

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

SWP No. 1345/2014

MP No. 1769/2014

Date of order: 25.04.2018

Rash Pal Singh

vs

State of J&K and others

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearance:

For the appellant/petitioner(s) : Ms. Surinder Kour, Sr. Adv. with Manpreet Kour, Adv.

For the respondent(s): Mr. R. S. Jamwal, Dy.AG for Nos. 1 to 4

Mr. R. S. Jamwal, CGSC for No. 5

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| i. | Whether approved for reporting in Press/Media | : | Yes/No |
| ii. | Whether to be reported in Digest/Journal | : | Yes/No |

1. Heard.

2. Common ground of both the sides is that petitioner retired on superannuation as 'Turn Cock' from the respondent-department on 31.12.2012. The Executive Engineer, PHE, City Division No. 1, herein respondent No. 4, submitted his pension case vide his communication No. 474 dated 23.04.2013 to the office of the Accountant General (A&E), Jammu, herein respondent No. 5. Respondent No. 5 vide his communication dated PNR-II/C-2/13-14/514-15 dated 01.07.2013 informed respondent No. 4 that benefit of non ITI with effect from 01.09.1992 in the pay scale of 950-1500 under SRO 149 was wrongly given to the petitioner as SRO 149 was repealed by SRO 91 of 1982 and finally withdrawn by the Government vide order No. 227-PW of 2010 dated 08.06.2010. Respondent No. 4 responded to the communication of respondent No. 5 vide his communication No.

PHECD-I/3337 dated 13.09.2013 stating *inter alia* that the case of the petitioner has been regulated correctly on the Service Book.

3. Case demonstrated by Ms. Surinder Kour, learned Senior Advocate appearing on behalf of the petitioner, precisely, is that respondent No. 5 has sanctioned the pension of the petitioner on the basis of the last pay drawn by him, short of the benefit under SRO 149 granted to him in the year, 1992 and has accordingly withheld the gratuity to the tune of Rs. 1,97,718/ towards the excess payment said to have been made to the petitioner on account of the benefit under SRO 149 availed by him. Learned counsel argued that the benefit under SRO 149 given to the petitioner far back in the year 1992 could not have been withdrawn after his retirement in view of Article 242 of the J&K Civil Services Regulations and the retirement benefits, including gratuity, is to be paid to the petitioner on the basis of the actual last pay drawn. In support learned counsel relied upon a judgment of a coordinate Bench of this Court in SWP No. 1774/2015 dated 11.03.2016.
4. Learned counsel for the respondents, however, supported the action of respondent No. 5 and submitted that the petitioner cannot be allowed to continue with the benefit, which was wrongly given to him at the relevant time.
5. The fact situation of the case in SWP No. 1774/2015 (supra) is identical to this case. Learned coordinate Bench has held in this case as under:

“For the reasons aforementioned and in view of the provisions of Article 242 of J&K CSR, reproduced above, which specifically prohibits examination of the correctness of the pay of the emoluments of a Government servant beyond 24 months preceding his/her retirement, this petition is allowed and impugned order dated 05.05.2015 is set aside. The pension of the petitioner shall be fixed in accordance with the last pay drawn by the petitioner as per the documents available on record. This shall be done within a period of six weeks by the respondent Nos. 1, 2 and 4 from the date of receipt of a copy of this order. Thereafter, his case for release

of pensionary benefits would be forwarded to respondent No. 3, who shall release the same including the arrears in favour of the petitioner within a further period of four weeks.”

6. The view taken by the coordinate Bench squarely applies to the case on hand and I find no ground for taking a contra view.
7. For aforementioned, this writ petition is allowed and direction is issued to the respondents, in particular respondent No. 5 that all retiral benefits, including pension and gratuity, shall be paid to the petitioner on the basis of actual last pay drawn by him. The withheld amount of the gratuity shall also be released in favor of the petitioner forthwith.
8. Disposed of.

Jammu:
25.04.2018
Rakesh



(Janak Raj Kotwal)
Judge