

Order dated: 09.07.2009

Coram: Hon'ble Mr. Justice K. Thankappan, M(J)

The applicant has filed this O.A. for a direction to the Respondents to pay the D.A. arrears and three annual increments from March 2006 to March, 2008 which are due and admissible, and also for a direction to quash the order dated 11.4.2008, Annexure-A/3, for recovery of an amount of Rs. 2645/- from the applicant.

2. The O.A. has been admitted by this Tribunal and notice ordered, and at the time of admission of the O.A., this Tribunal remarked that as the order has been passed for recovery of amount of Rs. 2645/- from the applicant, which is alleged to have been paid as fee to Shri B.K.Mohapatra, Lt. Additional Standing Counsel, Central Govt. appearing for and on behalf of the Respondents in O.A. No. 970/05 filed by the present applicant by challenging his transfer, and stayed the recovery. However, subsequently, the said O.A.No. 970/05 has been allowed and the transfer order has been quashed. Subsequent to the order passed by this Tribunal, the present Annexure-A/3 order has been passed by the Principal for recovery of an amount of Rs. 2645/- from the applicant and D.A. arrears and the annual increments from March 2006 to March 2008 have not been given to the applicant.

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3. After admission of the O.A. counter affidavit has already been filed for and on behalf of the Respondents in which the stand taken is that the order of recovery of amount of Rs. 2645/- is not justifiable and it is ordered to be returned to the applicant and as per a cheque bearing No. 265519 dated 30.10.2008 the amount has been already paid back to the applicant. With regard to other prayer for payment of the D.A. arrears etc., it is stated in the counter affidavit at page 3 that all the arrears have been already paid and the last pay certificate has been also sent In the above circumstances, the Ld. Counsel appearing for the Respondents submits that at present there exists nothing to be decided by this Tribunal in this O.A.

4. With regard to above reply given by the Respondents in the counter affidavit, Ld. Counsel for the applicant Shri M.B.Balbantry submits that even though the cheque of Rs. 2645/- was issued to applicant that has been returned back, but the reason is not known. The Ld. counsel is also not in a position to state before this Tribunal why it is returned and whether it was out of date or anything else. It will be the liability for the Respondents if such a stand is taken by the applicant. A person of litigious nature shall be a liability on the employer as per the judgment reported in 2001 SLJ 31 in the matter of Prabodh Sagar vs Punjab State Electricity Board and Ors. In the light of the principle laid down

therein, this Tribunal sees that the return of cheque by the applicant is without any reason. However, it is only proper for this Tribunal to order that if the amount is not received by the applicant hither to, the Respondents should reissue the cheque without any interest or any commission whatever there be. With this direction the first prayer is found allowed to the extent indicated above.

5. With regard to the second prayer, it is stated at pages 2 and 3 of the counter affidavit as follows:

"That as regards the claim of the D.A. arrears and three Annual Increments due from March-2006 to March-2008, it is submitted that since the service book and Last Salary Certificate were not available with the respondent No.3 as it was not dispatched from the J.N.V. Sundargarh to J.N.V. Jharsuguda, it was not possible to allow increment and D.A. etc. However steps were taken by the respondent No.3 requesting Principal, J.N.V./Sundargarh to make available the records at an early date so that she can take steps for release of the D.A. and increments etc. On receipt of the Last Pay Slip from J.N.V. Sundargarh vide their letter No. JNVZ/2006/334 dated 22.08.2006 (Annexure-R/5) the pay of the applicant was released on basic pay of 2910/- The Annual increment due on March 2006 was not sanctioned by the J.N.V. sundargarh though applicant was working there up to 03.08.2006. Therefore, the subsequent increments due in March 2007 and 2008 could not be released by the respondent No.3. The service Book of the applicant was received by the respondent No.3 on 20.11.2008 (Annexure-R/6) vide letter

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No.-744 dt.d. 19.11.2008 being dispatched by the J.N.V. Sundargarh. On verification of the Service Book increment of Rupees Sixty was sanctioned and the pay of the applicant was raised to Rs. 2970/- from Rs. 2910/- with effect from 12.03.2006 with the financial benefits from 01.03.2006 vide letter No. F.P.F./JNVZ/2007-2008/689 dt. 18.10.2008. Soon after this Vidyalaya has sanctioned his annual increment of Rs. 60/- raising pay from 2970/- to 3030/- with effect from 01.03.2007 and subsequent increment of Rs. 60/- raising pay from Rs. 3030/- to Rs. 3090/- with effect from 01.03.2008 vide sanctioned order No. JNV(Jsg)/2008/646 and No. JNV(Jsg)2008/647 dated 20.11.2008 respectively and released his arrear dues of increment on 22.11.2008 vide cheque No. 470700. (Annexure-R-7 Series)"

The above paragraphs clearly indicate that all the arrears of the applicant have been already given.

6. In the light of above, this Tribunal sees that nothing further remains to be adjudicated in this O.A. The O.A. is accordingly disposed of. No costs.

Member (Judl.)

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