

**IN THE HIGH COURT OF HIMACHAL PRADESH,**  
**SHIMLA.**

**CWP(T) No.7874/2008**

**Decided on:30.6.2009**

---

**Sarswati Devi and others.**

**...Petitioners.**

**Versus**

**State of Himachal Pradesh and others.**

**...Respondents.**

---

*Coram*

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

*Whether approved for reporting ?<sup>1</sup>. Yes.*

**For the petitioners : Mr. Ajay Mohan Goel, Advocate.**

**For the Respondents : Mr. R.K. Sharma, Sr. Addl. A.G. with Mr. Rajinder Dogra, Addl. Advocate General for respondents No. 1, 2 and 5.**

**Mr. J.R. Thakur, Advocate for respondents No. 3 and 4.**

---

**Rajiv Sharma, J.**

The husband of petitioner No.1 was employed as Forest Guard in the Forest Department in September, 1961. He was subsequently promoted to the post of Forest Ranger. He superannuated on 30.4.2001.

Mr. Ajay Mohan Goel, Advocate has strenuously argued that a sum of Rs. 58,523/- has been illegally withheld by the respondents from the DCRG payable to the husband of petitioner No.1 (hereinafter referred to as 'the petitioner's husband for convenience sake) on the basis of Annexure A-1 dated 27.3.2001. He then contended that petitioner's

---

<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment?* yes.

husband was not heard before withholding amount of Rs. 58,523/- from his retiral benefits.

Mr. R.K. Sharma, learned Senior Additional Advocate General has vehemently argued that a sum of Rs. 58,523/- has been withheld due to the lapses of the petitioner's husband while hiring the accommodation at Bangana for the department. He then contended that he was called upon repeatedly to get the rent assessed by the Himachal Pradesh Public Works Department (HPPWD), but he failed to do so. He lastly contended that the rent of the building hired between 17.7.1992 and 31.3.2000 was got assessed from the HPPWD on 11.3.1999 and thereafter the same was approved on 1.2.2000 by the competent authority.

I have heard the learned counsel for the parties and have perused the pleadings carefully.

The petitioner's husband was posted as Assistant Manager at Bangana with effect from 1.6.1992 to 7.7.1993. He hired private building for the purpose of office having carpet area of 116 square meters. According to the respondents, he has not completed the codal formalities while hiring the office building by getting the rent assessed from the HPPWD despite Annexures R-1 and R-2 dated 25.7.1992 and 5.8.1992, respectively. The rent was got assessed by the Department from the HPPWD, as noticed above, on 11.3.1999. According to the assessment given by HPPWD on 11.3.1999, the rent was fixed for carpet area 116 square meters i.e. Rs. 1899/- per month with effect from 17.7.1992. It was approved on 1.2.2000. The rent of Rs. 1330/- per month for the carpet area of 75 square meters was fixed for the office of Assistant Manager by the competent authority with effect from 17.7.1992 to 31.3.2000. The petitioner's husband was held responsible for hiring excess carpet area of 41 square meters and the differential value of rent of Rs. 58,523/- with

effect from 17.7.1992 to 31.3.1999 was ordered to be recovered from the petitioner's husband. Since the petitioner had to superannuate on 30.4.2001, no demand certificate was sent by the Divisional Manager on 27.3.2001 whereby an amount of Rs. 58,523/- was shown to be recovered from the petitioner's husband. He made representation to the competent authority on 19.4.2001. He received reply on 28.4.2001. He was informed that he had hired carpet area of 116 meters at his own level which was in excess than fixed norms, as such, he was held responsible for hiring of excess accommodation and recovery of Rs. 58,523/- was justifiable. Thereafter he made a detailed representation on 10.5.2001. In reply it has come that the representation of the petitioner was considered and he was called to the office. However, he did not attend the office and the matter could not be resolved. However, the fact of the matter is that before taking a decision to withhold the amount of Rs. 58,523/- from the gratuity of the petitioner, he was required to be heard. The order withholding a sum of Rs. 58,523/- from the gratuity/dues of the petitioner had visited the petitioner's husband with severe civil and evil consequences. He superannuated on 30.4.2001. He has given his explanation vide representation dated 10.5.2001. The matter pertained to the year 1992 and more precisely to 17.7.1992. It is also true that the petitioner's husband was called upon vide Annexures R-1 and R-2 to get the assessment done by the HPPWD. These letters were issued in the year 1992. He has also sent letter on 28.7.1992 informing the authorities that there was no other building at Bangana which was appropriate for hiring on rent for the purpose of office-cum-store. He has given the dimension of the rooms i.e. 116 square meters on 17.7.1992. It appears that letter dated 28.7.1992 remained unattended and it was only on 11.3.1999 that the assessment was got done. It was approved on

1.2.2000. In these circumstances the petitioner's husband cannot be held responsible for hiring the building at Banagana measuring 116 square meters.

The Court is of the firm opinion that if the respondents had given the opportunity to explain the circumstances in which the building was hired at Banagana, he could explain the circumstances on the basis of letter dated 28.7.1992.

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.”**

Accordingly, in view of the observations made hereinabove, the Court is of the firm view that the petitioner's husband ought to have been heard before taking a decision withholding an amount of Rs. 58,523/- from the retiral benefits of the petitioner's husband. He has been deprived of a sum of Rs. 58,523/- illegally.

Consequently, the petition is allowed. Annexures A-1 dated 27.3.2001 and A-4 dated 28.4.2001 effecting recovery from the DCRG amounting to Rs. 58,523/- are quashed and set aside. The respondents are directed to release an amount of Rs. 58,523/- to the petitioners within a period of eight weeks from today. This amount shall carry interest @ 9% per annum as per section 68 of the Central Civil Services (Classification, Conduct and Appeal) Rules, 1965 read with decision No.2 appended thereto. In normal circumstances liberty could have been reserved to the respondents to issue fresh notice to the petitioner, however, in the present case, since the original petitioner has superannuated and has expired during the pendency of the petition, no useful purpose will be served by keeping the proceedings pending. The proceedings are closed. No costs.

30.6. 2009  
\*awasthi\*

**(Rajiv Sharma ), J.**