

(2024) 04 SHI CK 0090
In the High Court Of Himachal Pradesh
Case No : CWPOA No.6347, 6537 Of 2020

Vikrant Arya And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 22-04-2024

Acts Referred:

Citation : (2024) 04 SHI CK 0090

Hon'ble Judges : Tarlok Singh Chauhan, J;Sushil Kukreja, J

Bench : Division Bench

Advocate : Munish Dhatwalia, Suman Bhimta, Anup Rattan, Ramakant Sharma, Sharmila Patial, Raj Negi

Judgement

Tarlok Singh Chauhan, J

1. Since common questions of law and facts arise for consideration in these petitions, therefore, they were taken up together for hearing and are being disposed of by a common judgment.

2 These petitions have been filed for grant of the following substantive relief:

CWPOA No. 6537 of 2020.

"That the respondents may direct to give the Dearness Allowances from November 2012 till the October 2018 along with arrears."

CWPOA No.6347 of 2020.

"That the respondents may kindly be directed to pay dearness allowances to the applicant from November, 2012 till April, 2018 and arrears accrued thereto from the same be paid to the applicant along with interest upon the arrears."

3. The petitioners were appointed as Lecturers in the College of Ayurvedic Pharmaceutical, Sciences, Joginder Nagar, District Mandi, H.P. by the Society namely Society for Ayurvedic Pharmacy Education and Training, Himachal Pradesh, vide Office Order dated 02.04.2012. Condition No.3 of this order

wherein the terms and conditions of appointment were set out read as under:

"3. The contract appointee will be paid contractual emoluments @ Rs.10,300+4400 Grade Pay+ Dearness allowance (as applicable to other Govt. servants) per month. The contract appointee will be entitled for increase in the contractual emoluments in the shape of increment @ Rs.3% (10300+4400 Grade Pay) for further extended years and no other allied benefits such as senior/selection scales and NPA etc. shall be given."

4. The respondents have framed byelaws for the post of Lecturers in the College of Ayurvedic Pharmaceutical, Sciences, Joginder Nagar, District Mandi, under the Department of Ayurveda to be filled up by the Society, for Ayurvedic Pharmacy Education, H.P. (for short "the Byelaws").

5. Byelaw No.8 provides for the terms of appointment and Clause II thereof provides for emoluments which read as under:

"II Emoluments:-

The contractual emolument will be Rs.14700+DA (as applicable) + annual increment @ 3% if the contract is extended beyond one year."

6. It is on the strength of the aforesaid Clause that the instant petitions have been filed by the petitioners.

7. The sole ground on which the respondents have opposed the claim of the petitioners is that the dearness allowance had been granted to the petitioners inadvertently and as being contractual appointees, they were not entitled for any dearness allowance because as per the Notification dated 03.12.2009, the contractual appointee is entitled for fixed amount equal to the minimum of the pay band plus grade pay.

8. On 14.03.2024, this Court passed the following order: "Heard for some time.

The instant petition has been filed for grant of the following substantive relief:-

"That the respondents may direct to give the Dearness Allowances from November 2012 till October, 2018 along with arrears."

In terms of order dated 02.04.2012, the petitioner is entitled to emoluments in the shape of increment @ 3% for further extended years and even in the supplementary affidavit, so filed, pursuant to the directions passed by this Court, it is evidently clear from Annexure R-II that appointees shall be entitled to 3% increment, in case contract is extended beyond one year.

Confronted with this, learned Additional Advocate General prays for and is granted three weeks' time to obtain instructions.

List on 04.04.2024."

9. Thereafter, when the matter came up for consideration on 18.04.2024, the

Court passed the following order:

"We are not at all satisfied with the stand taken by the respondents, more particularly with regard to the compliance of the order dated 14.3.2024. Therefore, Director (Ayush) is directed to appear before this Court along with relevant record on the next date of hearing and explain his stand as to how the respondents can claim that the dearness allowance was granted to the petitioner inadvertently given the fact that not only under clause 8(II) of appointment letter of the petitioner, he was held entitled to the grant of dearness allowance, but even the aforesaid stand is otherwise contrary to the service bye-laws as appended with the supplementary affidavit filed by respondent No.2 itself, more particularly, Annexure II at page 31-33 of the paper book.

List on 20.4.2024."

10. Today, the Director (AYUSH) has appeared before the Court and placed on record instructions dated 19.04.2024 to justify the stand of the respondents wherein it has been reiterated that the dearness allowance has been allowed to the lecturers including the petitioners contrary to the instructions dated 03.12.2009 of the Finance Department. It has further been pointed out that instructions to the Principal, College of Ayurvedic Pharmaceutical Sciences, Joginder Nagar, District Mandi, H.P. for withdrawal of dearness allowance have already been issued on 23.03.2013.

11. We really wonder how the respondents can seek to justify their stand given the fact that the petitioners are entitled to the dearness allowance not only on the strength of Condition No.3 of appointment order dated 02.04.2012 but also on the strength of byelaws framed by the respondents themselves, more particularly, byelaw No.8 and Clause II thereof.

12. It is too late in the day for the respondents to contend that the emoluments were wrongly paid to the petitioners, more particularly, once these have been granted under the byelaws as it is more than settled that the Executive Instructions cannot override the byelaws. That apart, even if, some instructions are issued today, they would be bad in law as it is settled proposition of law that vested rights or benefits accrued in favour of an employee cannot be retrospectively taken away even by legislation.

13. In *Chairman, Railway Board and others vs. C.R. Rangadhamaiah and others* (1997) 6 SCC 623, the Constitution Bench of the Hon'ble Supreme Court concluded that retrospective amendment affecting vested and accrued rights of the government employees is invalid.

14. In *Bank of Baroda and another vs. G.Palani and others* (2022) 5 SCC 612, the Hon'ble Supreme Court concluded that existing provisions of the Regulations could not have been amended with retrospective effect taking away the rights accrued in favour of the employees.

15. In view of the aforesaid discussion and for the reasons stated hereinabove,

we have no other option but to allow these petitions. Ordered accordingly. The respondents are directed to grant dearness allowance to the petitioners: (i) in CWPOA No.6537 of 2020 from November, 2012 till October, 2018 and in (ii) CWPOA No. 6347 of 2020 from November 2012 till April, 2018, in terms of order of appointment dated 02.04.2012 and in terms of byelaw No.8 and Clause (II) thereof, within a period of four weeks from today.

16. For compliance to come up on 20.05.2024.