

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4040 OF 2011

(Arising out of SLP(C) No.362/2008)

STATE OF HIMACHAL PRADESH

Appellant(s)

:VERSUS:

SARAB DAYAL

Respondent(s)

WITH

CIVIL APPEAL NO. 4027 OF 2011 (@ SLP(C)No.23225/2007)

CIVIL APPEAL NO. 4028 OF 2011 (@ SLP(C)No.23886/2007)

CIVIL APPEAL NO. 4029 OF 2011 (@ SLP(C)No.24042/2007)

CIVIL APPEAL NO. 4030 OF 2011 (@ SLP(C)No.24043/2007)

CIVIL APPEAL NO. 4031 OF 2011 (@ SLP(C)No.24045/2007)

CIVIL APPEAL NO. 4033 OF 2011 (@ SLP(C)No.24304/2007)

CIVIL APPEAL NO. 4036 OF 2011 (@ SLP(C)No.55/2008)

CIVIL APPEAL NO. 4032 OF 2011 (@ SLP(C)No.1114/2008)

CIVIL APPEAL NO. 4037 OF 2011 (@ SLP(C)No.5206/2008)

CIVIL APPEAL NO. 4039 OF 2011 (@ SLP(C)No.5208/2008)

CIVIL APPEAL NO. 4041 OF 2011 (@ SLP(C)No.8027/2008)

CIVIL APPEAL NO. 4042 OF 2011 (@ SLP(C)No.8562/2008)

CIVIL APPEAL NO. 4043 OF 2011 (@ SLP(C)No.15379/2008)

CIVIL APPEAL NO. 4113 OF 2011 (@ SLP(C)No.17525/2008)

CIVIL APPEAL NO. 4123 OF 2011 (@ SLP(C)No.19516/2008)

CIVIL APPEAL NO. 4132 OF 2011 (@ SLP(C)No.26055/2008)

CIVIL APPEAL NO. 4134 OF 2011 (@ SLP(C)No.26628/2008)

CIVIL APPEAL NO. 4044 OF 2011 (@ SLP(C)No.28886/2008)

CIVIL APPEAL NO. 4045 OF 2011 (@ SLP(C)No.26353/2008)

CIVIL APPEAL NO. 4046 OF 2011 (@ SLP(C)No.30185/2008)

CIVIL APPEAL NO. 4047 OF 2011 (@ SLP(C)No.28787/2008)

CIVIL APPEAL NO. 4048 OF 2011 (@ SLP(C)No.26454/2008)

CIVIL APPEAL NO. 4049 OF 2011 (@ SLP(C)No.30399/2008)

CIVIL APPEAL NO. 4050 OF 2011 (@ SLP(C)No.30730/2008)

CIVIL APPEAL NO. 4051 OF 2011 (@ SLP(C)No.30323/2008)

CIVIL APPEAL NO. 4054 OF 2011 (@ SLP(C)No.30782/2008)

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CIVIL APPEAL NO. 4190 OF 2011 (@ SLP(C)No.33600/2010)
CIVIL APPEAL NO. 4191 OF 2011 (@ SLP(C)No.32729/2010)

O R D E R

1. Delay condoned.
2. Leave is granted in all the Special leave

petitions.

3. These appeals emanate from the judgment and order dated 19.7.2007 delivered by a Division Bench of the High Court of Himachal Pradesh at Shimla in a group of civil writ petitions.

4. We have heard Mr. P.P. Rao, learned senior counsel appearing for the State of Himachal Pradesh and Mr. M.C. Dhingra, learned counsel for the respondents and other learned counsel appearing for the respondents.

5. During the course of hearing, a copy of Office Memorandum No.F.12(1)E.V/68, dated the 14th May, 1968, which was issued by the Government of India, has been brought to our notice. Admittedly the said Office Memorandum was neither filed by the appellant(s) nor by the respondents. Only during the course of arguments, a copy of this 1968 Office Memorandum was handed over to the High Court by the learned counsel for the respondents.

6. Learned counsel appearing for the appellant(s)

submits that the appellant State did not have any opportunity to file any reply to this Office Memorandum of 1968. The High Court in the impugned judgment has placed heavy reliance on this Office Memorandum. It is submitted by the learned counsel for the appellant(s) that the 1968 Office Memorandum was not adopted by the State. This fact could not be brought to the notice of the Court because the State did not have a chance of filing reply. Obviously the Court did not consider the aspect of non adoption of the Office Memorandum by the State in the judgment.

7. On 13th April, 2011, this Court directed the State of Himachal Pradesh to file an affidavit stating therein as to whether the Office Memorandum dated 14th May, 1968 issued by the Governments of India was adopted by the State or not.

8. In pursuance to the direction of this Court, an affidavit has been filed by Mr. P.C. Kapoor, Principal Secretary to the Government of Himachal Pradesh, Shimla, in which it is stated that the

State of Himachal Pradesh has not adopted the O.M. No.F.12(1)-EV/68, dated the 14th May, 1968 issued by the Government of India, Ministry of Finance, either for the payment of pension or payment of gratuity to its employees.

9. In the affidavit it is also mentioned that the Government of Himachal Pradesh is not paying the gratuity to its employees under OM dated 14th May, 1968 but is paying the gratuity to its workers under the Payment of Gratuity Act, 1972 and CCS Pension Rules, 1972 and as per the directions of the High Court vide its judgment dated 9.5.2007 in CWP No.150 of 2004, titled as 'State of H.P. versus Lashkri Ram'.

10. Mr. M.C. Dhingra, learned counsel appearing for the respondents has referred to The Punjab Reorganisation Act, 1966 and submitted that Himachal Pradesh became a State with effect from 25.1.1971 and prior to this, it was a Union Territory established under the Government of Union Territories Act, 1963. It was submitted by Mr. Dhingra that all the Office Memorandums issued by

the Government of India, ipso facto, became applicable to the State of Himachal Pradesh with effect from 19.5.1971.

11. We have perused the records and heard the learned counsel for the parties. We are of the considered view that an entirely new case has been weaved out before this Court. There are no pleadings to that effect. In this view of the matter, we are constrained to set aside the impugned judgment of the High Court and remit the matters to the High Court for fresh adjudication. To avoid any confusion, we direct the State to file a comprehensive amended writ petition in the High Court within eight weeks and reply of the same be filed within eight weeks thereafter and rejoinder, if any, within four weeks thereafter.

12. We request the High Court to dispose of the matters on the basis of the amended pleadings, as early as possible, in any event, within nine months from the date of communication of this order.

13. To avoid any delay in the matters, we direct

the parties to appear before the High Court on 17th May, 2011. The State of Himachal Pradesh would be at liberty to additionally serve the parties through their respective counsel in the High Court.

14. With these observations and directions, these appeals are disposed of, leaving the parties to bear their own costs.

.....J
(DALVEER BHANDARI)

.....J
(DEEPAK VERMA)

New Delhi;
May 5, 2011.

JUDGMENT