

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

CWP.No.1114/2006.

Date of Decision :30.11.2006...

Hans Raj Sharma.

...Petitioner.

Versus:

State of H.P. and another.

...Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice S S Thakur, Judge.

Whether approved for reporting?¹

For the petitioner:

Mr.Anuj Nag, Advocate.

For Respondents.

Mr.M.S.Chandel, Advocate
General with Mr.R.M.Bisht,
Dy.Advocate General.

Deepak Gupta, J (Oral).

This petition is directed against the order of the H.P. State Administrative Tribunal dated 18.8.2006, wherein the Execution Petition filed by the present petitioner has been disposed of as fully satisfied and his claim for interest has been rejected.

The petitioner being an Ex-Serviceman filed an Original Application before the H.P. State Administrative Tribunal claiming benefit under the Demobilized Armed Forces Personnel (Reservation of Vacancies in H.P. State Non Technical Service) Rules, 1972 . This application was allowed

¹ Whether reporters of Local Papers may be allowed to see the judgment?

by the State Administrative Tribunal vide its order dated 30th May, 1997 and the operative portion of the order reads as follows:

“The observations made in the Full Bench case referred to above squarely cover the facts of the instant case. In view of above narration the application is allowed and the respondents are directed to re-draw the seniority list. The respondents are further directed to give the benefit of approved military service to the applicant(s) with all consequences.

No order as to costs.”

According to the petitioner, he was not paid the amount due to him in terms of the order and he therefore filed an Execution Petition No.7 of 2001 before the Tribunal. During the pendency of the petition, the entire arrears payable under the said orders were paid to the applicant on July 13, 2006 . The applicant, however, prayed that in view of the fact that the order has been passed on 30.5.1997 and his arrears were paid in the year 2006, he should be paid interest at the rate of 18% per annum on this amount. This prayer was rejected by the Tribunal on the ground that sitting as an executing Court, (executing the earlier orders passed by the Tribunal) it had no jurisdiction or Authority to go behind the order and award interest. This order is under challenge before us.

Shri Anuj Nag, learned counsel for the petitioner has urged that in equity the petitioner is entitled to interest because the order was passed in his favour in the year 1997 and the amount was paid to him after nine years in July, 2006

that too, after filing of an execution petition. It may be true that the petitioner has been denied the amount payable to him for a long period. Unfortunately, we cannot go behind the earlier order passed by the Tribunal since it has attained finality and it was never challenged by the petitioner. The operative portion quoted hereinabove clearly shows that the Tribunal only directed the respondent to give the benefit of approved military service to the applicant with all consequences. Neither any time limit was fixed nor it was ordered that the benefits shall be payable to the applicant along with interest. The Executing Court cannot go behind the order or decree which it is enforcing. The original order may be right or wrong but the Executing Court has no jurisdiction whatsoever to change the order. Even though we have sympathy for the petitioner but we cannot help him in this matter. The writ petition therefore is dismissed.

(Deepak Gupta),
Judge.

(S S Thakur),
Judge.

November 30, 2006(R)