
R.N.R.

Before M. Jeyapaul, J.

DEVI CHAND AND ANOTHER,—*Petitioners*

versus

EXECUTIVE ENGINEER, JAGADHARI PROVINCIAL
DIVISION, PWD B&R BRANCH, YAMUNA NAGAR AND
ANOTHER,—*Respondents*

C.W.P No. 7001 of 1990

11th November, 2010

Constitution of India, 1950—Art.226—Building and Roads Manual—Rl. 3.23—Grant of 2 advance increments to work-charged employees by Executive Engineer—Executive Engineer failing to obtain approval from Chief Engineer—Withdrawal of increments after about 8 years of sanction—According to Rl. 3.23 Executive Engineer is competent to grant advance increments to employees but power of confirmation vested with Chief Engineer—No misrepresentation, fraud or deception on part of petitioners—Orders withdrawing increments & recovery proceedings quashed.

Held, that the competent authority has sanctioned two advance increments. It is presumed that such an authority had acted only after weighing the outstanding merit of the employee while granting advance increments. After a lapse of about eight years from the date of sanction of advance increments by the competent authority, such a reason cannot be assigned for withdrawing the benefit already granted to the employee. If the stand of the 1st respondent for withdrawal of the benefit accrued to the petitioners is accepted, no employee in the Government would be safe, inasmuch as the benefits already granted to an employee would be withdrawn capriciously by the Officers, who succeeded the Officers who granted such benefits.

(Para 10)

Further held, that an employee who was granted advance increments is not supposed to directly address the Chief Engineer seeking confirmation informing him of the grant of advance increments to him. A duty is cast upon the competent authority namely the Executive Engineer to seek confirmation by the Engineer-in-Chief in accordance with Rule 3.23 of the Building and Road Manual. To say at the least, the 1st respondent failed to seek confirmation of the two advance increments granted to the petitioners herein. The petitioners shall not suffer for the inaction on the part of the 1st respondent in not obtaining the confirmation from the Chief Engineer. Even otherwise the 1st respondent has no authority to direct the petitioners to repay the advance increments already paid to them after a lapse of about eight years when there was no fraud played upon the petitioners.

(Para 12 & 13)

Ashwani Bakshi, Advocate, *for the petitioners.*

Sukhwinder Singh Nara, Sr. DAG, Haryana, *for the respondents-
State.*

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(1) The first petitioner Devi Chand was appointed as Workcharged Storekeeper in the scale of pay of Rs. 50-3-80/4-88. under the order of appointment issued by the first respondent, the Executive Engineer dated 1st December, 1972. The second petitioner Lazza Ram was appointed as Workcharged Inspector in the scale of pay of Rs. 60-4-80/5-120, under the order of appointment issued by the first respondent dated 28th July, 1975. The first respondent was pleased to grant two advance increments to the 1st petitioner in the grade of Rs. 110-4-130/5-160-5-225 raising

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his pay from Rs. 130 to Rs. 140 with effect from 1st March, 1980. Similarly the first respondent was pleased to grant two advance increments to the 2nd petitioner in the grade of Rs. 120-5-150/6-180/8-220/10-250 raising his pay from Rs. 135 to Rs. 145 with effect from 1st March, 1980. Both the petitioners have been drawing their salary inclusive of those two advance increments granted by the first respondent.

(2) All of a sudden an instruction was given to the Superintending Engineer by the Engineer-in-Chief by his proceedings dated 18th October, 1988 to stop the payment of two advance increments forthwith and to re-fix the increments as per rules and take proceedings for recovery of the amount already paid. The same was challenged by the writ petitioners in CWP No. 10802 of 1988 on the ground that no opportunity was given to the petitioners before the said order was passed *suo-motu* by the Engineer-in-Chief. This Court allowed the writ petition and quashed the impugned orders passed by the Engineer-in-Chief and directed the respondents to go into the matter afresh in accordance with the rules and pass an appropriate order after hearing the petitioners.

(3) The impugned orders were passed by the first respondent on 16th April, 1990 of course after hearing the petitioners.

(4) The impugned orders passed by the first respondent on 16th April, 1990 are now under challenge before this Court.

(5) The learned Counsel appearing for the petitioners would submit that the first respondent, who had already weighed the merit of the case of the petitioners and granted two advance increments as early as on 18th March, 1980 and 19th March, 1980 respectively cannot now reassess the merits of the case of the petitioners for the entitlement of advance increments. The first respondent, if at all any approval was required for the advance increments sanctioned by him, should have approached the higher authority concerned seeking approval of his action. The petitioners have nothing to do with the departmental action expected from the respondents. It is his further submission that even as per Rule 3.23 of the Building and Road Manual, the Executive Engineer is competent authority to grant advance increments to the member of Workcharged establishment of course subject to the confirmation by the Engineer-in-Chief. The last submission made by the learned Counsel appearing for the petitioners is that the advance increments already sanctioned and granted to the petitioners cannot be recovered at this distant point of time especially when there is no mis-representation,

fraud or deception committed by the petitioners in the matter of sanctioning the two advance increments by the first respondent.

(6) In contrast, the learned Senior Deputy Advocate General, appearing for the respondents-State would submit that the impugned orders were passed by the first respondent only in accordance with Rule 3.23 of Building and Roads Manual. Inasmuch as no confirmation was obtained by the first respondent from the Chief Engineer, two advance increments sanctioned in favour of the petitioners cannot be legally sustained, it is submitted.

(7) The fact remains that the first petitioner was appointed by the first respondent as Workcharged Storekeeper,—*vide* proceedings dated 1st December, 1972 and the second petitioner was appointed as Work Inspector,—*vide* proceedings dated 28th July, 1975. The first respondent was pleased to grant two advance increments to the first petitioner,—*vide* proceedings dated 19th March, 1980. It is presumed that the first respondent having weighed the merits of the petitioners to receive two advance increments granted the same to the petitioners.

(8) It is not the case of the respondents that two advance increments were obtained by the petitioners from the 1st respondent by making misrepresentation, by playing fraud or by committing deception. Only if the Government employee got such benefits by playing fraud upon the department or making mis-representation or committing deception he is dis-entitled to retain the benefit he received (*see Budh Ram and others versus State of Haryana and others, (1)*).

(9) Two reasons have been assigned by the first respondent for withdrawing the two advance increments already granted to the petitioners way back in the year 1980. The first reason is that the records did not reflect the outstanding merit of the petitioners herein. The second one is that the approval of the competent authority was not obtained.

(10) As already pointed out by me, the competent authority has sanctioned two advance increments. It is presumed that such an authority had acted only after weighing the outstanding merit of the employee while granting advance increments. After a lapse of about eight years from the date of sanction of advance increments by the competent authority, such a reason cannot be assigned for withdrawing the benefit already granted

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to the employee. If the stand of the 1st respondent for withdrawal of the benefit accrued to the petitioner is accepted, no employee in the Government would be safe, inasmuch as the benefits already granted to an employee would be withdrawn capriciously by the Officers, who succeeded the Officers who granted such benefits.

(11) Coming to the next reason assigned for withdrawal of benefit of advance increments already granted to the petitioners, it is found that the 1st respondent is the competent authority even as per the Rule 3.23 of the Building and Road Manual to grant advance increments to the employees, but such an action is subject to the confirmation of the Chief Engineer. The aforesaid Rule does not say so that the Executive Engineer is incompetent to grant any advance increments nor does it say that the Chief Engineer is the only competent authority to grant advance increments. Though the Executive Engineer is competent authority to grant advance increments, the power of confirmation has been vested with the Chief Engineer.

(12) An employee, who was granted advance increments is not supposed to directly address the Chief Engineer seeking confirmation informing him of the grant of advance increments to him. A duty is cast upon the competent authority namely the Executive Engineer to seek confirmation by the Engineer-in-Chief in accordance with Rule 3.23 of the Building and Road Manual. To say at the least, the 1st respondent failed to seek confirmation of the two advance increments granted to the petitioners herein. The petitioners shall not suffer for the inaction on the part of the 1st respondent in not obtaining the confirmation from the Chief Engineer.

(13) Even otherwise the 1st respondent has no authority to direct the petitioners to re-pay the advance increments already paid to them after a lapse of about eight years when there was no fraud played upon by the petitioners.

(14) In view of the above, the impugned orders passed by the 1st respondent are liable to be quashed. Accordingly the impugned orders are quashed and the respondents are directed not to recover the advance increments received by the petitioners from the year 1980.

(15) With the above directions, the writ petition stands allowed. There is no order as to costs.