents, if the spouse is getting Family Pension and a family member is given appointment on compassionate ground, Dearness Allowance is not payable on Family Pension which is sought to be recovered by virtue of the impugned action.

4. Learned Counsel contends that the issue raised in this petition is squarely covered by judgment dated 20.1.2004 rendered by the Division Bench while dealing with Civil Writ Petition No. 891 of 2003 titled `Mukhtiar Singh and Ors. v. State of Punjab and Ors..

5. Notice of motion.

6. On the asking of the Court, Mr. B.S. Chahal, Deputy Advocate General, Punjab, accepts notice on behalf of the respondents.

7. Heard.

8. It has not been disputed by the learned Counsel for the respondents that the issue raised in this petition is covered by Mukhtiar Singhs case (supra). Learned Counsel has pointed out that the State of Punjab had gone up in appeal before the Hon'ble Supreme Court of India. The appeal has been dismissed and therefore, the judgment [Mukhtiar Singhs case (supra)] has attained finality.

9. Considering the facts and circumstances of the case, I am of the opinion that the matter is covered by Mukhtiar Singhs case (supra).

10. Operative part of Mukhtiar Singhs case (supra) reads as under:

In so far as the first issue is concerned, the controversy in hand stands adjudicated upon by the Apex Court in HSEB and Ors. v. Azad Kaur (Civil Appeal No. 5835 of 1998, decided on 18.8.1999). In view of the determination of the Apex Court on the issue under reference, we are satisfied that the claim of the petitioners for dearness allowance on family pension is misconceived. The first contention of the petitioner is, therefore, not accepted.

The second issue relates to the respondent recovery of dearness allowance wrongly paid to the petitioners. It is not a matter of dispute between the parties that the payment of dearness allowance to the petitioners was not based on any misrepresentation at their hands. It is clear that dearness allowance was wrongfully paid to the petitioners by the respondents unilaterally. That being so, in view of the decision rendered by the Apex court in Sahib Ram v. State of Haryana and Ors. 1994(5) SLR 753, we are satisfied that the recovery should not be effected from the petitioners.

In view of the above, the instant writ petitions are dismissed in so far as the claim of the petitioners for dearness allowance on family pension is concerned. However, the prayer of the petitioners is allowed in respect of the recovery sought to be made from them. In case any recovery has been made from the petitioners in the interregnum, the same shall be refunded to the petitioners within a period of four months from today.

11. In view of the above, this petition is allowed in the same limited terms as decision rendered in Civil Writ Petition No. 891 of 2003 titled Mukhtiar Singh v. State of Punjab and Ors. decided on 20.1.2004.