

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

SWP No.340/2012
CMA No.497/2012

Date of order:-18.02.2014

O.P.Abrol	Vs.	State and ors.
Coram:		
<i>Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge</i>		

Whether to be reported?	Yes
Appearing Counsel:	

For the Petitioner(s): Mr.Ajay Abrol, Advocate.

For the Respondent(s) : Mr. D.S.Jamwal, Dy. AG for R-1 and 2.
Mrs. S.Hakim, Dy. AG vice Mrs. Deepika
Mahajan, GA for R-3.

(Oral)

In view of the annexures annexed with the writ petition there is no requirement to seek response from the respondents No. 1 and 2. Respondent No.3 has already filed the reply affidavit.

Petitioner retired on superannuation in the year 2000 as Head Computer. His gratuity amount has been withheld by respondent No.3 on the ground that his pay could not be stepped up and put at par with Sh.R.C.Gupta and there has been allegedly wrong fixation of pay in terms of Government Order No.PW-162/89 dated 14.03.1989. The employer of the petitioner after considering his claim for stepping up of pay and finding the same justified, issued Government Order No.166-PW (R&B) of 2004 dated

15.03.2004 whereunder sanction has been accorded to the stepping up of pay of the petitioner from Rs.2650 to Rs.2725 in the pay scale of 2125-3600 pre-revised w.e.f 16.02.1993 and has been granted next date of increment on 1st of February, 1994. The order has been issued with the concurrence of Finance Department.

The respondent No.3 raised objection about the grant of the aforesaid benefit paid to the petitioner vide communication No. PNR-II-A/04-05/1521-22 dated 4th of February, 2005. In response to said communication, the Joint Director Sericultural Wing, Designs, Inspection and Quality Control, Jammu and Kashmir, Jammu vide its communication No.SWJ/8-9 dated 12th of April, 2005 informed the respondent No.3 that the stepping up of pay of petitioner was done after examining his case and after seeking concurrence from the Finance Department. The order in this behalf was issued and the request was made to respondent No.3 to release the withheld gratuity amount in favour of the petitioner.

The respondent No.3 thereafter raised one more objection about the fixation of pay in terms of Government Order No. PW-162/89 dated 14.03.1989.

When the efforts to get gratuity amount released failed, was constrained to file this writ petition.

In the facts of this case, the competent authority has examined the claim of the petitioner at par with his junior counterpart. The Government Order was issued with concurrence of the Finance Department. Respondent No.3 in these circumstances had neither jurisdiction nor authority to question the validity of said order.

The issue of fixation of pay in terms of order dated 14.03.1989 also cannot be looked into by the respondent No.3 in view of the clear cut mandate contained in first Government instruction appended to Article 242 of the Civil Services Regulation. The Government instruction has been inserted by Finance Department Notification No.SRO 45 dated 25th of January, 1980. This statutory instruction has to be followed by all concerned. Respondent No.3 in the face of the language employed in the said Government instruction can only look into the correctness of the order for a maximum period of 24 months preceding the date of retirement. He is not authorized to look into the correctness of the fixation of the pay in the year 1989 when the petitioner retired on superannuation in 2000.

Respondent No.3 has without any lawful authority withheld gratuity amount of the petitioner to the tune of Rs.60,000/-.

In view of the above, this writ petition is disposed of along with connected CMA in the following manner:-

1. The order of respondent No.3 withholding gratuity amount of Rs.60,000/- is set aside.
2. Respondent No.3 is directed to release the aforesaid amount by passing appropriate order within a period of two weeks from the date copy of this order is served upon him.
3. Respondent No.3 shall also pay interest @ 6 per cent from the date of withholding of the gratuity amount till its disbursement.

(Muzaffar Hussain Attar)
Judge

Jammu:

18.02.2014

Surinder

