

S.P. Sharma Vs. the All India Council for Technical Education

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Court : Delhi

Decided On : Feb-07-2000

Reported in : 2000IIIAD(Delhi)290; 85(2000)DLT109; 2000(56)DRJ199

Judge : A.K. Sikri, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : CWP No. 700 of 1999

Appellant : S.P. Sharma

Respondent : The All India Council for Technical Education

Advocate for Def. : Mr. E. C. Vidyasagar, Adv.

Advocate for Pet/Ap. : Mr. R. Vasudevan, Adv

Judgement :

ORDER

A.K. Sikri, J.

1. Rule.

2. Since short point is involved, with the consent of parties, the matter is taken up for final disposal at this stage.

3. The petitioner was appointed by respondent No. 1 as Consultant (Legal) as an outside expert on full time basis as non-pensioner. Appointment letter dated 15th December, 1997 was issued to the petitioner fixing his consolidated fees as Rs. 4000/-. Para 5 of the said appointment letter mentioned that it would be subject to other terms and conditions as may be enforced by the AICTE Secretary from time to time. Petitioner made representation dated 2nd February, 1998 for enhancing his consolidated fees from Rs. 4,000/- to Rs. 8,000/- as per rules. This representation was considered by the respondents in view DOPT letter No. 16011/5/93/Estt. (Allow) dated 21st December, 1993 which specified that consolidated fee be increased subject to a ceiling of Rs. 8,000/- per month. Accordingly it was decided to enhance the fee of the petitioner from Rs. 4,000/- to Rs. 6,000/- w.e.f. 11th March, 1998. Relevant portion of the noting, while enhancing his fee in the aforesaid manner reads as under :-

'According to D.O.P.T. Letter No. 16011/5/93-ESTT (Allow) dated 21.12.1993 (copy enclosed) page 2 section (d) the consolidated fee of Sh. Sharma may be increased subject to a ceiling of Rs. 8,000/- per month since he is appointed as consultant as a whole time basis.

Sh. Sharma is very sincere, hard working and having sound knowledge of legal matters. Thus he deserves an increase in the consolidated fees. therefore, his case may be recommended for the higher fees.'

4. Revised guidelines dated 13th December, 1998 were issued by DOPT regarding engagement of consultants as per which the fee could be enhanced subject to ceiling of Rs. 26,000/- per month. The relevant portion of these guidelines reads as under :-

'In the case of non-officials (outside experts), the fee will henceforth be subject to a ceiling of Rs. 26,000/- p.m. (with no DA, HRA, CCA or any other relief) if the engagement as Consultant is on a whole-time basis and of Rs. 13,000/- p.m. (with no DA, HRA, CCA or any other relief) if the engagement is on a part-time basis. In the case of retiring/relief Government servants engaged as full-time Consultants, the fee will be fixed subject to a ceiling of Rs. 13,000/- p.m.'

5. These orders were made effective from 1st December, 1997 as per Para 6 of these guidelines. On the basis of these guidelines petitioner requested for revising his fee also. This having been rejected by the respondents petitioner has filed the present writ petition.

6. In the counter affidavit filed by the respondents, the plea taken is that since the petitioner was appointed on ad hoc basis, the DOPT guidelines mentioned above are not applicable in his case. This stand of the respondents is untenable. First of all, guidelines dated 13th February, 1998 do not make any distinction between engagement on Ad hoc or regular basis. The distinction is only between the Consultants engaged on whole time basis or part time basis. Secondly, in any case the respondents had themselves followed such guidelines while revising the fee of the petitioner from Rs. 4,000/- to Rs. 6,000/-. thereforee, the respondents cannot now turn back and take the plea that these are not applicable to the case of the petitioner.

7. The other prayer of the petitioner is that the respondents wrongly deducted TDS from the amount paid to the petitioner as fee treating it as professional charges rather than salary/ remuneration. However, as TDS, after deducting from the amount paid to the petitioner, has been deposited by the respondents with Income Tax Authorities, it would be appropriate for the petitioner to file income tax return and claim refund of this amount from the Income Tax Authorities and on raising this plea before the Income Tax Authorities, they shall decide as to whether TDS was deductible or not and pass appropriate orders thereon. No other relief was prayed.

8. This petition is accordingly allowed partly. Directions are given to respondents to consider the case of the petitioner for enhancement of his fee in terms of guidelines dated 13th February, 1998 within a period of two months from today.

9. No order as to costs.