

Dev Raj Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 8, 2010

Acts Referred: Constitution of India, 1950 " Article 226, 227

Hon'ble Judges: Ajai Lamba, J

Bench: Single Bench

Judgement

Ajai Lamba, J.

This petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of

certiorari, quashing recovery sought to be made by the Respondents.

2. Learned Counsel for the Petitioner contends that the issue raised in this petition is covered by judgment dated 27.5.2009 rendered by this Court

in Civil Writ Petition No. 5568 of 2008 titled "Charan Dass and Ors. v. State of Punjab and Ors. Civil Writ Petition No. 5568 of 2008".

3. Learned Counsel for the Respondents admits that indeed the matter is covered by the judgment in Charan Dass's case (supra).

4. In Charan Dass's case (supra), the following has been held :

It is admitted case of the parties that the work charge period is to be counted as qualifying period for the grant of pensionary benefits and thus the

emoluments drawn by the employee as work charge employee had to be considered as also the period when the employee served in work charge

capacity. It is admitted case of the parties that the benefit of retrenchment increments and special increments was granted to the employees during

the period they were serving in work charge capacity without any misrepresentation or fraud on their part. The benefit allowed to the Petitioners is,

however, sought to be withdrawn after take over and regularization by the State Government with effect from 13.3.1996. The retrenchment

increments were allowed to bring their salary and emoluments at par with other employees in the revised pay scale, keeping in view their last drawn

salary as retrenches. No reasons have been given in the reply as to how such benefit is impermissible or illegal. The State, however, has attempted

to justify its action regarding withdrawal of special and retrenchment increments. Admittedly, special increments were granted from time to time to

some of the employees/Petitioners for their alleged good work. There was no uniform policy and benefit of special increments was given on

selective basis. In so far as the retrenchment increments are concerned, there cannot be any second opinion that the benefit was granted to bring

their wages at par under the revised pay scale and that too before their take over by the State Government.

As regards the grant of special increments is concerned, it was selectively granted from person to person and is not justified. However, one fact

remains common in regard to grant of both the benefits i.e. retrenchment increments and special increments that the said benefits were conferred

upon the Petitioners without any misrepresentation or fraud on their part. The issue is squarely covered by the Full Bench judgment of this Court

passed in CWP No. 2799 of 2008 along with other connected matters (Budh Ram and Ors. v. State of Haryana and Ors. CWP No. 2799 of

2008) decided on 22.5.2009. The case of the Petitioners falls in category ii) wherein following observations have been made :

It is in the light of the above pronouncement, no longer open to the authorities granting the benefits, no matter erroneously, to contend that even

when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to

recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee

is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting

on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had

known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct

interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a

manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess

amount simply because on a true and correct interpretation of the rules, such a benefit was not due....

We have, therefore, no hesitation in holding that in case the employees who are recipient of the benefits extended to them on an erroneous

interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor

have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the

future, but the amount already paid to the employees cannot be recovered from them....

In view of the above, the Respondents are not entitled to effect any recovery from the Petitioners either on account of retrenchment increments or

special increments allegedly erroneously given. However, the Respondents are entitled to re-fix the emoluments by reducing the special increment

only. Consequently the pay of the Petitioners will be re-fixed and in case of those employees who have already retired from service, the retiral

benefits shall be released within a period of two months. The Petitioners shall also be entitled to interest on the delayed payment of pension/retiral

benefits at the statutory rate wherever admissible and at the rate of 6% on pension and other retiral benefits where statutory interest is not provided

for. Any amount deducted from the retiral benefits or the salary of the Petitioners shall be refunded within the aforesaid period.

Ordered accordingly. Disposed of.

5. Considering the conceded position that the matter is covered by decision rendered in Charan Dass"s case (supra), relevant portion whereof has

been extracted above, this petition is allowed in the same limited terms of judgment dated 27.5.2009 of this Court in Civil Writ Petition No. 5568

of 2008 titled `Charan Dass and Ors. v. State of Punjab and Ors.".