
(2011) 04 SHI CK 0311

High Court of Himachal Pradesh

Case No: CWP (T) No. 10098 of 2008

Dr. K.K. Vaidya

APPELLANT

Vs

The State of H.P. and
Others

RESPONDENT

Date of Decision: April 20, 2011

Hon'ble Judges: V.K. Sharma, J

Bench: Single Bench

Judgement

V.K. Sharma, J.

The petition has been filed on the following prayers vide para 7(i) & (ii):

7(i) To quash and set-aside the impugned order at Annexure "PA" dt. 5.12.2002 being illegal & arbitrary.

(ii) To issue directions to the Respondents to refund amount of Rs. 32,030/-deducted out of Death-cum-Retirement Gratuity of the applicant on the basis of illegal and constitutionally void impugned order at Annexure "PA" and direct the Respondents to pay interest on Rs. 32030/-@ 12% w.e.f. 1.11.2002 till the final settlement of his claim.

2. In reply, the Respondents have taken the following stand vide paras 3(i) to 3(iv) and 6(d):

3(i) to (iv). It is submitted that the recovery amounting to Rs. 32030/-made from the DCRG of the applicant on account of over payment of pay and allowances. Further, it is pointed out that the A.G, H.P. has made certain observations which are reproduced below:

Pay fixation as on 1.1.1996 has been wrongly fixed which should be as under:

1.1.96 Rs. 12,000/-minimum of scale of Rs. 12000-15000 granted after 9 years.

1.1.1997 Rs. 14300/-minimum of scale Rs. 14300/-18150/-granted after 14 years.

1.1.98 Rs. 14,700/-annual increment.

1.1.99 Rs. 15100/-. 1.1.2000 Rs. 15,500/

1.1.2001 Rs. 15,900/-and 1.1.2002 Rs. 16,350/-scale after 14 years was admissible only w.e.f. 1.1.97 instead of 30.7.96 in terms of para(c) (iii) of H.P. Govt. O.M. No. Fin. (PR)B(7)-1/98-II dated 23.6.2000, this may be confirmed and revised entry of pay in this regard may be made in service book and if need be, recovery of pay and allowances may be made before drawal of Gratuity accordingly.

In view of the foregoing position, the over payment was worked out on the basis of actual payment made w.e.f. 1.1.96 onwards. The recovery is not arbitrary and illegal, hence the averments of this para are not admitted.

6(d) In reply to this para it is submitted that the applicant joined the services in the Health Family welfare Department on 30.7.1982 and his annual increment was 1st of every July. But the fixation was subject to review after the receipt of detailed guidelines/clarification from the Finance Department which were issued on 6.10.98. the re-fixation made vide order dated 5.12.2002 and pay fixed at Rs. 12,000/-on 1.1.96 after completion of 9 years services and further fixed at Rs. 14,300/-on 1.1.97 after completion of 14 years of service in accordance with the guidelines issued by the Finance Department on 23.6.2000. In these instructions it is very much clear that if the minimum of the higher scale is higher than the stage arrived, the pay of the incumbent shall be fixed at the minimum and the next increment in the higher scale is to be allowed after qualifying service of 12 months. The pay of the applicant in there-revised scale of Rs. 3000-4500/3700-5300 was Rs. 3500/-+ Rs. 750/-NPA, and as such emoluments comes to Rs. 10705/-according to pay fixation formula. The emoluments arrived at is less than the minimum of higher pay scale of Rs. 12000-15500. Hence the pay of the applicant was fixed at Rs. 12,000/-with next date of increment on 1.1.97 and after completion of 14 years of service, the pay scale of Rs. 14300-18150 was allowed w.e.f. 1.1.97 and the pay of the applicant was re-fixed at 1.1.98 in accordance with the instructions of the Finance Department dated 23.6.2000. Thus the averments made in this para are not tenable and therefore, not admitted.

3. Rejoinder, refuting the above stand on behalf of the Respondents and reiterating the averments set up in the petition, has been filed.

4. In view of the above reply, in case the Petitioner still has any surviving grievance with regard to the factual and legal position, he may certainly point out the same before Respondent No. 2/competent authority by way of appropriate representation along with copy of this judgment within one month from today, who shall consider the same and take a final decision in the matter in accordance with law within next three months, after affording an opportunity of being heard to the Petitioner, if so desired.

5. The petition stands disposed of in the above terms, so also pending CMP(s), if any.