

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 760 of 2012

Dushyant Kumar Deshmukh, aged about 66 years, S/o Kangluram, Retired Head Master Pri. School Brijhapur Block Dhamdha Distt. Durg Cg R/o Near Yogesh Printers Shivpara Durg Cg

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, School Education Department, DKS Bhawan, Raipur (CG)
2. Joint Director, Treasury, Accounts & Pension, Raipur Division, Raipur (CG)
3. Treasury Officer Durg, District-Durg (CG)

---- Respondents

For Petitioner	:	Shri S.P. Sahu, Advocate
For State	:	Shri Chandresh Shrivastava, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

10/08/2017

Heard.

1. This petition has been filed by a pensioner aggrieved by action of the respondents by which in his Last Pay Certificate (LPC), last pay drawn has been amended on account of re-fixation of pay, withholding the benefit of provision contained in FR 22-D of the Fundamental Rules.
2. The petitioner while working as Head Master retired in February, 2007. An order of recovery of Rs.48,948/- was passed on 30.3.2007 and for the purpose of payment and fixation of pension, his pay was fixed at Rs.7,400/- per month. Aggrieved by the recovery and re-fixation of pay for the purposes of calculating pension, the petitioner filed petition WPS No.5491 of 2007 which

was disposed off vide order dated 28.2.2008 for consideration by the Retiral Dues Committee. The Retiral Dues Committee issued notice to the petitioner and thereafter decided the case of the petitioner vide order dated 6.1.2009 in the manner that the recovery order was withdrawn but the pay fixation was upheld. Therefore, in the second round of litigation, the petitioner has assailed the legality of the order by which his pay fixation for the purpose of pension has been changed from Rs.7700/- to Rs.7400/-.

3. Learned counsel for the petitioner argues that rightly or wrongly, once the pay was fixed at Rs.7,700/-, it could not be changed to Rs.7,400/-.
4. On the other hand, learned counsel for the State submits that the petitioner was wrongly granted benefit of provision contained in FR 22-D of the Fundamental Rules which was not permissible under the Rules, therefore, an occasion arose for arriving at correct fixation in accordance with the Rules.
5. After hearing, learned counsel for the parties, I find that the main operative reason for amending pay fixation was that the petitioner was wrongly given benefit of FR 22-D. The relevant provision under FR 22-D is relevant and is therefore extracted as below:

“F.R.22-D Notwithstanding anything contained in these rules, where a Govt. servant holding a post in a substantive, temporary or officiating capacity, is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post, shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued:

Provided that the provisions of this rule, shall not apply where a Govt. servant holding a Class-I post in a substantive, temporary or officiating capacity is

promoted or appointed in a substantive, temporary or officiating capacity to a higher post which is also a Class-I post.”

6. A perusal of this provision show that the benefits are available only when the promotion are made from the lower to a higher post when the pay scale of two posts are different and the pay scale of feeder post is lower than the pay scale of the post on which promotion is made.
7. The undisputed facts of the case are that the petitioner was granted scale promotion equivalent to pay scale of Head Master on 1.1.1986. That means from 1.1.1986, he was drawing same pay scale which is the pay scale of the Head Master. Eventually, the petitioner was granted promotion on the post of Head Master on 31.12.1997. There is nothing on record to show that at the time of promotion of the petitioner to the post of Head Master, pay scale which was granted to him was not the equivalent pay scale which he was drawing upon scale promotion since 1986.
8. The obvious conclusion in such case would be that the benefit of increment available under FR 22-D would not be available. The pay fixation order was required to be corrected and brought to Rs.7400/- in place of 7700/-. Though the resultant recovery on account of excess payment could not be made and the same has rightly been cancelled, this Court does not find any fault with the pay fixation done. Therefore, no relief can be granted to the petitioner.
9. The petition therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge