

In the High Court for the States of Punjab and Haryana, at Chandigarh.

C.W.P. No. 807 of 2002  
Decided on September 28,2007.

Mrs. Pomila Sharma --Petitioner.

vs.

Haryana State and another -- Respondents.

Present: Mr. R.K.Malik, Advocate, for the petitioner.

Mr. M.S.Sindhu, DAG, Haryana.

Mr. R.S.Chahar, Advocate, for respondent No.2.

Permod Kohli,J:

The petitioner is aggrieved of the order dated January 02,2002 (Annexure P6), passed by Member Secretary, Management Committee, Sainik Parivar Bhawan,Haryana,withdrawing seven increments earlier granted to the petitioner and also for effecting recovery from her pay. It is necessary to briefly refer to the facts of this case.

Admittedly, the petitioner was an employee of respondent-Board and was serving as Administrative Officer. The respondent-Board passed an order Annexure P-2 granting four additional increments to her from the date of her appointment as Administrative Officer i.e. January 01,1986 on account of her devotion to the duties. This was pursuant to

the decision of the Management Committee-Sainik Parivar Bhawan, taken on December 02,1985.Her initial basic pay was fixed @ Rs.1000/-per month. By a subsequent order dated December 19,1985, the petitioner was allowed further benefit of four additional increments (one regular and three special) w.e.f. January 01,1986, again in appreciation of her services and outstanding performance. While the petitioner was enjoying the benefits of these increments and her salary was, accordingly, fixed, she was served with a show cause notice dated October 11,2001(Annexure P-4) seeking her explanation/response why seven additional increments be not withdrawn from her. It has been mentioned in the said show cause notice that Vigilance Enquiry and Internal Audit Objected to the grant of increments to the petitioner, which further indicated that from her service record, it appears that her ACRs are “Good” and not “Outstanding” and “Exemplary”.

The petitioner replied to the aforesaid show cause notice (Annexure P-4) claiming that she was given additional increments by the competent authority as an award for her services. She also stated that she has not concealed anything nor misrepresented any fact to the authorities and the benefit was conferred by the authorities themselves more than 16 years back, which cannot be taken away. Despite this reply, the impugned order came to be passed withdrawing increments and ordering consequential recovery. It has been pleaded by the petitioner that benefits of additional increments were conferred upon her by the authorities and she is not responsible for making any mis-representation, nor she concealed any fact from the authorities at the time the benefits were conferred upon her.

The respondents in the reply have stated that the petitioner obtained four and three additional increments through deceit, fraud and misrepresentation in connivance with certain officials. It is also mentioned that her service grading was only 'Good' and hence, she was not entitled to be conferred any such benefits.

I have heard learned counsel for the parties.

The only question that needs to be examined is whether the benefit was secured by the petitioner by any fraudulent means or misrepresentation or it was conferred by the authorities of their own either on account of misinterpretation or ignorance of the rules. Though, it has been mentioned in the show cause notice that the grant of increments to the petitioner was objected to by the Vigilance Inquiry and Internal Audit, however, no material has been placed on record to indicate whether Vigilance Enquiry or Internal Audit has found any misrepresentation or fraud on the part of the petitioner for conferment of these benefits. Even from the reply filed by the respondents, nothing is forth-coming as to whether the petitioner is responsible for conferring any such benefit or it was the action of the authorities. There is nothing on record at all to show that the petitioner had, at any stage, made any mis-representation or persuaded the authorities to confer these benefit by any concealment of fact or fraudulent means. Under these circumstances, action of the respondents cannot be justified. The issue is squarely covered by the judgment of the Hon'ble Apex Court in the case of Sahib Ram vs. State of Haryana and others 1995 (1) S C T.668, wherein the Hon'ble Apex Court made the following observations:-

“Admittedly the appellant does not possess the required

educational qualifications. Under the circumstances, the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission.

The appeal is allowed partly without any order as to costs”.

Learned counsel for the petitioner has also argued that the additional benefits so granted cannot be taken away by the authorities when it was conferred by the competent authority when there is no fraud or misrepresentation. According to him, the successor-in-office cannot review the order or withdraw the benefit. He has relied upon a judgment of this Court reported in Kamlesh Kumari vs. The State of Haryana and others 1990 (2) R.S.J 682, wherein this Court has made the following observations:-

“In any case, it has been settled by the privy Council, in the case reported as R.T. Rangachari v. Secretary of State A.I.R.1937 Privy Council 27, that once a benefit has been conferred on a government servant by a competent authority, the successor-in-office cannot review the same and withdraw that benefit. This celebrated judgment of their Lordships of the privy Council has since been followed with approval by almost all the High Courts in the country as also the Supreme Court in a

number of cases during the last half a century. In this Court also, a Division Bench consisting of D.K.Mahajain and Bhopinder Singh Dhillon, JJ. In the case, the General Manager, Northern Railway, Baroda House, New Delhi and another v. Madan Lal Chopra ,etc. 1971 (1) S.L.R. 629, following the law laid down in the aforesaid judgment of the Privy Council, permitted the Railway employees to retain the service benefit granted to them by the Railway authorities, which the successor authorities, on consideration wanted to withdraw”.

In view of the above legal position, the impugned order is not sustainable in law and is liable to be quashed. I order accordingly.

It has been reported that the petitioner has retired from service on December 31,2005. Resultantly, the petitioner shall be entitled to all post retiral benefits without any deduction and her benefits be released in her favour within four months from today. She will also be entitled to statutory interest where-ever payable and also interest @ 6% p.a. on post retiral benefits w.e.f one month after the date of retirement.

Sept 28,2007  
RR

(Permod Kohli)  
Judge