

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. : 723 of 2011

Reserved on : 04.04.2023

Decided on : 11.04.2023

Dr. K.B.L. Srivastava

....Appellant.

Versus

State of Himachal Pradesh and Ors.

...Respondents.

Coram

Hon'ble Ms. Justice Sabina, Acting Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ No

For the appellant : Mr. G. R. Palsra, Advocate.

For the respondents : Mr. Rakesh Dhaulta, Additional
Advocate General.

Satyen Vaidya, Judge

By way of Letters Patent Appeal, appellant has assailed judgment dated 26.04.2011, passed by learned Single Judge of this Court in CWP(T) No. 14399 of 2008.

2. Petitioner was working as Medical Officer in the Department of Health Services, Himachal Pradesh. On revision of pay scales w.e.f. 01.01.1996, petitioner was fixed at Rs. 15,100/-, vide office order dated

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

26.09.1998. Subsequently, vide office order dated 13.08.2001, the pay of petitioner was reduced from Rs.15,100/- to Rs.14,300/- w.e.f. 01.01.1996. Petitioner assailed the office order dated 13.08.2001 by way of Original Application No. 2484 of 2001 before H.P. Administrative Tribunal. The original application of the petitioner was allowed by the Tribunal on 29.05.2003 in following terms:-

“Ld. Counsel for the parties submitted that the present original application is fully covered by the decision given in OA(M) No. 357/2001 titled as Sumedh Kaul Vs. State and others. The facts and legal propositions of the present original application are similar to that of O.A. (M) No. 357 of 2001.

In view of this position, we allow the present application and quash and set-aside the operation of Annexure P-A, dated 18.05.2005. Accordingly, the present O.A. stands disposed of with no orders as to cost.”

Thus, the office order dated 13.08.2001 was set aside on the ground that the petitioner had not been afforded any opportunity of being heard before passing said order. Order dated 29.05.2003, passed by the Tribunal was not assailed by either side.

3. Petitioner received a memo dated 18.07.2005 requiring him to show cause, as to why, his pay be not re-fixed at Rs.14,300/- w.e.f. 01.01.1996. Petitioner replied to the memo, however, respondents, vide office order dated 18.05.2006, again ordered the fixation of pay of petitioner at Rs. 14,300/- w.e.f. 01.01.1996 instead of Rs. 15,100/- as fixed earlier.

4. Petitioner assailed office order dated 18.05.2006 before Tribunal and on abolition of Tribunal the matter came before this Court as CWP(T) No. 14399 of 2008. Learned Single Judge, while deciding CWP(T) No. 14399 of 2008, specifically noticed the objection of petitioner to the effect that the order dated 29.05.2003, passed by Tribunal in O.A. No. 2484 of 2001 had attained finality and hence, the subsequent order dated 18.05.2006, reducing the pay of petitioner was not lawful. Learned Single Judge also noticed the objection of petitioner to the effect that petitioner was not instrumental in wrong fixation of the pay and had not misrepresented any fact resulting in such fixation. After dealing with both the objections raised by the petitioner,

learned Single Judge, partly allowed CWP (T) No. 14399 of 2008, by passing a judgment in following terms:-

“In view of above, the petition is partly allowed. The fixation of pay of the petitioner vide memo dated 18.05.2006, Annexure PA, is upheld. However, respondents are directed not to recover any amount already paid to the petitioner prior to re-fixation of his pay, vide memo dated 18.05.2006, Annexure PA. The interim order dated 22.06.2006 stands vacated.”

5. We have heard learned counsel for the parties and have also gone through the record of the case carefully.

6. Petitioner has assailed the impugned judgment, on the grounds, firstly, that after final adjudication of the matter by the Tribunal on 29.05.2003 by deciding O.A. No. 2484 of 2001, the same issue could not have been raised by the respondents and in such view of the matter the re-fixation of pay of the petitioner, vide order dated 18.05.2006, was bad in law. Secondly, the impugned judgment had placed the petitioner in disadvantageous position, as vide judgment dated 18.04.2011, passed by another Bench of this Court in **CWP(T) No. 14394 of**

2008, titled as Dr. Jagat Ram Thakur Vs. State of H.P. and Ors, in exactly identical facts, it has been decided otherwise.

7. Respondents have supported the impugned judgment, on the ground that no prejudice has been caused to the petitioner as the respondents have been restrained from recovering any amount already paid to the petitioner in excess prior to re-fixation of his pay, vide memo dated 18.05.2006. It is also submitted that the impugned judgment does not suffer from any illegality.

8. It is not the case of the appellant that learned Single Judge had not noticed or considered any of the contention raised by the appellant before such Court. That being so, the impugned judgment is to be assessed on the basis of material considered therein.

9. Undisputably, the order dated 29.05.2003, passed by Tribunal in O.A. No. 2484 of 2001, had not decided on merits the issue with respect to the correctness of decision of respondents to re-fix the pay of the petitioner w.e.f. 01.01.1996. Order dated

29.05.2003, was passed by the Tribunal only on the basis that the principles of natural justice had not been followed before passing the order dated 13.08.2001, whereby the pay of the petitioner was re-fixed and reduced w.e.f. 01.01.1996. In this view of the matter, no fault can be found with the impugned judgment, which returned the findings that the Tribunal had not decided the issue involved in the matter on merits. In such circumstances, respondents were not precluded from passing the order of re-fixation in accordance with law.

10. As regards, the judgment passed by another Single Bench of this Court on 18.04.2011 in CWP(T) No. 14394 of 2008, we are of the considered view that the said judgment was *in personam* and petitioner cannot be allowed to take its benefit by using it as a precedent. The acceptance of verdict in CWP(T) No. 14394 of 2008 by respondents also cannot create any estoppel against them.

11. Learned counsel for the appellant has placed reliance upon a judgment passed by this Court in LPA No. 695 of 2011, on the ground that this Court had

decided the identical issue. However, after going through the judgment passed in LPA No. 625 of 2011, we find that though there is similarity of facts, but the issue involved in the present appeal was not decided in LPA No. 695 of 2011 and the said appeal was decided keeping in view its own peculiar circumstances.

12. In result, we find no merit in the appeal and the same is accordingly dismissed. Judgment dated 26.04.2011, passed by learned Single Judge in CWP(T) No. 14399 of 2008, is affirmed.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(Sabina)
Acting Chief Justice

11th April, 2023
(sushma)

(Satyen Vaidya)
Judge