IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 6929 of 2015 (O&M)
Date of decision : 9.9.2015

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Surinder Kumar Mittal
................Petitioner

vs.

State of Haryana and others
.................Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Petitioner in person.

Mr. Ashok Chaudhary, Additonal Advocate General, Haryana for respondent No.1.

Mr. Shekhar Verma, Additional Govt. Pleader, Chandigarh Administration for respondent No.2.

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

P.B. Bajanthri, J.

In this petition, the petitioner is seeking a direction to take the personal pay granted on account of vasectomy towards grant of pension in the light of judgment passed in CWP No. 8058 of 2009, vide Annexure P-3 and decision passed in CWP No. 27022 of 2013, vide Annexure P-6.

(2) Petitioner is stated to have been appointed as a Employment Officer. He was compulsorily retired on 20.4.2003 as a measure of penalty. Aggrieved by the order of compulsory retirement,

he has filed CWP No. 5818 of 2003, which is pending consideration. The petitioner has submitted representation to the Ist respondent on 6.5.2010 with a request to consider his personal pay for the purpose of retirement benefits and pension. On 4.6.2010 vide Annexure P-5 grievance of the petitioner was rejected stating that benefit of personal pay towards the pension is not permissible. The petitioner after receipt of communication dated 4.6.2010 (Annexure P-5) did not pursue further. On 6.7.2012, petitioner approached District Consumer Disputes Redressal Forum, Chandigarh (for short 'DCDRF'), with a grievance to count personal pay for the purpose of pension and sought direction to the Ist respondent. On 26.3.2013, the DCDRF issued direction to respondent No.1 to release retiral benefits alongwith interest and cost of litigation of Rs.7,000/- was ordered vide Annexure P-14.

(3) Respondent No.1 aggrieved by the order of DCDRF, preferred an appeal before the State Consumer Disputes Redressal Commission, U.T., Chandigarh (for short 'SCDRC'). SCDRC allowed the Ist respondent's appeal on 17.9.2013. It was observed that petitioner is not a consumer as held by the Apex court in the case of **Dr. Jagmittar Sain Bhagat Vs. Director Health Services, Haryana and others,** III (2013) CPJ 22 (SC).

(4) The petitioner, aggrieved by the order of SCDRC, filed three revision petitions numbered as Revision Petitions No. 1 of 2014, 3 of 2014 and 14 of 2014. All the revision petitions were dismissed by the SCDRC. Further petitioner did not approach

National Consumer Forum. In this petition grievance is to pay personal pay after his retirement and to add personal pay to the pension and pensionary benefits. Hence this petition.

(5) The petitioner argued in person. He relied on two decisions of this Court in CWP No. 8058 of 2009 and CWP No. 27022 of 2013, vide Annexure P-3 and P-6, respectively. The petitioner vehemently contended that his grievance is identical to that of the aforesaid decisions. Consequently, he is also entitled for benefit of personal pay (special increment granted for undergoing vasectomy operation on 31.3.1986 read with Policy of the State Government).

(6) Per contra, the learned counsel for the State -respondent No.1 submitted that personal pay of an employee would be granted while an employee is in service. It is only a special increment granted for vasectomy operation under the Scheme of the Government, namely, 'Special Increment – An Incentive for Family Planning'. It is only an incentive, which is not paid to each and every employee. Therefore, pay of an employee for the purpose of grant of pension and pensionary benefits, the last pay drawn in a post and a scale would be considered, while excluding personal pay. In other words, personal pay is only for limited purpose. It is an incentive granted to an employee who has undergone sterilization. The same cannot be taken into consideration for the purpose of pension. He further contended that 'Special Increment – An Incentive for Family Planning' is not part and parcel of Pension Pay Rules, therefore, the incentive granted under the aforesaid scheme cannot be taken into consideration for the

purpose of pension and pensionary benefits. Learned counsel for respondent No.1 further contended that the decisions cited by the petitioner, in which Rule 6.19 (c) and Rule 2.44 (a) (i) of the Punjab Civil Services Rules, Volume I, Part I, was not noticed. The said amendment rules, relates to emoluments and pay. Therefore, the judgments cited by the petitioner are not applicable. It was further contended that petitioner before approaching this Court has not served legal notice under Section 80 of the CPC, which is a pre-requisite as per law, he has not approached this Court with clean hand, he has suffered an order before the SCDRC. Remedy for the petitioner is to approach National Consumer Forum. It was further contended that claim of the petitioner is hopelessly barred by time for the reasons that he was retired compulsorily on 20.4.2003 and present petition was filed in the year 2015. Therefore, it was contended that on the ground of delay and latches, the petition is liable to be rejected. It was also contended that the petitioner had a cause of action in the year 2003, when he was retired compulsorily. For the first time, he has approached the authorities on 6.5.2010 i.e. after 7 years from the date of his retirement. His application dated 6.5.2010 was rejected on 4.6.2010 vide Annexure P-5. The petitioner failed to question the said decision of the Director, Department of Employment, Haryana, Chandigarh. Thus it was submitted that the petition is liable to be rejected both on the question of delay, as well as, on merits.

(7) Learned counsel for the 2nd respondent submitted that un-necessarily the 2nd respondent has been dragged to this Court. The

petitioner has no grievance against the 2nd respondent, having regard to the prayer made in this writ petition. Having unnecessarily impleaded the 2nd respondent, the petitioner is liable to pay cost to the 2nd respondent. Moreover, the petitioner suffered an order in the hands of 2nd respondent . If at all the petitioner is aggrieved by the 2nd respondent's decision/order, remedy is before the National Consumer Forum. Petitioner has not questioned 2nd respondent's action in this petition. Therefore, the petitioner's impleadment of 2nd respondent as one of the respondent, is highly mischievous for the reasons that the 2nd respondent is neither proper/necessary party to this writ petition.

(8) Heard, petitioner in person and counsel for the respondents.

(9) The question for consideration is whether the personal pay/special increment granted to the petitioner for undergoing vasectomy operation, under the scheme called 'Special Increment – An Incentive for Family Planning' dated 20.7.1981 vide Annexure P-1, is to be taken into consideration for the purpose of pension and pensionary benefits in addition to the pay scale of the post last held by the petitioner. Special increment is an incentive for family planning. The said scheme cannot be mixed up with the pension scheme. These are two separate schemes. Special increment – an incentive, which has been granted to an employee for undergoing vasectomy operation, which benefit is not part and parcel of pay of the post held by an employee. Therefore, personal pay/special increment, which is granted to an employee, cannot be counted

towards the last pay drawn by an employee for the purpose of granting pension and pensionary benefits. In this background, Rule 6.19 (c) read with Rule 2.44 (a) (i) of the Punjab Civil Services Rules, Volume I, Part I, amended as on 7.12.2001, vide Annexure R-1 to the written statement filed by Ist respondent is relevant and it was not noticed in the cited judgments. The amendment did not include special pay as on 2003 also, the date on which petitioner was retired compulsorily. There is difference between emoluments and pay. The petitioner's pension will have to be fixed with reference to last pay drawn against the post held by him, for which personal pay would not be added. Pension of an employee would be fixed only with reference to last pay drawn against a particular post and so also with reference to scale of the post. It is true that cited decisions and the notification dated 7.12.2001, was not taken note of, therefore, the aforesaid decisions do not assist to the petitioner's claim. The petitioner's claim in this petition, has to be rejected at the threshold on the ground of delay and latches. The petitioner has not pleaded reasons for the delay in approaching this Court. Even though cause of action accrued to the petitioner in the year 2003, he has approached the authorities for the first time in the year 2010 and his grievance was rejected on 4.6.2010 vide Annexure P-5. However, the petitioner failed to question the rejection of the petitioner's claim even to this day. Therefore, on the score of delay and latches, this petition is liable to be dismissed and so also in not questioning order dated 4.6.2010 (Annexure P-5). Even on merits, the petitioner has not made out a case so as to compute personal pay towards grant of pension and pensionary benefits.

(10) The petitioner un-necessarily impleaded 2nd respondent. The 2nd respondent is neither proper or necessary party to this petition. For dragging the 2nd respondent un-necessarily to this Court, the petitioner is liable to pay cost. At this juncture, it is to be noted that the petitioner approached DCDRF with the very same relief, which has been sought in this writ petition. There was an order in his favour by the DCDRF. However, respondent No.1 aggrieved by the order of DCDRF preferred the appeal before the SCDRC, in which the petitioner suffered an order. Having regard to the facts and circumstances that the petitioner suffered two orders, one is order of the department dated 4.6.2010 vide Annexure P-5 and the other is order of SCDRC dated 17.9.2013 vide Annexure R-3. Both the orders have become final as on today. In other words, the petitioner has not questioned both the orders before the appropriate forum. Consequently, the petitioner is not entitled for the relief sought in this petition. The petitioner is directed to pay cost of Rs.5,000/- to the 2nd respondent.

(11) The writ petition is dismissed.

(P.B. Bajanthri)
Judge

September 9th, 2015.
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