Sr. No.19
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(C) No.1261/2023

FAROOQ AHMAD ZARGAR …Petitioner(s)

Through: Mr. L. A. Latief, Advocate.

Vs.

UT OF J&K & ORS. …Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG.
Ms. Shaila, Assisting Counsel, vice Mr. Allau-ud-Din Ganai, AAG.

CORAM:HON'BLE MR. JUSTICE SANJAY DHAR,JUDGE

ORDER(ORAL)
24.07.2024

1. The petitioner has challenged communication No.PNR-3/S-2/22/22-23/223426/2052-53 dated 09.02.2023, addressed by respondent No.5 to respondent No.3, whereby the said respondent has been asked to forward the pension case of the petitioner after ignoring the benefit of SRO-149 and to furnish the due drawn statement regarding excess pay drawn by the petitioner.

2. From the pleadings of the parties, it comes to the fore that the petitioner was an employee of the Power Development Department of J&K Government and he has retired from service. It appears that the parent department of the petitioner i.e. respondent No.3, has forwarded the pension

case of the petitioner to respondent No.5, in response whereto, the impugned communication has been addressed by respondent No.5 to respondent No.3.

3. According to the petitioner, his pay was fixed in terms of SRO 149 of 1973 as was done in the case of similarly situated employees of the respondent Department. It has been submitted that the parent department of the petitioner has fixed his pay and the same has been confirmed by the Government in terms of order No.309-PDD of 1995 dated 30.08.1995 and entry of SRO 149 of 1973 stands confirmed vide the aforesaid Government Order. In this regard, the entry has been recorded in the service book of the petitioner which was forwarded to the office of respondent No.5 for release of pension as per the grade and scale of pay in which the petitioner was drawing his salary at the time of his retirement. It has also been contended that respondent No.5 has returned the pension case of the petitioner on flimsy grounds by stating that a case pertaining to SRO 149 is subjudice before the Supreme Court of India. According to the petitioner, he has nothing to do with the said case and is not, in any manner, connected with the case pending before the Supreme Court.

4. Respondent Nos.1 to 4 despite availing a number of opportunities have not filed their reply. However, respondent No.5 has contested the writ petition by filing its reply. In the

said reply, it has been submitted that the query has been raised by the said respondent by virtue of the impugned communication on account of pendency of a case pertaining to SRO 149 before the Supreme Court. It has been submitted that the respondent No.5 is legally obliged to work out the correctness of the financial matters relating to fixation of pension of Government employees and in the instant case, it is fully justified in raising a query about pension case of the petitioner.

5. I have heard learned counsel for the parties and perused record of the case.

6. It is not in dispute that pay of the petitioner has been fixed by his parent department as per the pay scale provided in SRO 149 of 1973, whereby revision of pay scales has taken place. It is not the case of the respondents that any litigation is pending as regards the fixation of pay of the petitioner in the Supreme Court or for that matter in any other Court. In the impugned communication, respondent No.5 has refused to approve the pay fixation made by the parent department of the petitioner on the ground that there is some litigation relating to SRO 149 of 1973 going on in Supreme Court. It has asked the parent department of the petitioner to forward the pension case of the petitioner after ignoring the benefit of SRO 149 of 1973.

7. Unless the Supreme Court delivers a judgment declaring that the benefit accorded to all the employees under SRO 149 of 1973 is not in accordance with law, respondent No.5 cannot refuse to authorize pension of an employee on the basis of the pay fixed by his/her parent department. It is not the case of respondent No.5 that any such declaration has been made by the Supreme Court as yet. Therefore, it is not open to respondent No.5 to ask the parent department of the petitioner to ignore the benefit granted to him in terms of SRO 149 of 1973.

8. Mere pendency of a matter relating to grant of benefit under SRO 149 of 1973 to an employee of the Government of Jammu and Kashmir cannot have any effect upon the pensionary benefits of the petitioner. Therefore, inaction of respondent No.5 in not authorizing pension of the petitioner in accordance with the recommendation made by his parent department cannot be justified in law. A similar view has been taken by Coordinate Benches of this Court in the cases of **Manzoor Ahmad Shah vs. UT of J&K & Ors.** (WP(C) No.2313/2021 decided on 27.05.2022) and **Abdul Majeed Lone vs. State of J&K & Ors.** (SWP No.754/2014 decided on 13.10.2017).

9. So far as the recovery of alleged excess pay drawn by the petitioner is concerned, the respondents cannot take any

such action having regard to the fact that the petitioner has superannuated from his service. Thus, even if it is assumed that the petitioner has drawn excess pay, which, as already discussed, is not the case over here, the respondents in view of the ratio laid down by the Supreme Court in the case of **State of Punjab vs. Rafiq Masih (White Washer & ors.),** (2015) 4 SCC 334, cannot effect recovery of excess pay from the pension or pensionary benefits of the petitioner.

10. In view of what has been discussed hereinabove, the writ petition is allowed and respondent No.5 is directed not to give effect to the impugned communication dated 09.02.2023. It is further directed that respondent No.5 shall authorize pension as well as post retiral benefits to the petitioner in accordance with the pay fixed in his favour by his parent department. The respondents are also restrained from effecting any recovery from the pension or pensionary benefits of the petitioner.

(Sanjay Dhar)
Judge

Srinagar
24.07.2024
"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No

Mohammad Altaf Bhat
I attest to the accuracy and
authenticity of this document

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