

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

SWP No. 313/2008

Date of Order: 26.02.2014

Abdul Qayoom Vs. State of J&K and ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat-Judge

Appearing counsel:

For petitioner (s): Mr. Rahul pant, Advocate

For respondent (s): Mr. Gagan Basotra, Sr. AAG for 1, 2, & 4.

Ms Deepika Mahajan, Dy.AG for 3.

i) Whether approved for reporting
in Press/Media : **YES/NO**

ii) Whether approved for reporting
in Digest/Journal : **YES/NO**

Petitioner who retired from service as Sub-Inspector of Police on 31st May, 2002 is aggrieved of re-fixation of his salary behind his back, withholding his gratuity and deduction therefrom to the tune of Rs. 41,442/- and less fixation of his pensionary benefits by respondents.

Following reliefs have been claimed in the writ petition.

i) Writ, order or direction in the nature of Writ of Mandamus commanding the respondents to re-fix all the pensionary benefits of the petitioner on the basis of

the actual pay drawn by the petitioner on the date of his retirement i.e. 31st May, 2002 in accordance with his Last Pay Certificate.

ii) Writ, order or direction in the nature of Writ of Mandamus commanding the respondents to pay to the petitioner arrears of all pensionary benefits after re-fixing the same along with interest @ 12% per annum.

iii) Writ, order or direction in the nature of Writ of Certiorari quashing Order No. 179 of 2003 dated 18th February, 2003 passed by Respondent No. 2 whereby the salary of the petitioner was re-fixed after the retirement of the petitioner without any notice to the petitioner and behind the back of the petitioner,

iv) Writ, order or direction in the nature of Writ of Mandamus commanding the Respondent No. 4 to produce before this Hon'ble Court, the copy of Order No. 1221 of 2002 dated 31st December, 2002 whereby the salary of the petitioner has been re-fixed behind the back of the petitioner and further writ of Certiorari for quashing the same;

It is averred in the petition that petitioner has rendered 38 years of service in police department. In the year 1988 when he was working as Head Constable, his pay was re-fixed to keep him at par with his junior. He was promoted as Assistant Sub Inspector in 1991 and subsequently as Sub Inspector of Police. He retired on 31st May, 2002. His last drawn pay was to the tune of Rs. 12599/-.

Respondent No. 3-Accountant General raised objections regarding wrong pay fixation of petitioner when matter for release of pensionary benefits of petitioner was under consideration. An amount of Rs. 70000/- was withheld from the gratuity of the petitioner. Respondent No. 2 unilaterally worked out excess pay drawn on the basis of communication of respondent No. 3. This was done behind the back of the petitioner. Thus pay of the petitioner was re-fixed after his retirement in terms of order No. 179 of 2003 dated 18.02.2003. Re-fixation of pay resulted in substantial reduction of the basic pay. Respondent No. 4 re-fixed the pensionary benefits of the petitioner on the basis of re-fixed pay. Deduction of Rs.41442/- was ordered

from the withheld amount of gratuity and recovery was effected accordingly. However, the balance amount of Rs. 28558/- too was not released in favour of the petitioner. It is further averred in the petition that respondent No. 4 Senior Superintendent of Police, Doda had fixed salary of petitioner vide his Order No. 2165 of 1998 dated 30th November, 1998 in terms of SRO 75 of 1992. Petitioner, who had been placed under suspension at the time of issuance of SRO 72 of 1992 was later reinstated with all benefits and promoted as well. Thus, he claims, there was nothing wrong in the pay fixation done by respondent No. 4-Senior Superintendent of Police, Doda.

Respondents 1, 2 and 4 have contested the petition on the ground that re-fixation of salary of petitioner was made after objection raised by respondent No. 3. Respondent No. 4 vide Order No. 1221 of 2002 dated 31.12.2002 re-fixed the salary of the petitioner up to 01.11.1998. After receiving the said fixation respondent No. 2 vide Order No. 179 of 2003 dated 18.02.2003 re-fixed the pay of the petitioner up to 31.05.2002 and on the basis of

such re-fixation of pay, statement showing the recovery was drawn up.

Respondent No. 3 has also filed objections contesting the petitioner's claim on the ground that on receipt of pension papers from respondent No. 2 in may 2002 it was observed that the pay of the petitioner was not fixed correctly on his promotion as Assistant Sub-Inspector w.e.f. 28.11.1991. It was noticed that the pay had been fixed at Rs. 1800/- wrongly whereas it was to be fixed at Rs. 1680/- in the pay scale of Rs. 1400-40-1800-50-2300. Irregularity was brought to the notice of respondent no. 2. However, the retirement benefits determined on correct pay due under rules were authorized in favour of the petitioner. An amount of Rs. 70,000/- was withheld from the gratuity till matter of fixation of his pay was sorted out. Upon re-fixation of pay by respondent No. 2 recovery of Rs. 41,442/- was effected from the withheld portion of gratuity. The pensionary benefits authorized vide PPO No. 115449 dated 08.07.2002 were neither re-fixed nor reduced in 2003. Thus pension case of the petitioner stands finalized and

retirement benefits i.e. pension, commutated value of pension and gratuity were authorized in favour of the petitioner.

Heard rival sides and perused the record.

The question falling for consideration is whether it was within the domain and jurisdiction of respondent No. 3 to hold that pay of petitioner had been wrongly fixed at Rs. 1800/- instead of Rs. 1680/- in the pay scale of Rs.1400-40-1800-50-2300, when petitioner was promoted as Assistant Sub Inspector w.e.f. 28.11.1991. The answer has to be as emphatic 'no'. It is indisputable that the petitioner had no role to play in the pay fixation. The stand taken by the respondents is that the wrong fixation of pay at the stage of promotion of petitioner as Assistant Sub Inspector w.e.f. 28.11.1991 was noticed by respondent No. 3 in May 2002 when pension papers of the petitioner were received from respondent No. 2. Admittedly, the pay was fixed by the department more than a decade before the same was noticed by respondent No. 3. Article 242 of J&K CSR provides that the average emoluments in respect of a Government

servant are to be taken into consideration on the basis of last ten months pay, and pension and other benefits are to be fixed accordingly. The fixation has been done more than 10 years before respondent No. 3 made observation regarding wrong fixation of pay. Government instruction inserted vide SRO 45 dated 28.01.1980 creates an absolute bar to check the correctness or otherwise of the past emoluments beyond the period of 24 months preceding the date of retirement. Thus respondent No. 3 could not dig deep into distant past to re-fix pay to the detriment of petitioner's interests and that too at his back.

The question for consideration is whether the fixation of pay by competent authority of the department, which has not been disputed for over a decade and to which petitioner has not contributed, can be disputed by respondent No. 3 after a lapse of a decade. This Court has consistently held in a number of judgments that the department cannot reduce the pay by holding that pay fixation was wrongly done, that too at the fag end of the service career of an employee. In view of law laid down in

Perdhuman Krishan Khullar vs Union of India

2003 (3) JKL 423(HC), ***Mulakh Raj vs Union of***

India, SWP No. 341/2003 decided on 3.11.2006,

Bhushan Kumar vs Union of India, SWP No.

1065/2006 decided on 5.4.2007, ***Maryam Bano vs***

State and ors, reported as SLJ 2003 (1) 188 and a

judgment of a Letters Patent Bench in LPA(OW)

200/2003 ***State vs Mohd Aziz Khan*** decided on

21.08.2002, the respondents are not within their

rights to rectify the error, workout the pension on

the basis of such re-fixation, withhold the portion

of gratuity of the petitioner and effect recovery from

the excess pay drawn worked out on the basis of

re-fixation of pay from such withheld amount of

gratuity. Respondent No. 3 was required to fix the

pension of the petitioner on the basis of last drawn

salary and pensionary benefits had to be calculated

accordingly.

In view of the aforesaid discussion, the writ petition succeeds and impugned order dated 18th February, 2003 is quashed. Respondents are directed to re-fix all the pensionary benefits of the petitioner on the basis of the actual last pay drawn

by the petitioner on the date of his retirement i.e. 31st May, 2002, in accordance with his last pay certificate. Respondents are further directed to release arrears of all pensionary benefits in favour of the petitioner after re-fixing the same along with interest @ 7.5 % per annum. Let this exercise be completed within a period of two months from the date a copy of this order is made available to the respondents by the petitioner.

*(Bansi Lal Bhat)
Judge*

Jammu:
26.02.2014
Bir

