G.S. Dod Vs. State of Hp and ors.

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Court : Himachal Pradesh

Decided On : May-18-2009

Judge : R.B. Misra and; Surjit Singh, JJ.

Appellant : G.S. Dod

Respondent : State of Hp and ors.

Disposition : Petition dismissed

Judgement :

Surjit Singh, J.

1. Petitioner has sought judicial review of order dated 28.2.2002 passed by the Himachal Pradesh State Administrative Tribunal, Shimla (now defunct) in O.A No. 1260/99, whereby prayer made by the petitioner in the said OA for payment of interest on delayed disbursement of arrears of pension, gratuity, leave encashment and commutation of pension has been allowed only in part. Through the present writ petition, he seeks partial reversal of the order of the learned Tribunal, to the extent the interest on a part of the arrears of pension, gratuity, commutation of pension and leave encashment, has been declined.

2. Petitioner was employed as a member of Himachal Pradesh Forest Service at the time of his retirement in July, 1998. In fact, he attained the age of superannuation in May, 1998, but was allowed to serve till further orders, because

his case for consideration for promotion to IFS cadre was pending and in the case of IFS officers, the date of retirement is 60 years.

3. It appears that his case was rejected by the Departmental Promotion Committee and, therefore, he was retired in July, 1998. In the meanwhile, revision of pay scales of employees of State Government took place. Notification of revision of pay scale was issued on 20.1.1998. Revision was effective from 1.1.1996. As per CCS (Pension) Rules and the instructions issued thereunder, papers for finalizing the pension case and other retiral benefits due to a government servant are required to be submitted to the Accountant General, respondent No. 3 in this case, 18 months in advance, i.e. 18 months prior to the anticipated date of retirement. If the instructions and the rules aforesaid were followed, the case of the petitioner was supposed to have been submitted to the Accountant General in November/December, 1996. However, respondents No. 1 and 2 did not do so. They submitted the papers for grant of pension, gratuity and other retiral benefits to him only in May, 1998, which delayed fixation and sanction of pension, gratuity, commuted value of pension and leave encashment etc.

4. Further even though respondents No. 1 and 2 submitted the papers for grant of pension, gratuity, commutation of pension etc. based on revised pay of the petitioner, respondent No. 3, Accountant General, sanctioned the pension, gratuity and other benefits on the basis of pre-revised pay. Sanction in respect of difference between pension, gratuity, commutation etc, based on pre-revised scale and revised scale, was issued much later. Disbursements of arrears of pension and other retiral benefits were made to the petitioner on different dates as per the following detail, reproduced from para 9 of the writ petition:

---Date on which credit Amount credited Nature of credit given.given in the BankAccount---30.4.1999 Rs. 49,879 Arrears of pension inthe old pay scale.---28.5.1999 Rs. 81,589 Commuted value ofpension in old payscale.---6.7.1999 Rs.

41,044 Part of gratuity in oldpay scale.--19.7.99 Rs. 28,017 Arrears of pension inrevised pay scale.--1.8.99 Rs. 2,11,376 Commuted value ofpension in revised payscale--9.8.99 Rs. 18,590 Part of gratuity in oldpay scale.--29.12.99 Rs. 1,19,542 Gratuity in revised payscale.--17.7.2000 Rs. 1,32,248 Leave encashment inrevised pay scale.--13.9.2000 Rs. 30,916 Part payment of leaveencashment--28.2.2001 Rs. 15,098 Balance amount ofgratuity.--Total Rs. 7,28,290.--

5. Petitioner filed O.A seeking award of interest @ 24% PA on delayed payment of arrears of pension, gratuity, leave encashment, commutation of pension etc. Tribunal has awarded interest @ 12% on the amounts representing arrears of pension, gratuity, commutation of pension, leave encashment, based on pre revised pay only and not on the difference between the amounts of pension, gratuity, commutation of pension, leave encashment, worked out on the basis of pre revised scale and the revised scale. Petitioner, through the present petition, has sought interest on arrears of such difference.

6. Prayer of the petitioner is opposed by the respondents. Respondent No. 3 has stated that he received the papers for pension in May, 1998, though as per rules and instructions, such papers should have been sent to him by the respondents No. 1 and 2 18 months prior to the date of retirement. As regards delay in payment of difference between the benefits, worked out on the pre revised pay and the revised pay, plea taken by the respondents is that there was an office Memorandum issued by respondent No. 1, dated 31st August, 1998 (Annexure R-3), which said that arrears of pension and death gratuity to those retired between

1.4.1997 and 31.7.1998 were to be paid in the financial year 1999-2000 and a clarificatory letter had also been issued by the said respondent on 26th December, 1998 (Annexure R-4), which reiterated that arrears on account of gratuity, commuted value of pension were also to be paid in the financial year 1999-2000 to those who retired between 1.4.1997 and 31.7.1998.

7. Learned Tribunal has allowed interest @ 12% on the amounts of arrears of pension, gratuity, leave encashment and commuted value of pension, worked out on the basis of pre-revised pay only, holding that respondents No. 1 and 2 had delayed the submission of papers of pension and retiral benefits to respondent No. 3. Prayer for award of interest on the amounts of arrears of pension, gratuity etc. representing amounts worked out on the basis of prerevised pay and the revised pay, has been disallowed in view of office Memorandum (Annexure A-3) and the clarificatory letter (Annexure A- 4), which deferred the payment of such arrears to the financial year 1999-2000.

8. We have heard the learned Counsel for the parties and gone through the record. Learned Counsel for the petitioner says that the petitioner was entitled to payment of arrears of pension, gratuity and other benefits immediately on his retirement in view of the provisions of CCS (Pension) Rules, 1972, particularly Rule 49 thereof and the State Government was not competent to defer the payment of arrears of pension etc. by an executive order. Submission made by the learned Counsel does not seems to be correct. Civil Service Pension Rules, 1972, applicable to central government employees, have been adopted by the Government of Himachal Pradesh by an executive order. Whenever any change in the rules takes place, that does not apply automatically, but only when it is adopted by the State Government by issuing an office memorandum. Memorandum Annexure R-3 has been issued in the name of Governor and it reads that the Governor is pleased to introduce the modifications in the rules regulating pension/DCRG and family pension under CCS (Pension) Rules, 1972 and commutation of pension under CCS (Commutation of Pension) Rules, 1981. Article 162 of the Constitution of India gives executive power to a State, extending to all those matters with respect to which the State has power to make laws. Admittedly, the matters regarding pay, pension and other service conditions of the

employees of the State, fall within the legislative competence of a State and, therefore, the executive power of the State extends to such matters. In view of the above stated position, we do not think this to be a fit case where in exercise of the extraordinary power of judicial review of the decision of a judicial body, the High court should interfere. Hence, writ petition is dismissed. In view of the disposal of main petition, pending application(s) are also dismissed.