

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**LPA No. 83 of 2013 alongwith CWP Nos.
2318, 2319, 2408, 2409 and 2500 of 2019.**

Reserved on : 05.01.2023

Pronounced on: 10.01.2023

LPA No. 83 of 2013

State of H.P.

... Appellant.

Vs.

Lt. General (Retd.) B.S.Thakur and others

....Respondents

CWP No. 2318 of 2019

Dr. Man Singh

... Petitioner

Vs.

State of H.P. and others.

....Respondents

CWP No. 2319 of 2019

Major General DVS Rana (Retd.)

... Petitioner

Vs.

State of H.P. and others.

....Respondents

CWP No. 2408 of 2019

Mohan Lal Chauhan

... Petitioner

Vs.

State of H.P. and others.

....Respondents

CWP No. 2409 of 2019

Meera Walia

... Petitioner

Vs.

State of H.P. and others.

....Respondents

CWP No. 2500 of 2019
Pardeep Singh Chauhan

... Petitioner

Vs.

State of H.P. and others.

....Respondents

Coram:

Hon'ble Ms. Justice Sabina, Judge.

Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?

In LPA No. 83 of 2013

For the appellants/State : Mr. Anup Rattan, Advocate General
with Ms. Seema Sharma, Dy. A.G and
Mr. Rajat Chauhan, Law Officer.

For the respondent : Mr. R.L.Sood, Sr. Advocate with Mr.
Arjun Lall, Advocate, for respondents
No.1 to 3 and 5.

Mr. Ajay Kochhar, Sr. Advocate, with
Mr. Anubhav Chopra, Advocate for
respondent No.4.

Mr. Vikrant Thakur, for respondent
No.6.

In CWP No. 2318, 2319, 2408, 2409 and 2500 of 2019

For the petitioners: Mr. Hamender Singh Chandel,
Advocate.

For the respondent/State: Mr. Anup Rattan, Advocate General
with Ms. Seema Sharma, Dy. A.G and
Mr. Rajat Chauhan, Law Officer.

Mr. Vikrant Thakur, for
respondent/Commission.

Sabina, Judge.

Vide this order above mentioned Letters Patent Appeal as well as Writ Petitions would be disposed of as the legal question involved in all the cases is the same.

2. The question involved in the present cases is as to whether Regulations 5, 6 and 9 (2) of the Himachal Pradesh Public Service Commission (Members) Regulations, 1974 (hereinafter referred to as the *Regulations* in short) as amended from time to time were *ultra-vires* of Article 318 of the Constitution of India.

3. Learned Advocate General has submitted that the learned Single Judge while allowing the writ petition (CWP No. 2190 of 2007 decided on 19.4.2021 titled as Lt. General (Retd.) B.S.Thakur and others Vs. State of H.P. and others) filed by respondent B.S.Thakur and others (in the LPA 83/2013) has erred in allowing the writ petition. In fact, the decision given by the Punjab and Haryana High Court in ***Ram Phal Singh Vs. State of Haryana and others, in CWP No. 15159 of 1995 decided on 8.9.2004*** was not applicable in view of the decision given by a Division Bench of this Court in ***State of H.P. and others vs. Justice Arun Kumar Goel (Retd.) in LPA No. 23 of 2010 decided on 17.08.2021.*** The State has the power to frame regulations with regard to appointment and salary of the Chairman and Members of the Public Service Commission. The regulations had been framed in terms of the provisions of the Constitution of India.

4. Learned senior counsel for the respondents in LPA has submitted that the controversy in the present case is no longer *res-integra* and has been settled by the Punjab and Haryana High Court in Ram Phal Singh's case *supra*. Learned Single Judge has rightly allowed the writ petition filed by the respondents. Learned senior counsel has further submitted that the decision given by the Punjab and Haryana High Court in Ram Phal Singh's case *supra* had been duly approved by the Hon'ble Supreme Court in ***G.L.Batra Vs. State of Haryana and others reported in (2014) 13 SCC 759***. Learned senior counsel has further submitted that the decision given by this Court in ***LPA No. 23 of 2010*** was not applicable to the facts of the present case as in the said case appointment of the President of Himachal Pradesh State Consumer Disputes Redressal Commission was under the statute and was to be governed by the State Act, whereas, the Chairman and Members of the Public Service Commission were constitutional authorities and the decision given in Ram Phal Singh's case *supra* was liable to be followed. In support of arguments, learned senior counsel has placed reliance on ***State of Punjab vs. Salil Sabhlok and others reported in (2013) 5 SCC 1***, wherein it has been held as under:

“74. It cannot be said that the Chairperson of the Public Service Commission holds a post in connection with the affairs of the Union or the State. He or she is not a Government servant, in the

sense of there being a master and servant relationship between the Union or the State and the Chairperson. In view of the constitutional provisions pertaining to the security of tenure and the removal procedure of the Chairperson and members of the Public Service Commission, it can only be concluded that he or she holds a constitutional post. In this context, in Reference under [Article 317\(1\)](#) of the Constitution of India, In re, it was held:

“9. The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of a Member of the Commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by Articles 315 to 323 of Chapter II of Part XIV of the Constitution.”

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79. This being the position, it is not possible to say that the Chairperson of the Public Service Commission does not occupy a constitutional position or a constitutional post. To describe the appointment to a constitutional post generically or even specifically as a “service matter” would be most inappropriate, to say the least.”

5. Regulations 5, 6 and 9(2) of the Regulation, read as under:-

Regulation 5

“The Chairman and Members appointed to Commission shall receive pay and allowances as admissible to the Financial Commissioners and Commissioners respectively under the State Government from time to time.”

Regulation 6

“Provided further “If the Chairman or a Member, at the time of appointment as such is a person retired from Government, a Local Body, A University or any other body wholly or substantially owned or controllers by the Government he will be entitled to get such total monthly emoluments as last drawn, reduced by the amount of pension, if any, (excluding pension equivalent to DCRG). He will however, draw full amount of pension, if any in addition.”

Regulation 9(2)

“Notwithstanding any thing contained in these regulations, the Chairman/Member of H.P. Public Service Commission shall be entitled to the pay scale of Rs. 22400-500-24500 and Rs. 18400-500-22400 respectively.

Provided that if the Chairman or a Member, at the time of appointment as such is a person retired from Government, a local Body, a University or any other Body wholly or substantially owned or controlled by the Government and was drawing pay more than the maximum of the pay scales of Chairman and Member in that case the last pay drawn by them shall be taken into consideration for fixation of pay subject to the condition that pay plus gross pension shall not exceed Rs. 26000/- per month.”

6. Similar provisions had been made under Regulation 6 of the Haryana Public Service Commission (Conditions of Service) Regulations, 1973 (hereinafter referred as Haryana Regulation), which read as under:-

“6. Pay (1) The Chairman shall receive a remuneration of seven thousand rupees in a month and each of the other Members a remuneration of six thousand rupees a month. They shall also be entitled to such other allowances as may be admissible in future from time to

time to Government employees drawing the same pay in addition to four hundred rupees a month as car allowances, provided a car is maintained.

2. Chairman or the Member, if at the time of his appointment, as such, is a retired Government employees, he will be entitled to the remuneration mentioned in sub-regulation (i) in addition to the pension sanctioned to him.

Provided that the amount of remuneration plus the gross amount of pension or the pension equivalent to other forms of retirement benefits does not exceed the pay last drawn by him before his retirement or the remuneration mentioned in sub-regulation (1) whichever is higher.

Provided further that the total remuneration plus the gross of pension and the pension equivalent to other forms of retirement benefits, excluding the allowances, shall in no case exceed eight thousand rupees per month.

(3) The Chairman or the Member who at the time of his appointment as such is in the service of the Central or State Government and does not exercise option under sub-regulation (1) of regulation 9 shall be paid the remuneration drawing by him immediately before his appointment as Chairman or Member, as the case may be or the remuneration mentioned in sub regulation (1) whichever is higher till the date of his retirement from Government Service in the normal course and thereafter his remuneration shall be regulated as provided in sub-regulation (2).

(4) A member who, in the absence of the Chairman on leave or otherwise, is asked to perform the additional duties of the Chairman, shall be entitled to an additional remuneration at the rates of two hundred rupees a month;

Provided that such additional duties are performed for a period of not less than fourteen days.”

7. The question with regard to the legality/validity of the Regulation 6 of Haryana Regulation came up for consideration before the Punjab and Haryana High Court in Ram Phal Singh's case *supra vis-à-vis* Article 318 of the Constitution of India. The learned Single Judge held as under:-

“In this behalf, it would be pertinent to mention that while calculating the emoluments payable to the petitioner, deduction of pension payable to him on account of service rendered by him under the government as well as deduction of pension equivalent to Death-cum-Retirement Gratuity paid to him (for service rendered by him under the government) are being made from the stipulated remuneration of Rs.6000/- under Regulation 6(1) of the 1973 Regulations. The aforesaid deductions comprising of pension, as well as pension equivalent to Death-cum-Retirement, Gratuity, constitute earnings of the petitioner in lieu of the service rendered by him under the Government. The action of making the instant deductions amounts to depriving the petitioner of his existing rights, prior to his appointment as a member of the Public Service Commission. The aforesaid earnings are not relatable to the duties and responsibilities which a member of the Public Service Commission discharges as a member of the Public Service Commission. It is wholly unreasonable to make the aforesaid deductions from the remuneration of the petitioner because the aforesaid payments have no nexus to the duties and responsibilities of the petitioner as a member of the Public Service Commission. The only issue relevant for determining the emoluments payable to the members of the Public Service Commission is the duties and responsibilities discharged by them as members of the Public Service Commission. All the members of the Public Service Commission discharge the same duties collectively as a unified body and the duties and responsibilities of the members of the Public Service Commission are inter-changeable, there can, therefore, be no justification to pay them differently for the duties discharged by them. In view of the above, it is natural to conclude that the first proviso under Regulation 6(2) of the 1973 Regulations which envisages a stipulation wherein a member of the Public Service Commission can be paid lesser remuneration than the remuneration fixed under Regulation 6(1) of the 1973 Regulations, is clearly ultra vires the provisions of the Constitution of India, and is, therefore, liable to be set aside, and is, accordingly set-aside. The petitioners and others who were drawing wages under the government at a level less than the remuneration under Regulation 6(1) of the 1973 Regulations (prior to their appointment as members of the

Public Service Commission), are hereby held to be entitled to the remuneration fixed under Regulation 6(1) of the 1973 Regulations, without any deduction therefrom.

In so far as the first category, namely, members of the Public Service Commission, who were earlier employees under the Government and were drawing wages in excess of the remuneration under Regulation 6(1) of the 1973 Regulations, is concerned, they are entitled to the constitutional protection envisaged by the proviso under clause (b) of Article 318 of the Constitution of India. There is an obvious justification for the aforesaid namely, had such members of the Public Service Commission continued to discharge duties under the government they would have continued to draw wages in excess of the remuneration stipulated under Regulation 6(1) of the 1973 Regulations. So as to ensure that the best available talent would readily accept membership of the Public Service Commission, it was imperative to ensure that they would not suffer any monetary loss by accepting the instant assignment. The proviso under Clause (b) of Article 318 of the Constitution of India, therefore, provides that the conditions of service of the members of the Public Service Commission, who were earlier employees under the government, would not be varied to their disadvantage after their appointment. The first proviso under Regulation 6(2) of the 1973 Regulations, also stipulates that a member of the Public Service Commission who was drawing a remuneration under the government in excess of the one fixed under Regulation 6(1) of the 1973 Regulations, would not be entitled to draw a remuneration in excess of the last pay drawn by him under the government. The emoluments which would have been drawn by such members, had they continued to serve under the government will have to be paid to such members. The remuneration payable to such members will, therefore, be ascertained from the wages that would be payable to such member as if he had continued, by a fiction of law to serve under the government. To pay such members of the Public Service Commission the last wage drawn by them before their appointment as members of the Public service Commission, would violate the constitutional protection granted to them by the proviso under Clause (b) of Article 318 of the Constitution of India. Accordingly, it is

obvious that the first proviso under Regulation 6(2) of the 1973 Regulations, which restricts the remuneration payable to a member of the Public Service Commission (who was drawing wages under the government at a level higher than the remuneration fixed under Regulation 6(1) of the 1973 Regulations) the last pay drawn by him under the government at the time of his appointment as a member of the Public Service Commission, is violative of the proviso under Clause (b) of Article 318 of the Constitution of India. In view of the above, the first proviso under Regulation 6(2) of the 1973 Regulations, whereby the emoluments payable to an erstwhile employee under the government who were drawing a wage in excess of the remuneration fixed under Regulation 6(1) of the 1973 Regulations, is restricted to the last wage drawn by him under the government is liable to be set –aside and is accordingly, set-aside. The remuneration payable to such member shall have to be, the same as the wage he would have drawn had he continued to serve under the Government.”

8. The decision given by the Punjab and Haryana High Court in Ram Phal Singh’s case *supra* was considered by the Hon’ble Supreme Court of India in ***G.L.Batra Vs. State of Haryana and others reported in (2014) 13 SCC 759***, Wherein it was held as under:

“1. Leave granted. We are in this case concerned with the question whether the State Government is competent to vary the remuneration fixed to a constitutional appointee to his disadvantage, after his appointment.

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12. We are also of the view, as rightly contended by the learned Senior Counsel for the appellant, that the High Court has committed a serious error in ignoring the judgment of the learned Single Judge in **Ram Phal Singh v. State of Haryana** **Ram Phal Singh v. State of Haryana**, WP C No. 15159 of 1995, decided on 8-9-2004, a case relating to the member of the Haryana Public Service Commission, who

was appointed as a member along with the appellant by the Haryana Government vide Notification dated 16-7-1994. The learned Single Judge in that case held that the first proviso under Regulation 6(2) of the 1972 Regulations which restricts the remuneration payable to a member of the Public Service Commission [who was drawing wages under the Government at a level higher than the remuneration fixed under Regulation 6(1) of the 1972 Regulations], the last pay drawn by him under the Government at the time of his appointment as a member of the Public Service Commission, is violative of the proviso under clause (b) of Article 318 of the Constitution of India.

13. A Division Bench of the Punjab and Haryana High Court placing reliance on Ram Phal Singh case, rendered the judgment in [M.P Pandove v. State of Punjab](#) , decided on 26-2-2005. Against the said judgment, Special Leave Petition (C) No. 12336 of 2005 was preferred before this Court which was dismissed on 13-7-2005. Further, we notice that LPA No. 115 of 2005 filed against the judgment in **Ram Phal Singh v. State of Haryana** was also dismissed by a Division Bench of the Punjab and Haryana High Court on 19-3-2007.

9. So far as the judgement given in Ram Phal Singh's case *supra* is concerned the same has attained finality. The argument raised by the learned Advocate General to the effect that the judgement given by this Court in Justice Arun Kumar Goel (Retd.)'s case *supra* was liable to be followed is without any merit. So far as the appointment of President of Himachal Pradesh State Consumer Disputes Redressal Commission is concerned the same is made under a statute enacted by the State. In the said case the State can frame

its own Rules and Regulations. So far as the Chairman and Members of the Public Service Commission are concerned they occupy a constitutional post and cannot be said to be government servant, as has been held in Salil Sabhlok's case *supra* . Hence, the decision of this Court in Justice Arun Kumar Goel (Retd.)'s case *supra* has no bearing on the facts of the present case. The controversy involved in the present case has already been settled in Ram Phal Singh's case *supra* and the learned Single Judge by rightly basing reliance on the said decision had allowed the writ petition filed by the respondents in the LPA.

10. Accordingly, LPA No. 83 of 2013 is dismissed.

11. Consequently, the writ petitions No. 2318, 2319, 2408, 2409 and 2500 of 2019 are allowed in terms of the order passed in CWP No. 2190 of 2007 decided on 19th April, 2012.

**(Sabina)
Judge**

10th January, 2022^(TM)

**(Sushil Kukreja)
Judge**