

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP(T) No.7685 /2008

Decided on:30.4.2009

Pradeep Kumar Gupta.

...Petitioner.

Versus

State of Himachal Pradesh and another.

...Respondents.

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?¹.

For the petitioner : Mr.D.P. Gupta, Advocate vice Mr. K.D. Shreedhar, Advocate.

For the Respondents : Mr. R.K. Sharma, Sr. Addl. A.G. with Mr. Rajinder Dogra, Addl. A.G. and Mr. Vikas Rathore, Deputy Advocate General for the respondents.

Rajiv Sharma, J.(Oral)

The petitioner was appointed as Junior Basic Trained Teacher on contract basis. He was paid dearness allowance @ 37% which was subsequently increased to 41%. This allowance has been paid to the petitioner by the respondent-State. It is not borne out from the records that the petitioner has ever misrepresented the facts at the time of payment of dearness allowance to him. The Court is of the firm opinion that the order dated 10.11.2000 (Annexure A-4) has visited the petitioner with civil and evil consequences. The petitioner was required to be heard before the issuance of order dated 10.11.2000.

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

Their Lordships of the Hon'ble Supreme Court have held in ***Rajesh Kumar and others versus Dy. CIT and others***, 2007 (2) SCC 181 that when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed. Their Lordships have held as under:

“26. Effect of civil consequences arising out of determination of lis under a statute is stated in State of Orissa v.Dr. (Miss) Binapani Dei and Ors. (1967 (2) SCR 625). It is an authority for the proposition when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed. In such an event, although no express provision is laid down in this behalf compliance of principles of natural justice would be implicit. In case of denial of principles of natural justice in a statute, the same may also be held ultra vires Article 14 of the Constitution.”

The question relating to release of salary for the vacation period is no more *res integra* in view of the definitive law laid down by their Lordships of the Hon'ble Supreme Court in ***Rattan Lal versus State of Haryana***, AIR 1987 SC 478.

Accordingly, the petition is allowed. Annexure A-4 dated 10.11.2000 is quashed and set aside. The respondents are restrained from effecting recoveries from the salaries of the petitioner. The respondents are directed to pay the salary to the petitioner for the vacation period with interest @ 9% per annum within a period of six weeks from today. The question of regularization and payment of regular pay scale to the petitioner is left open. There will, however, be no order as to costs.

30.4.2009
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(Rajiv Sharma), J.