
(2015) 05 SHI CK 0049
In the High Court Of Himachal Pradesh
Case No : CWP No. 3318 of 2009

Surjan Singh

APPELLANT

Vs

Himachal Road Transport Corporation and Others

RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Citation : (2015) 05 SHI CK 0049

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Umesh Kanwar, Advocate Manish Sharma, for the Appellant; Adarsh Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner joined as Conductor in the respondent-corporation on 12.10.1990. He was allowed proficiency step on completion of 8 years satisfactory service as Conductor vide order dated 20.9.2000 with effect from 12.10.1998. He was granted benefit of proficiency step up with effect from 1.11.2007 on completion of 16 years of service. Petitioner was served with a show cause notice on 6.6.2009 whereby he was informed that as per Finance Department notification dated 30.12.1998, the service records and ACRs of the individuals are required to be taken into consideration. It was further stated that the service record of the petitioner was also examined, but it was not found satisfactory. Petitioner filed detailed reply on 7.7.2009. However, fact of the matter is that benefit of proficiency step up granted to the petitioner was withdrawn on 25.7.2009. The averments made in the reply have not been taken into consideration by the Regional Manager while issuing impugned Annexure P-4 dated 25.7.2009. Once the petitioner had been called upon to file the reply, stand taken by the petitioner was required to be looked into by the Regional Manager.

2. Petitioner has neither misled nor misrepresented the authorities at the time of grant of proficiency step up vide order dated 20.9.2000 whereby his pay was

increased from Rs. 3900/- to Rs. 4020/- on completion of 8 years" service and when his pay was increased from Rs. 5320/- to Rs. 5480/- on completion of 16 years" service vide order dated 20.9.2008. The notification dated 30.12.1998 was within the knowledge of the respondent-corporation when the proficiency step ups were granted to the petitioner.

3. Their Lordships of the Hon'ble Supreme Court in Union of India (UOI) and Others Vs. Jagdish Pandey and Others, AIR 2010 SC 3019 : (2010) 126 FLR 914 : (2010) 7 SCC 689 : (2010) 5 SLR 209 : (2010) 7 UJ 3652 : (2010) AIRSCW 4762 have held that pay scale is a legitimate right of an employee and except for valid and proper reasons it cannot be varied. Their Lordships have held as under:

8. The respondents in the present appeal had challenged the validity of the above order before the Tribunal on various grounds including that they have always been placed at parity with the goods driver, they have been given similar scales and there was no reason, whatsoever, for altering the pay scale to the prejudice of the respondents, which was in force for a considerable time. It will be useful for us to notice the findings recorded by the Tribunal. In paragraph 8 of its judgment the Tribunal noticed that both the parties have not placed on record any material to indicate as to what was the pay scale provided for the TWDs pursuant to the various Pay Commission Reports. The Tribunal specifically noticed and recorded the finding that for the last 40 years, i.e. right from 1959 the respondents were being paid the same pay scale as goods drivers. There was no disparity of pay scales between TWDs and goods drivers after Union of India and Railways had accepted recommendations of the IInd, IIIrd, IVth and even of Vth Pay Commissions. The Tribunal also specifically noticed vague denials of the Union of India and that such denials were hardly substantiated by any cogent material. Reliance was placed upon the judgment of the Calcutta High Court in relation to the grant of running allowance. In that Writ Petition, the only dispute raised by the parties related to the grant of running allowance and the Union of India did not raise the issue of disparity in pay scale. This order of the High Court had attained finality. We have already referred to the findings recorded by the Tribunal where it is specifically noticed that after acceptance of Vth Pay Commission Report by the Government, TWDs were given the salary in the pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 and in the letter dated 15.4.1993 the concerned authorities noticed the disparity created even between the TWDs i.e. in Sealdah division out of 32 TWDs, 24 were getting pay scale of Rs. 1350-2200 (unrevised) and remaining 8 were getting the pay scale of Rs. 1320-2040 and it directed a uniform pay scale of Rs. 1350-2200 should be given to all the TWDs. Another reason that weighed with the Tribunal was that no material has been produced to show as to what were the reasons or material on the basis of which the authorities had decided to discontinue the pay scale of Rs. 1350-2200 to these respondents. The above reasoning and discussion in the order of the Tribunal clearly shows that the action on the face of it was arbitrary. This order of the Tribunal was confirmed by the High Court and the respondents made no

effort to place anything on record to show that they were different and distinct classes and were entitled to receive different pay scales. Even in the order dated 9th August, 2002 the Tribunal specifically noticed that it was not even averted that eligibility criteria for the post of TWDs was different than that for the goods driver and their duties were substantially different. In other words, either before the Tribunal or before the High Court the Union of India never pleaded the essential basis for justifying payment of different pay scales to two categories of drivers i.e. TWDs on the one hand and goods train drivers on the other. There has to be a substantial difference in method of recruitment, eligibility, duties and responsibilities before substantial disparity in scale can be justified. As far as recording of finding of facts is concerned, factual disputes can hardly be raised before this Court and in any case for the first time. Despite this the Union of India has failed to place any material to substantiate its decision before the Forum/Courts. The judgment of the Calcutta High Court, in relation to running allowances, has attained finality. At that time no other issue was raised by Union of India that they are different and distinct posts with different pay scales and as such identical running allowances could not be paid. In fact, the judgment of the Calcutta High Court has duly been implemented now for years together without objection. Not only this, same pay scale as that of the goods train driver has been paid to these respondents for years and there appears to be no justification on record for unilateral withdrawal of such a scale. Pay scale is a legitimate right of an employee and except for valid and proper reasons it cannot be varied, that only in accordance with law. None of these justifiable reasons exist in the present case. The impugned order itself does not give any reason. The expression "erroneously" used in the order can hardly justify withdrawal of such an existing right.

4. Their Lordships of the Hon'ble Supreme Court in *State of Punjab and others etc. v. Raiq Masih (White Washer) etc.* JT 2015 (1) SC 95 have held down the following principles governing the situation where the recovery by the employers would be impermissible in law. It has been held as follows:

[12] It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

5. Accordingly, the present petition is allowed. Annexure P-4 dated 25.7.2009 is quashed and set aside. Pending application(s), if any, also stands disposed of. No costs.