

(2014) 05 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (C) No. 427 (AP) of 2012

Taguram Perme

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 26-05-2014

Acts Referred:

Citation : (2014) LabIC 3236

Hon'ble Judges : C.R. Sarma, J

Bench : Single Bench

Advocate : Muk Pertin, Tambo Leriak, K. Dabi, Chakter Gongo, W. Sawin, L. Perme, K. Taron and B. Bui, Advocate for the Appellant; Geeta Deka, Addl. Sr. Govt. Advocate, Advocate for the Respondent

Judgement

C.R. Sarma, J.—Heard Mr. Muk Pertin, learned counsel, appearing on behalf of the petitioner. Also heard Ms. Geeta Deka, learned Addl. Senior Government Advocate, appearing on behalf of all the respondents. The challenge in this writ petition is to the letter, dated 12.01.2012, issued by the Director of Audit & Pension, Government of Arunachal Pradesh, Naharlagun, and the letter, dated 19.10.2012, issued by the Deputy Director of School Education, Government of Arunachal Pradesh, East Siang District, Pasighat.

2. By the impugned order, dated 19.10.2012, the Deputy Director of School Education, Government of Arunachal Pradesh, East Siang District, Pasighat, has directed the writ petitioner to refund and deposit an amount of Rs. 1,17,491/- by Treasury Challan on the ground that the said amount was drawn by the petitioner as excess salary w.e.f. 21.11.2003 to 07/2011. The petitioner who joined as an Assistant Teacher(C) [for short AT(C)], retired on superannuation, on 31.07.2011, as an AT(C). After his retirement, necessary pension papers were submitted before the Director of Audit & Pension, Government of Arunachal Pradesh, Naharlagun. The Director, abovementioned, after examining the pension papers and the service records of the petitioner, pointed-out that though the petitioner was serving as an AT(C), was wrongly given the pay-scale of Assistant

Teacher(B) for short AT(B), by enhancing his pay-scale from Rs. 3050-75-4590/- p.m. to Rs. 4,000-100-6,000/- p.m. w.e.f. 01.04.1998. Accordingly, the Director of Audit & Pension, Government of Arunachal Pradesh, Naharlagun, by his letter, dated 12.01.2012, aforesaid, requested the Deputy Director of School Education, Government of Arunachal Pradesh, East Siang District, Pasighat, who was the controlling authority of the petitioner, to review the matter regarding excess drawal of pay & allowances and to recover and deposit the excess amount. On receipt of the said letter, the Deputy Director of School Education, Government of Arunachal Pradesh, Pasighat, i.e. Respondent No. 3, by issuing the letter dated 19.10.2012, aforesaid, informed the petitioner that there was overdrawal of salary & other allowances w.e.f. 21.11.2003 to 07/2011 and accordingly, asked him to deposit Rs. 1,17,491/- through Treasury Challan. In view of the issuance of the said letters and nonpayment of pensionary benefit, the petitioner has challenged the said decision regarding the recovery of excess amount drawn as salary & other allowances on the ground that he was entitled to get the pensionary benefit on the basis of his last salary drawn.

3. The State Respondent Nos. 1, 2 and 3, have challenged the said plea of the petitioner by filing an affidavit-in-opposition. According to the contesting respondents, though the petitioner was entitled to get-the salary of AT(C) due to mistake, he was given the pay-scale of AT(B) w.e.f. 01.04.1998 and as such, there was excess drawal amounting to Rs. 1,17,491/- as pay & allowances, in respect of the salary of the petitioner.

4. Controverting the said contention, the writ petitioner filed an affidavit-in-reply and stated that he reached the pay-scale of AT(B) on the basis of increment, ACP and MACP and that, he was never given the pay-scale of AT(B) as indicated in the impugned letters. In the said affidavit-in-reply, it has also been contended that though this Court, by order, dated 20.12.2012, directed the respondent authorities to pay at least 50% of the provisional pension, the respondent authorities paid 50% as the provisional pension for a period of 6 months only and thereafter, ceased to pay any pensionary benefit to the petitioner.

5. Mr. Pertin, learned counsel for the petitioner, has submitted that by virtue of his length of service, earning increment, ACP, MACP, the petitioner reached the pay-scale of Rs. 4,270/- on 01.07.1998, which was above the initial scale of AT(B) and that, at no point of time, he was given the scale of AT(B). In support of his contention, learned counsel, has referred to the Annexure-1 series to the affidavit-in-reply. Mr. Pertin, learned counsel for the petitioner, has further submitted that even if any excess amount was paid to the petitioner, he cannot be liable to repay the same for no fault on his part after his superannuation.

6. In support of his contention, Mr. Pertin, learned counsel for the petitioner, has referred to the decisions held in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ; and Sahib Ram Vs. State of Haryana and Others, .

7. Ms. Deka, learned Addl. Senior Government Advocate, referring to the statement of pay fixation i.e. Annexure-1 series, aforesaid, has submitted that though the writ petitioner was functioning as an AT(C), the authorities concerned, due to inadvertent mistake, fixed his salary at Rs. 4,200/- which is the pay-scale of AT(B) w.e.f. 01.04.1998 and thus, he has given the higher salary than his entitlement. Supporting the impugned letters and the decision of the Respondent No. 3, learned Senior Additional Government Advocate has submitted that as the petitioner was given excess salary, the Respondent No. 3 committed no error by asking him to deposit the excess amount.

8. Having heard the learned counsel appearing for both the parties, I have carefully perused the materials on record and the relevant extract of the Service Book(Annexure-I series to the affidavit-in-reply of the petitioner).

9. There is no dispute that the petitioner joined as an AT(C) and he retired on the same capacity on 31.07.2011 on attaining the age of superannuation. Admittedly, on 01.07.1998, the petitioner was given the scale of Rs. 4,270/-. From the order passed by the Deputy Director of School Education, Government of Arunachal Pradesh, Pasighat, it appears that the petitioner's scale was enhanced and fixed at Rs. 4,200/- as on 01.04.1998 in the scale of pay of Rs. 4,000-100-6,000/- p.m. vide Govt. Order No. ED-2/360/98 dated 27.03.2000 under FR-23 and Clause 1(a)(2) of FR-22(I). The said order reveals that the petitioner was given the scale of AT(B) and thus, he was given salary in the higher scale w.e.f. 01.04.1998. Prior to the fixation of the said scale of pay, the petitioner used to get increment in the month of July every year, and thus, on 01.07.1997, his salary was Rs. 4,190/- inasmuch as his increment as AT(C) was due in the month of July. Therefore, it is clearly found that the pay-scale of Rs. 4,200/- given on 01.04.1998 was the pay-scale of AT(B). Therefore, I find no difficulty in understanding that the petitioner's pay-scale was wrongly fixed in the scale of Rs. 4,000-100-6,000/- p.m. w.e.f. 01.04.1998. Hence, there can be no dispute that the petitioner was given excess salary and the total amount of such salary, as calculated and intimated by the Respondent No. 3, stood at Rs. 1,17,491/-.

10. There is no dispute that the said enhanced pay-scale was wrongly given by the controlling authority of the petitioner and the petitioner played no role in fixation of his salary. There is nothing, on record, to show that the petitioner had, in any way, either mis-represented or compelled the authorities concerned to give him higher salary.

11. In the case of Shyam Babu Verma (supra), the question regarding recovery of excess amount drawn by an employee came up for consideration. The Apex Court, in Paragraph No. 11, observed, as under:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480/- in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973, and only after the period of 10 years, they

became entitled to the pay scale of Rs. 330-560/- but as they have received the scale of Rs. 330-560/- since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

12. In the case of Sahib Ram (supra) also, the benefit of higher pay-scale was given by wrong construction of pay-scale. In the said case, the Apex Court restrained the authority from recovering the excess amount already paid to the employee, on the ground that no misrepresentation was made by the appellant.

13. In the present case also, there is nothing, on record, to show that the higher pay-scale was given to the petitioner due to any misrepresentation made by the petitioner. The principle laid down in the above noted cases is applicable to the case at hand. As there was no fault on the part of the petitioner in fixation of his pay-scale, he cannot be held responsible for such wrong fixation and it will not be just and reasonable, to penalize him by directing to re-pay the amount, already paid to him, due to the fault on the part of the authorities concerned. Therefore, I find sufficient merit in this writ petition. Accordingly, the impugned direction/order made by the letter dated 19.10.2012, issued by the Respondent No. 3 viz. Deputy Director of School Education, Government of Arunachal Pradesh, East Siang District, Pasighat, requiring the petitioner to refund an amount of Rs. 1,17,491/-, is hereby set aside. The petitioner, Sri Taguram Perrae, be given all his pensionary benefits, to which he is entitled as per rules. The entire process be completed within a period of 3(three) months from today. With the above directions, this writ petition stands is allowed. However, there shall be no order as to cost.