

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP(T) No. 7299 of 2008

Date of Decision : August 31, 2010

Dr.Rajinder Parsad Sood

Petitioner

Versus

State of Himachal Pradesh and others

Respondents

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

*Whether approved for reporting?*¹ No.

For the petitioner : Mr. Ranjan Sharma, Advocate, for the petitioner.

For the respondents : Mr. Ram Murti Bisht, Deputy Advocate General for the respondents/State.

Sanjay Karol, J. (Oral)

1. There is no dispute that on 21.9.1995 the government of Himachal Pradesh took a policy decision (Annexure A-2) of providing Special non-Practising Allowance amounting to a sum of Rs. 1,00,000/- and Rs. 75,000/- each depending upon the place of posting of the employees in the areas mentioned in Annexures A-I and A-II being very hard areas and Annexures B-I and B-II being hard areas. The relevant clause of the policy is reproduced as under:-

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

"OFFICE MEMORANDUM

The matter with regard to give some financial incentive to the doctors of Health & Ayurveda Department of the State was engaging attention of the Government for some time past to that the far flung areas and remote Health Institutions of the State may not remain without their services and the people of these areas are provided with better health facilities.

Therefore, the Governor, Himachal Pradesh, is pleased to order that the doctors of Health & Ayurveda Departments of Himachal Pradesh will be entitled for accumulated "Special non-Practising Allowance" amounting to Rs. 1.00 lakh for the areas mentioned in Annexure 'A-I & A-II' and Rs. 75,000/- for the areas mentioned in Annexures 'B-I & B-II' for the effective service of the doctors in these areas subject to the following conditions:-

- (A) The period for minimum effective service will be three years and will commence from the date of actual joining or w.e.f. 15.9.95, whichever is later, of the doctor and it will not include leave of any kind admissible under the C.C.S. (Leave) Rules, 1972 except casual leave during this period.
- (B) Earned leave, if not availed of by the doctors posted in these institutions, will not lapse even after the accumulated leave 240 days and this will be allowed to be accumulated in relaxation the rules for three years after which encashment of the earned leave will be admissible to the concerned doctors in addition to accumulated special N.P.A. In respect of such cases where the total accumulated earned leave is less than 240 days from the date of joining or w.e.f. 15.9.95

whichever is later, in very Hard/Hard Areas as per (Annexure A-I, A-II and B-I and B-II), such doctors shall be entitled to encashment or earned leave after completion of prescribed tenure of three years effective service in relaxation of Rules.

- (C) The incentive (sic) proposed above will be in addition to the pay and allowance admissible to employees under existing Rules/Instructions (sic).
- (D) The encashment of Rs. 75,000/- will be payable annually @ Rs. 25,000/- per annum and the amount of Rs. 1.00 lakh will be payable @ Rs. 30,000/-, Rs. 30,000/- and Rs. 40,000/- during Ist, 2nd and 3rd years respectively after completion of every effective years of service. Those not completing the minimum effective period of 3 years and having received any part of the incentive shall have to refund the amount received which shall be recovered from them in one lumpsum. This amount shall be secured at the time of release of Ist instalment by obtaining a bond from the concerned doctor. The period of leave of any kind admissible under the C.C.S. (Leave) Rules, 1972 availed by the concerned doctors during posting in Hard/very hard areas shall be added to the actual period spent on duty in the Institution in these areas during the currency of respective effective years of service for being eligible to receive accumulated Special N.P.A.”

2. There is also no dispute that the said scheme was discontinued as it had failed to evoke positive response from the doctors. However, the government reconsidered the matter and

continued with the said scheme and accorded benefits to such of those employees who had joined hard/very hard areas prior to 17.3.1997. This fact is evident from Annexure A-3 and A-5.

3. There is also no dispute that petitioner in terms of certificate (Annexure A-1) was appointed as Ayurvedic Chikitsa Adhikari and posted in different tribal/hard/very hard areas in the State of H.P.

4. There is also no dispute that atleast one instalment was disbursed to the petitioner as he had completed more than one year of his service in these areas. This amount is Rs. 25,000/-.

5. The purpose of the scheme was to ensure continuity of health services to the people in the far flung and remotest areas of the State of Himachal Pradesh as the health institutions set up by the Government in these areas were sparsely manned by people. This adversely affected in achieving and fulfilling the constitutional obligations and goals of building a strong and healthy nation.

6. There is also no dispute that in terms of notification dated 23.8.1997 (Annexure A-4) petitioner was transferred out from the hard/very hard areas and posted in other parts of the State. It pertains to two categories of employees. One who seek transfer and are thus not entitled to T.T.A. and second who are transferred out by the Government and are entitled to T.T.A. The notification itself clarified that the petitioner was entitled to T.T.A. (Travelling and Transport Allowance). The transfers were not on the asking of the petitioner and were carried out in public interest by the State of its

own. As a consequence thereof petitioner could not complete his stipulated period of three years of service in these areas. Some of the employees had also opted to be transferred out of these areas. Notification makes this distinction and clarifies that they are not entitled to T.T.A.

7. In terms of letter dated 24.12.1999, Government of Himachal Pradesh asked the Director Ayurveda for recovering the amounts disbursed to the employees who had not completed minimum period of service of three years in these areas. It is this action which is under challenge in these proceedings.

8. From the perusal of the terms and conditions governing the employees it is evident that period for minimum effective service to be counted was to be three years commencing from the date of actual joining or w.e.f. 15.9.1995, whichever was later. Amount of Rs. 1 lakh or Rs. 75,000/-, depending upon the place of posting of the employee was to be disbursed in instalments i.e. with the completion of the first year, the second year and the third year. No doubt there is a condition that those employees who do not complete minimum effective period of three years service are not entitled to the incentive under the scheme, but however this condition cannot be made applicable to those employees whose services, in public interest, were required by the Government in the other parts of the State. The scheme was floated in September, 1995. The employees, legitimately expecting to be governed by the

said scheme readily accepted their transfer orders and agreed to be posted in hard/very hard areas of the State to which the scheme was made applicable. In fact they had completed more than two years of their service in these areas. They were transferred out by the State Government and not on their asking. It is also not in consonance with the scheme floated by the Government. With a special purpose and object of achieving or providing health services in the remotest areas of the State money was to be paid in instalments. It could have been paid in lumpsum also. But the intention appears to be otherwise. The deterrent clause was to ensure that the employee do not opt to be transferred out mid way. Continuity of health services had to be maintained in these areas. The petitioner could be relieved only after handing over charge to the next incumbent. In this background the decision taken by the Government to recover the disbursed amount from the petitioner, without his having completed three years of service, cannot be said to be justified.

9. In the reply it stands mentioned that petitioner was transferred on his own asking. This fact has not been substantiated by the State.

10. Further the amount was disbursed long ago. Most of the employees have also retired. There is no fault of the petitioner. Hence in any event no recovery can be made.

11. For all the aforesaid reasons the impugned orders dated 24.12.1999 (Annexure A-7) and 2.2.2000 (Annexure A-8) qua the petitioner are quashed. Petition stands disposed of.

(Sanjay Karol),
Judge.

August 31, 2010
(PK)