

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

CWP (T) No.: 9519/2008

Reserved on: 21.4.2011

Decided on: 29.4.2011

Mrs. Veena Chauhan.

...Petitioner.

Versus

State of H.P. and another.

...Respondents.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Ms. Ranjana Parmar, Advocate.

For the Respondents: Mr. Anshul Bansal, Addl. A.G. with Mr. Vikas Rathore, Dy. A.G. and Mr. R.P. Singh, Asstt. A.G.

Justice Rajiv Sharma, Judge.

Petitioner's pay was fixed as per Annexure A-1 on 26.2.1998. Audit party, during audit inspection for the period September, 1999 to October, 2001, raised objection. It was pointed out that the pay of the petitioner has been wrongly fixed by ignoring orders dated 24.5.1996 and 24.8.1997 at the time of promotion of the petitioner as Superintendent Grade-I on 20.9.1994. Petitioner was served with a show notice on 29.5.2004, to which she filed a

¹ Whether reporters of the local papers may be allowed to see the judgment? Yes

detailed reply vide Annexure A-2. Thereafter, the Department also tried to settle the audit objection during the audit inspection for the period November, 2001 to October, 2002. However, the audit party refused to settle the audit para. Thereafter, impugned Annexure A-3 dated 20.6.2003 was issued whereby the pay of the petitioner was re-fixed and recovery of ₹ 22,375/- was ordered.

2. Ms. Ranjana Parmar has strenuously argued that the impugned Annexure A-3 dated 20.6.2003 is illegal and arbitrary and thus violative of Articles 14 of the Constitution of India. She further contended that the petitioner has neither misled nor misrepresented the facts at the time of issuance of Annexure A-1.

3. Mr. Anshul Bansal, learned Additional Advocate General has vehemently argued that the petitioner's pay had been wrongly fixed vide Annexure A-1 and the same has been rectified after the mistake was detected by the audit party.

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

5. Petitioner's pay had been fixed on 26.2.1998 vide Annexure A-1. She has neither misled the authorities nor misrepresented the facts at the time of fixation of her

pay on her promotion as per Annexure A-1. Mr. Anshul Bansal has drawn the attention of the Court to Annexures RA and RB dated 24.5.1996 and 24.8.1997, respectively. It is evident from the combined reading of these Annexures that the pay of the petitioner, in fact, was wrongly fixed on 26.2.1998. The same was to be fixed at ₹ 2340/- instead of ₹ 2340/- + 40 A.P., as such, so far as the re-fixation of the pay is concerned, the same is in accordance with law. In the case in hand, petitioner, as noticed above, has not misled or played any fraud at the time when Annexure A-1 was issued on 26.2.1998 whereby her pay was fixed. This was a conscious decision taken by the Department. In view of this, no recovery could be effected from the salary of the petitioner.

6. This question is no more *res integra* in view of the law laid down by their Lordships of the Hon'ble Supreme Court in ***Syed Abdul Qadir and others versus State of Bihar and others***, (2009) 3 SCC 475.

7. Accordingly, the petition is partly allowed. Respondents are restrained from effecting any recoveries from the petitioner. No costs.

(Justice Rajiv Sharma),
Judge.

29.4. 2011

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