

(2010) 12 SHI CK 0174
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 10104 of 2008

Tek Singh

APPELLANT

Vs

F.C.-cum-Secretary (P.W.D.) and Another

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0174

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed for quashing of office order dated 17.3.2003 with further prayer that direction may be given to the Respondents to allow the Petitioner in the pay scale of Rs. 5000 - 8100 with all consequential benefits. The further prayer of the Petitioner is that he may be allowed protection of his pay as Junior Assistant under F.R. 27 or as a measure personal to him. The Petitioner has filed the petition against order dated 17.3.2003 whereby the placement/promotion of the Petitioner as Junior Assistant ordered earlier and pay fixed in the higher pay scale of Rs. 5000 - 8100 during the year 1998 and on 6.8.2002 has now been superseded /withdrawn/cancelled and revised/re-fixed wrongly, arbitrarily, unconstitutionally and illegally by ordering placement under 50: 50 percent by the Superintending Engineer, HPPWD, Mandi as a Junior Assistant in the pay scale of Rs. 4400 - 7000 has been allowed reducing the pay of the Petitioner by three increments all of a sudden without assigning any reason and without serving show cause notice and without calling for option. It has been alleged that change/cancellation/supersession of earlier promotion/ placement, reduction in pay fixation and recovery is arbitrary, unconstitutional, illegal and is punitive in nature and as such the same is liable to be quashed and set-aside.

2. The Respondents have filed the reply. It has been stated that Petitioner was placed as Junior Assistant in the pay scale of Rs. 4400 - 7000 vide

Superintending Engineer 1st Circle, HPPWD, Mandi office order dated 17.3.2003. This placement was ordered in pursuance of H.P. Govt. notification dated 31.5.2001 whereby the Pay Revision Rules were amended to the extent that cadre of Clerks shall be bifurcated into the posts of Clerks in the pay scale of Rs. 3120 - 5160 (with initial start of Rs. 3220/- P.M.) and the Junior Assistant in the pay scale of Rs. 4400 - 7000 in the ratio of 50: 50. It has also been stated that Junior Assistant was to be filled up by the placement to the extent of 100% out of Clerks who have an experience of working as such for a minimum period of five years in the cadre of Department. The amendment of Pay Revision Rules were made applicable w.e.f. 1.1.1996, hence the order dated 31.5.2001 is legal. It has also been stated that amendment has not effected the categories of Junior Assistant who were allowed the benefit of F.R. 22 (a) (i) as their promotion as Junior Assistants was as per Pay Revision Rules 1998 vide notification dated 1.9.1998.

3. I have heard the learned Counsel for the parties. It has been submitted on behalf of the Petitioner that the impugned action of the Respondents has adversely affected the Petitioner inasmuch as the Petitioner was earlier promoted as Junior Assistant and now he has been given the placement as Junior Assistant instead of promotion as Junior Assistant. The consequence of impugned action is that the pay of the Petitioner has been reduced and Petitioner will lose three increments. The impugned action of the Respondents has civil consequences. The Petitioner was not heard nor he was given any option before the impugned action was taken by the Respondents. It has been submitted that due to impugned action the pay of the Petitioner has been reduced from back date and no doubt the Government have waived off recoveries to some extent but still the recoveries have not been waived off altogether. The learned Counsel for the Petitioner has relied Syed Abdul Qadir and Others Vs. State of Bihar and Others, and Division Bench judgment of this Court in CWP(T) No. 9003 of 2008 dated 5.1.2010 titled Narain Singh and Ors. v. Commissioner-cum-Secretary(Revenue) and Anr. He has submitted that the Respondents have given the earlier benefit to the Petitioners by promoting them as Junior Assistants. It is not a case where the Petitioner mis-represented or played fraud for obtaining undue benefit from the Respondents. The Petitioner was given benefit by the Respondents in their own wisdom. A right had accrued in favour of the Petitioner due to earlier benefit given by the Respondents. Such right could not have been taken away by the Respondents without following the principles of natural justice and for the same reasons no recovery can be made from the Petitioner as a consequence of impugned action of the Respondents.

4. In Syed Abdul Qadir (supra) the Supreme Court has held as follows:

Undoubtedly, the excess amount that has been paid to the Appellants-teachers was not because of any misrepresentation or fraud on their part and the Appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to

mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the Appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the Appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the Appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the Appellants-teachers should be made.

5. The learned Counsel for the Petitioner has submitted that the Division Bench judgment in Narain Singh's (supra) is more nearer to the facts of the present case. The Division Bench in that case has held as follows:

Petitioner was promoted w.e.f.1.1.1996 pursuant to orders dated 1st December, 1998. The general revision of pay scale was notified and issued on 20th January, 1998. The pay of the Petitioner was enhanced. However, vide order dated 31st December, 2001 the promotion of the Petitioner as Junior Assistant in the pay scale of Rs. 4400 - 7000 has been withdrawn. This order has been passed admittedly without hearing the Petitioner. The Petitioner has been visited with civil and evil consequences. It is settled law by now that any order which has civil and evil consequences must be passed in accordance with the principles of natural justice.

Accordingly, Annexure A-1 dated 31st December, 2001 is quashed and set-aside. However, liberty is reserved to the Respondents to proceed with the matter in accordance with law.

The petition stands disposed of.

In the present case also the impugned action has been taken without hearing the Petitioner. Therefore, in view of the judgment dated 5.1.2010 in Narain Singh's (supra), the impugned action of the Respondents is not sustainable.

6. No other point was urged.

7. The result of the above discussion, the petition is allowed, Annexure A-1 dated 17.3.2003 is quashed and set-aside. However, liberty is reserved to the Respondents to proceed with the matter in accordance with law after hearing the Petitioner either personally or through his representative. No costs.