S. No. 4

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case:- WP(C) No. 608/2023
CM No. 1423/2023
CM No. 5117/2024

Tarlok Chand S/o Mani Ram, R/o Ward No.7,
Tehsil Hira Nagar, District Kathua, age 63 years …..Petitioner(s)

Through: Mr. Aditya Sharma, Advocate

Vs

1. UT of J&K, Law Secretary, Department of Law, Civil Secretariat, Jammu/Srinagar.
2. Principal Secretary to Hon'ble Chief Justice of Hon'ble Higfh Court of J&K and Ladakh, Jammu
3. Principal Accountant General, Govt. of J&K, Shakti Nagar, Jammu.
4. Principal District & Sessions Judge, Kathua.
5. Senior Accounts Officer (PNRJ-4), Office of the Accountant General (A&E), Shakti Nagar, Jammu. ….. Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG for R-1
Ms. Deepika Mahajan, Advocate &
Mr. Atharv Mahajan, Advocate for R-2 & 4
Mr. Ajaz Choudhary, Advocate for R-3&5

Coram: **HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT
(24.12.2024)

(ORAL)

01. The petitioner was appointed as Peon on 24.08.1987 in the pay scale of ₹630-940 and was thereafter re-designated as Process Server. He was granted promotions from time to time and finally the petitioner retired as Head Assistant from District Judiciary in May, 2020. In the year 1992, the Process Servers working in the Subordinate Courts of then State of J&K (Now UT) filed SWP No. 1683/1992 seeking pay parity with their counterparts working in the State Excise Department. The writ petition was allowed and the judgment passed by the writ Court was confirmed by the Division Bench of this Court in LPA No. 112/1994. In compliance to the aforesaid judgment, the Process Servers were given the benefit of pay scale on a par with Process Servers of the Excise Department in terms of the revised pay rules notified under SRO 75 of 1992. Accordingly, the benefit of In-Situ promotion was also granted to the petitioner.

02. The Judicial Staff Welfare Association was aggrieved of such benefit granted to the Process Servers as, it has, in their opinion created anomaly in the salary structure of different cadres of the Subordinate Courts staff as well. With a view to look into the grievance of the Judicial Staff Welfare Association, a committee was constituted by the then Lord Chief Justice and on the basis of the report and upon consideration of the matter, the High Court passed Order No. 713 dated 28.03.2005. In the light of the aforesaid order passed by the High Court, the Process Servers like the petitioner were held entitled to the benefit of enhanced grade in terms of the judgment and SRO 75 of 1992 w.e.f 01.04.1990 only. The further promotions including In-Situ promotion in favour of such Process Servers including the petitioner were directed to be granted by taking their placement in the grade of Process-Server w.e.f 01.04.1990.

03. All the Principal District and Sessions Judges of the concerned districts were directed to re-fix the salary of the Process-Servers. It seems that the Principal District and Sessions Judge, Kathua under whom the petitioner was working as Process-Server did not comply with the order of the High Court and the petitioner continued to enjoy the benefit of enhanced pay-scale of Process-Server w.e.f 24.08.1987. He also earned the future promotions including In-Situ promotion on the basis of his placement in the pay scale w.e.f 24.08.1987. The entire matter went un-noticed till the petitioner retired on superannuation on 31.05.2020. It was the office of Accountant General which pointed out that the re-fixation in the case of the petitioner had not been done by the concerned Principal District & Sessions Judge, in terms of the High Court Order No. 713 dated 28.03.2005. Accordingly, Senior Accounts Officer of Accountant General vide its communication dated 07.10.2022 intimated to the Principal District & Sessions Judge, Kathua to re-fix the salary of the petitioner and work out the details of excess pay and allowances drawn by the petitioner in the light of the High Court's Order No. 713 dated 28.03.2005.

04. It seems that the Principal District & Sessions Judge, Kathua, who was intimated by the office of Accountant General to re-fix/revise the salary of the petitioner in the light of the High Court's Order, showed its inability to do so in view of the provisions of Article 242 of J&K CSR Vol-I. Despite the response given by the Principal District & Sessions Judge, Kathua, the pensionary benefits in favour of the petitioner were not released instead a provisional pension was released in favour of the petitioner by the office of the Accountant General. The office of the Accountant General also withheld the gratuity of the petitioner. This is how the petitioner is before us through the medium of the instant petition.

05. Having heard learned counsel for the parties and perused the record, we are of the considered opinion that the issue raised for adjudication in this petition is *no longer res-integra*. Indisputely no revision/re-fixation of the salary of the petitioner was made during the currency of his service. It is true that in the year 2005, the High Court had passed an order directing all the Principal District & Sessions Judges to re-fix the salary of the Process-Servers serving under them. However, in the instant case for the reasons best known to the office of Principal District & Sessions Judge, Kathua no such exercise was undertaken. The petitioner continued to draw the benefit of enhanced salary w.e.f 1987 and also the benefits arising out of the subsequent promotions given to him from time to time. It was only after he retired and his pension papers processed, the Accountant General pointed out the irregularity committed by the employer of the petitioner. The matter was taken up by the Accountant General with the Principal District & Sessions Judge, Kathua, but the Principal District & Sessions Judge, Kathua declined to re-fix the salary of the petitioner and work out the excess payment received by him in view of the provisions of Article 242 of the J&K CSR Vol-I.

06. The import of provisions of Article 242 of the J&K CSR Vol-I has already been explained by this Court in number of judgments. It has been clearly held that the correctness of emoluments drawn by an employee before twenty four (24) months of his retirement cannot be disputed while calculating the retiral benefits of such employee. The dispute regarding the correctness of emoluments drawn by an employee disputed by the Accountant General more than after a decade cannot be made the basis for re-calculating the retiral benefits which, otherwise are due to the employee on the basis of last pay drawn by him at the time of his superannuation (**See "Maryam Bano vs State of J&K & Ors", SLJ 2003 Vol-I, Page 188**).

07. That apart in the instant case the excess amount, if any, drawn by the petitioner is because of the negligence and remissness on the part of the employer i.e. Principal District & Sessions Judge, Kathua and no act or omission is attributed to the petitioner. The petitioner was paid the excess amount of salary and he accordingly adjusted his way of life and spent money on his family, accordingly. It would be too harsh at this stage when he has superannuated from the service to ask for huge recoveries on account of some erroneous payment made by his employer without there being any act or omission attributable to the petitioner. In case titled "**Thomas Daniel vs State of Kerala & Ors", 2022 Live Law (SC) 438**, the Supreme Court has held in Para (11) as under:

> (11) In **Col. B.J. Akkara (Retd.) v. Government of India and Others** this Court considered an identical question as under:
>
> "**27**. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7.6.1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18: 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521: 1994 SCC (L&S) 683: (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416: 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139: 1997 SCC (L&S) 1652]):
>
> (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.
>
> (b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.
>
> **28**. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is

> implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

08. The case of the petitioner is fully covered by the aforesaid judgment.

09. For the foregoing reasons, we find merit in this petition, the same is accordingly allowed. The communication of respondent No.5 dated 06.10.2022 impugned in this petition is quashed. The respondents, in particular, the office of Accountant General is directed to release the pension and gratuity of the petitioner as per the papers processed and submitted to his office by the employer of the petitioner. Let the needful be done within a period of two months from the date a copy of this order is served upon the respondents.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
24.12.2024
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: Yes