(2009) 03 SHI CK 0024

In the High Court Of Himachal Pradesh

Vinod Walia APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Citation : (2009) 1 ShimLC 399

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—In the present petition, the petitioner has prayed for the following relief:

(a) the respondents be directed not to re-fix his pay as per the observations made by the Audit but the pay already fixed vide Annexure P-IV should be allowed to stand;

(b) no recovery of the alleged excess amount should be effected from the applicant.

2. In January, 1968, petitioner was appointed as Drawing Instructor in the Government Polytechnic, Hamirpur in the pay scale of Rs. 150-300. He was confirmed and subsequently in 1972 his basic pay was revised to Rs. 200-450 plus special pay of Rs. 50/-.

3. The pay scales of the employees of the State of Himachal Pradesh were revised on the pattern of the employees of the State of Punjab and later on his pay scale was revised to Rs. 700-1200 plus special pay of Rs. 50/- on the pattern of the employees of the State of Punjab.

4. The Himachal Pradesh Public Service Commission selected the petitioner for the post of Lecturer (Mechanical Engineering) in the Government Polytechnic, Hamirpur. On his appointment, he joined the said post on 12.11.1984 in the pay scale of Rs. 940-1850 plus Rs. 100/- as special pay. Immediately prior to the

said appointment, he was drawing basic pay of Rs. 910/- plus Rs. 100/- special pay in the pay scale of Rs. 700-1200 plus special pay of Rs. 100/-.

5. On 1.5.1985, petitioner represented to the respondent-State requesting for fixation of his pay in accordance with the Fundamental Rules 22-C. Accordingly, in consultation with the Finance Department of the State, the Director, Technical Education vide Memo (Annexure P-IV) dated 24.12.1985 re-fixed the petitioner''s pay in accordance with FR 22-C in the higher post of Lecturer at the stage of Rs. 1000/- plus Rs. 100/- special pay w.e.f. 12.11.1984.

6. Somewhere in the year 1991, while auditing the departmental account of the Government Polytechnic, Hamirpur, the Audit party noticed the discrepancy and took the audit objection that the special pay of Rs. 50/- could not have been taken into account and added in the basic pay of the grade of the lower post while fixing the pay under FR 22-C. According to the audit report due to the said wrong fixation of the basic pay, an amount of Rs. 5254/- stood paid in excess for the period November, 1985 upto December, 1990.

7. Based on the said audit objection, in consultation with the Finance Department, the petitioner''s pay was re-fixed and vide letter dated 17.12.1994, respondent No. 3, Principal, Government Polytechnic Himachal Pradesh, Hamirpur, took action for re-fixation of the pay. The Director in terms of letter dated 2.9.1996 (Annexure P-VIII) asked the respondent No. 3 to immediately effect the recovery. The total amount is below Rs. 26,000/-.

8. It is this action which has been assailed by the petitioner in the present proceedings.

9. The respondent-State in its return, while not disputing the factual matrix has clarified that the benefit of FR 22-C was inadvertently allowed to the applicant vide letter dated 25.3.1985 (Annexure P-II) and the mistake having been noticed, the same was rightly withdrawn and the recovery of over payment directed to be effected in terms of letter dated 2.9.1996.

10. The reference is also to the contents of the letter dated 27.8.1994 (Annexure P-VI), wherein it is clarified that the Finance Department has expressed its inability to agree to the proposal of giving special pay.

11. Importantly, in the reply it is not so disputed that the benefits of FR 22-C, based on the old pay pattern, were given to the petitioner in consultation with the Finance Department of the State.

12. The petitioner undoubtedly cannot be faulted for the erroneous fixation of the pay-scale and release of the same. Since 1972 onwards, the petitioner has been getting special pay of Rs. 50/- which was later revised to Rs. 100/-. He had been receiving the same and as such was taken into account for fixation of his pay in the higher post.

13. It is not in dispute that the audit objection and the consequential

Governmental action to revise and re-fix the pay is in accordance with Rules. The challenge now, is only with regard to the recovery of the dues already released to him.

14. The petitioner had continuously received the said benefit. It is not that he was associated with the revision of his pay-scale to gain monetary benefits and advantage. The error in interpreting and applying the Rules was that of the State and not the petitioner. The decision was taken to confer benefit to the employees of the State at the highest level in consultation with the Finance Department.

15. The total amount involved is Rs. 26,000/-. The petitioner has discharged his duties to the satisfaction of all and has now retired.

16. In the facts and circumstances of the case, in my considered view, since the amount was received by the petitioner without any fault on his part, it would be only just, fair and proper that the same be not recovered from him. While taking this view, I am supported by the ratio of law laid down by the Apex Court in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , Purshottam Lal Das and Others Vs. The State of Bihar and Others, and Sahib Ram Vs. State of Haryana and Others, .

17. For the aforesaid reasons, Memo dated 2.9.1996 (Annexure P-VIII) is quashed. The State shall not effect recovery of the dues already paid to the petitioner amounting to Rs. 26,000/-, as prayed for in the petition.

