

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No. 292/2000

% Reserved on : May 13, 2008
Date of decision: May 23, 2008

KANWAL SINGH ...PETITIONER
Through: Mr.Bhim Sen Sehgal, Advocate.

Versus

UOI ...RESPONDENTS
Through: Ms Jyoti Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J

1. The petitioner is an Ex-Serviceman who served Indian Army for almost 18 years from 13.11.1963 to 30.11.1981. After his retirement he was re-employed in the CRPF on 17.4.1982.

2. On his retirement from Indian Army he was granted pension @ 192/- per month w.e.f. 01.12.1981. After Fourth Pay Commission the pension made admissible to the petitioner was enhanced by Rs. 375/- per month. Accordingly, the petitioner started getting pension by Rs. 449/- per month.

3. The respondent issued a circular dated 11.9.1987 whereby they decided to withdraw the enhanced portion of the

pension made admissible to similarly placed re-employed persons like the petitioner. It was decided to re-fix the pay of the petitioner which was also made admissible to him at the time of his re-employment by reducing the enhanced portion of the pension from his salary w.e.f. 01.1.1986. The persons aggrieved by the manner in which their pension was revised approached the Apex Court for redressal of their grievance where the circular dated 11.9.1987 annexed as Annexure P-1 to the present writ petition came up for consideration.

4. The Apex Court vide judgment delivered in the case of Union of India Vs. G. Vasudevan Pillay & Ors., reported in reported in JT (1991) CISF 417 dealt with the issue and held :

“Reduction of enhanced pension from pay of those ex-servicemen who were holding civil posts on 01.01.1986 following their re-employment.

The aforesaid reduction, which is the subject-matter of some appeals, is the fall out of Office Memorandum dated 11.9.1987 according to which the pay of the ex-servicemen who were in employment in a civil post as on 01.01.1986 following their re-employment, is required to be reduced by an amount equivalent to the enhanced pension made available pursuant to the report of the Fourth Pay Commission.

12. The ground of attack is that the aforesaid decision violates Articles 14 and 16 of the Constitution inasmuch as there is no national basis for classifying the employees for the aforesaid purpose on the basis of there being in employment on 01.01.86. This submissions has been advanced because the reduction of the aforesaid nature has not been made in respect of those who have been in employment since 01.01.86. The additional affidavit filed on behalf of respondent No. 1 in SLP (C) No. 17456/91 on 25.8.94 contains some names of those who were re-employed after 01.01.86 and are being paid both the

revised pay and revised pension. This factual position has been admitted in the aforesaid written submissions filed on behalf of the Union of India inasmuch as it has been stated in page 9 that the pensioners who are re-employed after 01.01.86 enjoy the benefit of revised pay and also revised pension w.e.f. 01.01.86.

13. Reliance has been placed in support of aforesaid submission on a two-Judge Bench decision of this Court, to which one of us (Kuldip Singh, J) was a party. That decision was in the case of T.S. Thinuvengadam v. Secretary of Government of India, 1993 (2) SCC 174: [1993 (2) SLR 34 (SC)]. The facts of that case are, however, different inasmuch as there the Memorandum dated June 16, 1967 stating that revised pensionary benefits would be made available only to those Central Government servants who have been absorbed in public sector undertakings after that date was not found to be constitutional because the very object of bringing to the existence the revised terms and conditions by the Memorandum was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public sector undertakings. It was, therefore, held that restricting the applicability of the revised Memorandum only to those who are absorbed after coming into force of the same would not only defeat the very object and purpose of Memorandum but would be contrary to fair play and justice also.

14. Despite the aforesaid decision being of no aid in the present cases, we find no logic and basis for classifying the re-employment persons on the basis of their being on employment on 01.01.86. Indeed, no justification has been canvassed before us. The decision which held the field before the impugned Memorandum is not taking note of pension while fixing pay of the ex-servicemen on re-employment, which was based on good reasons, had no good reason for its reversal, as enhanced person was not confined to those who were in employment on 01.01.86. The impugned decision is, therefore, arbitrary and is hit by Articles 14 and 16 of the Constitution. We, therefore, declare the same as void."

5. Accordingly, it was held that the decision taken by the Central Government to reduce the enhanced pension of only those ex-servicemen who were holding civil post from 01.1.1986 was unconstitutional and consequently orders were made for refund of the portion recovered.

6. It appears, that after the recommendation of the Fifth Pay Commission came into force, the Government issued a fresh circular dated 19.11.1997 whereby they again sought to withdraw enhanced portion of the pension which was made admissible to the re-employed persons because of the benefits granted to them as a consequence of the acceptance of the recommendations of the Fourth and Fifth Pay Commission. A perusal of the aforesaid circular which is Annexure P-7 to the writ petition goes to show, that despite the prohibition by the Hon'ble Supreme Court in the case of Union of India Vs. G. Vasudevan Pillay's case (supra), the Government again wanted to deduct the enhanced portion of pension by issuing the aforesaid circular.

7. It may be appropriate to take note of some of the paragraphs of the aforesaid circular which are reproduced hereunder for the sake of reference:-

"2. II. The initial pay of a re-employed govt. Servant who retired with a pension or any other retirement benefit and whose pay was fixed on re-employment with reference to these benefits or ignoring a part thereof and who elects or is deemed to have elected to be governed by the revised scaled from the 1st day of Jan, 1996 shall be fixed in accordance with the provisions contained in rule 7 of the Central Civil Service (Revised pay) Rules, 1997.

In addition to the pay so fixed, the re-employed Govt. Servant would continue to

draw the retirement benefits he was permitted to draw in the pre-revised scales, as modified based on the recommendation of 5th Central Pay Commission, order of which have been issued separately by the Deptt. Of Pen. & Pensioners Welfare. However, an amount equivalent to the revised pension (excluding the ignorable portion of pension where ever permissible) effective from 01.1.1996 or after shall be deducted from his pay in accordance with the general policy of the Govt. on fixation of re-employed pensioners. After pay in the revised scale is fixed in the manner indicated above increase will be allowed in the manner laid down in rule 8 of CCS (RP) Rule 1997.

4. Where re-employed Govt. Servant elect to draw his pay in the existing scale and is brought over to revised scale from the date latter than 1st Jan, 1996 his pay from later date in the revised scale shall also be fixed in accordance with the provisions of Rule 7 of the CCS (R.P.) Rule, 1997.

8. It may also be pertinent to refer to rule 7 of CCS Pension Rules which is reproduced hereunder:-

"7(1) A Government servant shall not earn two pensions in the same service or post at the same time or by the same continuous service.

(2) Except as provided in Rule 19, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment.

9. Thus it is apparent that what the Government wanted to do was to again withdraw the benefit of the enhanced pension made admissible to the retired government employees in pursuance to

the recommendations of Fourth and Fifth Pay Commission merely because the said person was re-employed and was also getting his pay in accordance with the terms and conditions of the post for which he was re-employed without stipulating therein that deduction shall be made out of his salary in respect of enhanced pension.

10. It is the grievance of the petitioner that the respondent started deducting the enhanced portion of the pension made admissible to him out of the pension which became payable by taking into consideration the enhanced portion of the pension due to the acceptance of the Fourth and Fifth Pay Commission despite the fact that there was no special stipulation in terms and conditions of his re-employment. He, therefore, made representation to the respondents from time to time to desist from doing so. He also brought to their notice the judgment delivered by the Hon'ble Supreme Court in the case of Union of India Vs. G. Vasudevan Pillay's case (supra). However, the respondents failed to desist from their illegal action and have also not refunded the amounts already deducted from his pay by way of re-fixation of pay which was payable to the petitioner in addition to the enhanced pension on account of his previous service.

11. The respondents have opposed the writ petition by filing the counter affidavit on the ground that the petitioner had not sent a letter of election as to whether he would like to be benefited by the Fifth Pay Commission or would like re-fixation of his pay as per the Pay Commission by taking into consideration his previous service. This argument of the respondents is misconceived for the simple reason, that at no point of time before re-employing the person the

petitioner was ever informed about any such options or was told that if in case of his re-employment his pay would be fixed by taking into consideration his previous pay or the pension derived by him on account of his previous service.

12. Moreover, the matter is no more res-integra as the Division Bench of this court in Jai Singh Vs. UOI, 113(2004) DLT 173 while considering the matter relied upon the Hon'ble Supreme Court's judgment in the case of Union of India Vs. G. Vasudevan Pillay's case (supra) and held:-

"...In the aforesaid decision of the Supreme Court, it has been held that the respondent could not deduct the military pension in the absence of any terms and conditions stipulated at the time of re-employment. It was also held that the decision to reduce the enhanced pension from pay of those ex-servicemen only, who were holding civil posts on 01.1.88 following the re-employment is unconstitutional. The Division Bench of this court in H.C./G.D. Riazul Haq v. Union of India & Others, in CWP 224/96 decided on 13.2.1997 has also taken a similar view that the respondent cannot deduct the amount from enhanced military pension.

2. In view of the aforesaid settled position of law, we are satisfied that these writ petitions could also be allowed holding that the impugned decision and action of the respondent to deduct enhanced military pension or any part thereof from the pay of the petitioners is illegal and without jurisdiction. The impugned order, therefore, stand quashed and are set aside.

It is direct that the respondents shall re-fix the pay of the petitioners ignoring the enhanced military pension. The respondents are further restrained from making any recovery of the alleged arrears. It is also made clear that in case any amount has been recovered from the petitioners, the same shall be duly paid to the petitioners within eight weeks from today.

3. The writ petitions are accordingly allowed in the aforesaid terms. Let a copy of

this order be sent to D.O.P. & T. of the Government of India with a direction to them to ensure that these orders are complied with in future, in other similar cases, as well."

13. It appears that the respondents despite the aforesaid pronouncement by a Division Bench of this court as also the judgment of the Hon'ble Supreme Court of India in Union of India Vs. G. Vasudevan Pillay's case (supra) instead of taking corrective action forced the petitioner to run from pillar to post and finally to come to this court for redressal of his grievances. This action on the part of the respondent reflects high handedness and needs to be deprecated. Such action besides being illegal and unwarranted also is contemptuous and needs to be dealt with a heavy hand, more so, when the respondents were given a chance by this court to remedy the petitioner on their own but on instructions, the learned counsel stated that the respondents wanted to invite a judgment.

14. Taking all these facts into consideration, we quash the orders dated 29.2.1992 and 02.1.1999 passed by the respondent on the basis of which they have deducted the enhanced portion of the pension from the salary of the petitioner by re-fixing his pay. We direct the respondents to re-fix the pay of the petitioner by giving full effect to the recommendations made by the Fourth and Fifth Pay Commission as accepted by the Government in respect of the pension made admissible to the petitioner and to pay full salary to the petitioner in addition to the pension payable to the petitioner in respect of his earlier service taking into consideration the recommendations of the Fourth and Fifth Pay Commission. We also quash the circular dated 19.11.1997. Needless to say, that the amount recovered from the petitioner will be refunded to the

petitioner along with any other amount payable to him within a period of three months from today. He will also get simple interest @ 9% per annum on the amount deducted or not paid. The writ petition is accordingly allowed with cost of Rs. 10,000/-.

MOOL CHAND GARG, J

MAY 23, 2008
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SANJAY KISHAN KAUL, J