

Sanjeev Kumar Vs State Of H.P. & Others

Court: High Court Of Himachal Pradesh

Date of Decision: Dec. 19, 2022

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Onkar Jairath, Desh Raj Thakur, Narender Thakur

Final Decision: Allowed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for the following substantive reliefs:-

1. That the impugned office order dated 27.11.2017 contained in Annexure A-5 whereby the pay of the applicant has been refixed to his

detriment and further ordered the recovery may be quashed and set aside.

ii) That the respondents may further be directed to grant pay band i.e. 10300+34500+3200 Grade Pay w.e.f. 15.9.2013.

iii) That the respondents may be further directed to grant the applicant actual consequential financial benefits on annual increments from date of

promotion i.e. 15.9.2011 in place of notional benefits.

iv) That the order of recovery issued by respondent No.3 be quashed and set aside.

2. Brief facts necessary for adjudication of the case are that the petitioner was initially appointed as Part Time Water Carrier in the year 1997. He

was converted into whole time contingent worker in June, 2004. The services of the petitioner were regularized w.e.f. 15.9.2005 as Class-IV. During

his service as Class-IV, petitioner improved his qualification and passed 10+2 examination, conducted by H.P. Board of School Education.

3. On the recommendations of DPC, petitioner was promoted to the post of Clerk vide office order dated 15.9.2011 in the pay scale of Rs. 5910-

20200+1900 Grade Pay. The promotion order of the petitioner was subject to following condition:

4. Officials so promoted as clerks will qualify the typing test with a minimum speed of 30 words per minute in English typewriting or 25 words per

minute in hindi typewriting within probation period and during the period, if the candidates fail to qualify the typing test within the prescribed period,

their probation will be extended. During this period the incumbents will get one more chance. If the candidates still failed to qualify the typing test in

the extended period they will be reverted from clerk to class-IV posts.

4. The pay of the petitioner was fixed in the Pay Band of Rs. 5910-20200+1900 Grade Pay vide office order dated 17.1.2012.

5. The State Government vide notification dated 27.9.2012 amended the H.P. Civil Services (Category/Post wise Revised Pay) Rules, 2012 by adding

certain categories/posts in the schedule appended to the rules and the category of Clerks was also included therein for entitlement of Pay Band of Rs.

10300-34800+ Grade Pay of Rs. 3200. Such Pay Band and Grade Pay, however, was made available only to those incumbents, who had completed

two years of regular service. Petitioner completed two years of regular service as Clerk on 15.9.2013 and thus became entitled to Pay Band of Rs.

10300-34800+ Grade Pay of Rs. 3200 w.e.f. 15.9.2013.

6. Petitioner qualified the typing test on 30.4.2015 and became entitled to the annual increment w.e.f. 30.4.2016 as per terms and conditions of his

promotion order, as noticed above. The petitioner was promoted as Junior Assistant by way of placement vide office order dated 18.8.2017 and his

pay was fixed in the Pay Band of Rs. 11560-15160+ Rs. 3600 as Grade Pay.

7. Respondent No.2 vide office order dated 27.11.2017 re-fixed the pay of petitioner in the Pay Band of Rs. 5910-20200 + Grade pay of Rs. 1900

right from the date he was promoted as Clerk. In pursuance to said office order, the pay of petitioner as Junior Assistant as of 1.9.2017 was fixed at

Rs. 14320 (10720 + Grade Pay of Rs. 3600). The over payment, if any, found to have been made to the petitioner was also ordered to be recovered.

8. Aggrieved against the aforesaid action of respondents, petitioner approached the erstwhile H.P. State Administrative Tribunal by way of O.A. No.

356 of 2018, which on abolition of the Tribunal came to be transferred to this Court and was registered as CWPOA No. 3885 of 2020 i.e. the instant

petition.

9. The grievance of the petitioner is that his pay has been wrongly revised and re-fixed to his detriment. Consequently, the order to recover the

overpaid amount from the petitioner has also been alleged to be wrong and illegal. As per contention of the petitioner, he was not afforded any

opportunity of being heard before issuing an order to the detriment of his vested rights. The impugned order dated 27.11.2017 has been assailed as

illegal, arbitrary and discriminatory.

10. Respondents have filed the reply. As per stand of the respondents, petitioner was not entitled to annual increments as well as next higher scale or

promotion without qualifying the typing test. Evidently, respondents have taken such stand by placing reliance on para-17.1.8 (i) and (ii) as contained in

Volume-I of the Hand Book on Personnel Matters. The respondents have also made reference to the terms and conditions of the order, as noticed

above, whereby the petitioner was promoted as Clerk.

11. I have heard learned counsel for the parties and have also gone through the record carefully.

12. Clause-4 of the terms and conditions of order of promotion of petitioner provided that the petitioner was to qualify the prescribed typing test within

the probation period and in case he failed to qualify within the prescribed period of probation, the same would be extended and the petitioner would get

one more chance to qualify the typing test. It was further provided that in case petitioner still failed to qualify the typing test in the extended period, he

would be reverted from Clerk to Class-IV post.

13. The office order dated 15.9.2011, vide which petitioner was promoted as Clerk did not specifically provide that the petitioner was to remain on

probation and also the duration of probation, if any. The reference to the probation could be found in Clause-4 of the terms and conditions of promotion

order but there also the period of probation was not mentioned. The respondents have also not placed on record the Recruitment & Promotion Rules

for the post of Clerks in Department of Education from which an inference as to the requirement of probation period or its tenure could be

ascertained.

14. The reference made by respondents to Clause 17.1.8 of Hand Book on Personnel Matters in support of their stand appears to be clearly

misconceived. Chapter-17 of Volume-I of Hand Book on Personnel Matters relates to "employment assistance to dependents of Government

servants, who die in harness or are permanently disabled or are missing". Clause 17.1.8 (i) and (ii) clearly have relation to appointment made on

compassionate basis. Except the afore mentioned provisions of Hand Book on Personnel Matters, respondents have not been able to place on record

any material to justify their stand.

15. During the course of arguments, learned counsel for the petitioner has submitted that the petitioner had qualified the typing test on 30.4.2014 and

as such, he had no grievance with respect to grant of increments to the petitioner w.e.f. 30.4.2015. He however raised serious grievance with respect

to the re-fixation of the pay of petitioner vide impugned order dated 27.11.2017 on the grounds that the petitioner had become entitled to Pay Band of

10300-34800+ Grade Pay of Rs. 3200 in terms of notification dated 27.9.2012, issued by the State Government, whereby the schedule to the Himachal

Pradesh Civil Services (Category/Post wise revised pay) Rules 2012 was amended by including the post of Clerks. He further contended that

petitioner had completed regular service of two years as Clerk on 15.9.2013 and thus had become entitled to the afore stated pay band. The

entitlement of petitioner to such pay band was neither diluted nor taken away on account of failure of petitioner to pass typing test till 30.4.2014, as

there was no such condition of service.

16. As noticed above, the stand of the respondents is that the petitioner was not entitled to annual increments, further promotion or senior pay scale till

he qualified type test. However, respondents have failed to substantiate their above stand. Evidently, no such condition existed in the promotion order

of petitioner. The respondents have also not been able to justify their stand by showing any rule or condition of service to that effect. Since the

petitioner himself has given up the challenge with respect to non-grant of increments to him, the same need not to adjudicate by this Court. As regards

the rest of the claim, I am of the considered view that the impugned order dated 27.11.2017 is wrong, illegal and arbitrary, as it does not have the

backing of any rule or applicable service condition behind it.

17. The entitlement of petitioner to Pay Band of 10300-34800+ Grade Pay of Rs. 3200 was in pursuance to the decision of the State Government to

include the category of Clerks in the schedule appended to Himachal Pradesh Civil Services (Category/Post wise revised pay) Rules 2012. Such

entitlement cannot be said to be relatable in any manner to failure of petitioner to qualify the typing test till 30.4.2014. Thus, the entitled of petitioner to

such pay band and fixation of salary in accordance therewith could not have been taken away by respondents vide impugned order dated 27.11.2017.

Except for the withholding of annual increments till lapse of one year after qualification of typing test by petitioner, the respondents had no right to

reduce or re-fix his pay, as has been done by way of impugned order dated 27.11.2017.

18. Viewed from another angle, the stand of respondents as canvassed is clearly absurd. Firstly, there was no mention of probation period in the

promotion order, hence reference to passing of typing test within the probation period was vague, secondly, the respondents have not come out clearly

with the facts that when did initial probation period of petitioner came to an end and for how long it was extended. There is also no material to show

that how many chances were availed by petitioner to qualify the test and thirdly, the respondent in order to take benefit of Clause-4 of the terms and

conditions of promotion order could have come out clearly about the aforesaid facts as non-adherence to the terms of aforesaid Clause-4 of terms and

conditions entailed reversion to Class-IV. Petitioner was promoted on 15.9.2011. He qualified the typing test on 30.4.2015. Instead of such delay on

the part of petitioner in qualifying the typing test, he was further promoted to the post of Junior Assistant in 2017. Having granted all service benefits

to petitioner, it is not understandable as to for what reason the impugned office order dated 27.11.2017 was issued. Said order clearly is without any

basis. Moreover, an order having civil and evil consequences against petitioner was issued without affording petitioner an opportunity of being heard.

Even the representation made by petitioner remained unanswered.

19. A Division Bench of this Court after considering the law on the subject including Chandi Prasad Unial, has passed the judgment on 24.03.2022 in

CWPOA No.3145 of 2019, S.S. Chaudhary vs. State and others, and culled out certain situations in which recoveries from government employee be

held to be impermissible in the manner as under:-

35. In view of the aforesaid discussion, as held by Hon'ble Supreme Court in Rafiq Masih's case (supra), it is not possible to postulate all situations of

hardship, where payments have mistakenly been made by the employer, yet in the following situations, recovery by the employer would be

impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even

though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to

such an extent, as would far outweigh the equitable balance of the employer's right to recover.

(vi) Recovery on the basis of undertaking from the employees essentially has to be confined to Class-I/Group-A and Class-II/Group-B, but even then,

the Court may be required to see whether the recovery would be iniquitous, harsh or arbitrary to such an extent, as would far outweigh the equitable

balance of the employer's right to recover.

(vii) Recovery from the employees belonging to Class-III and Class-IV even on the basis of undertaking is impermissible.

(viii) The aforesaid categories of cases are by way of illustration and it may not be possible to lay down any precise, clearly defined, sufficiently

channelized and inflexible guidelines or rigid formula and to give any exhaustive list of myriad kinds of cases. Therefore, each of such cases would be

required to be decided on its own merit.

20. It is not in dispute that the petitioner belonged to Class-III services. Thus, his case will be squarely covered under clause (I) of para 35 of the

judgment referred above

21. In view of above discussion, the petition is allowed. Impugned office order dated 27.11.2017 Annexure A-5 is quashed and set aside to the extent,

it re-fixed and reduced the pay of petitioner to his detriment. It is held that petitioner was entitled to pay band of Rs. 5910-20200 + Grade Pay of Rs.

1900 from 15.9.2011 till 15.9.2013 and thereafter, he became entitled to pay band of Rs. 10300-34800 + 3200 Grade Pay and further his entitlement on

his placement as Junior Assistant had arisen to the pay band of Rs. 10300-34800 + 3600 as Grade Pay. Additionally, the petitioner also became

entitled to annual increments w.e.f. 30.4.2016. Consequently, the respondents are directed to re-fix the pay of petitioner in terms of this judgment

within eight weeks from the date of its pronouncement. It is further directed that no recoveries be effected from petitioner in terms of impugned office

order dated 27.11.2017. Pending application(s), if any, also stand disposed of.