
(2003) 01 P&H CK 0159
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6799 of 2001

Tej Singh Retired Superintendent	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 133 PLR 492

Hon'ble Judges : S.S. Nijjer, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Sameer Sachdeva, for the Appellant; H.S. Sran, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The petitioner is aggrieved against the order dated 7.3.2001, Annexure P-7, whereby he has been asked to deposit a sum of Rs. 13,255/- on account of wrong fixation of salary without issuing any show cause notice.

2. The petitioner was promoted as Assistant on qualifying Assistant Grade Examination within first five chances and was posted in the office of District Education Officer (S) Bathinda. Subsequently, the petitioner was promoted as Superintendent on 19.3.1993. One Kishori Lal was junior to the petitioner in as much as he was at Sr. No93 as against the petitioner who was at Sr. No. 50 in the seniority list of Senior Assistants. Since Kishori Lal was drawing more pay therefore, the pay of the petitioner was stepped up to the level of Kishori Lal and fixed at Rs. 1800/- i.e. equal to the salary of Kishori Lal.

3. Subsequently, the Accountant General, Punjab raised an objection against the wrong fixation of pay for the period November, 1994 to September, 1995. However, the District Education Officer (Schools) justified the fixation of pay. On 20.2.1996 the Accountant General (Audit) dropped the objection in respect of the pay fixation of the petitioner. The petitioner retired as Superintendent from the

office of the District Education Officer (Schools) on 30.4.1996. The petitioner filed a writ petition No. 10753 of 1999 in view of the fact that there was anomaly in respect of the fixation of pay from 1.1.1986. The said writ petition was allowed on 17.5.2000 but the Distt. Education Officer, Mansa raised an objection on 23.6.2000 that a sum of Rs. 11,759/- is due from the petitioner on account of wrong fixation of pay. Subsequently, the District Education Officer passed an order on 17.3.2001 on the basis of communication from the Accountant General, Punjab requiring the petitioner to deposit a sum of Rs. 13,255/-.

4. In the written statement, the respondents have stated that the pay of the petitioner was wrongly fixed inasmuch as the pay of Kishori Lal was stepped up with the pay of Tirlok Nath Khanna who was junior to Kishori Lal but was promoted having passed the Assistant Grade Examination in second chance as against Kishori Lal who passed the examination in the fifth chance. The petitioner has passed the examination in fourth chance and thus, asserted that the pay of the petitioner was wrongly stepped up.

5. After hearing the learned counsel for the parties and going through the record of the case, we are of the opinion that the communication, Annexure P-7 is illegal and is not sustainable.

6. The recovery is sought to be effected without complying with the principles of natural justice and giving the opportunity of hearing. The recovery could be set aside on this short ground alone. However, we have gone through the order to find out the justification in passing the impugned order. The pay of the petitioner was stepped up by the respondents without any misrepresentation on the part of the petitioner. Learned counsel for the petitioner has relied upon *Sahib Ram v. State of Haryana* 1995(1) S.C.T. 668 SC to contend that the recovery cannot be effected if there is no misrepresentation on the part of the petitioner. Therefore the mere fact that the pay of the petitioner was wrongly fixed is not a ground to make recovery from the petitioner.

7. In view of the above, we find that the order Annexure P-7 is wholly illegal, violative and against the principles of natural justice and is thus liable to be set aside. The respondents are however, at liberty to refix the pay of the petitioner but cannot recover the amount paid in excess for the past period. In view of above the writ petition is allowed. Order Annexure P-7 is set aside. No costs.

Sd/- S.S. Nijjer, J.