IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8910 of 2015
Date of Decision:- 07.05.2015.

Post Graduate Institute of Medical Education and Research, Chandigarh

......Petitioner

Versus

Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others

.......Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI

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?**

Present: Mr. Amit Jhanji, Advocate for the petitioners.

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SURYA KANT, J. (ORAL)

1.) The Post Graduate Institute of Medical Education and Research (in short 'PGIMER') impugns the order dated 11.03.2015, passed by Central Administrative Tribunal, Chandigarh Bench (for short 'the Tribunal') vide which the order dated 24/25.05.2014 of the petitioner-Institute was set aside and respondent Nos.2 to 40 have been held entitled to pension/family pension/pensionary benefits as were drawn by them at the time of retirement, namely, on the Punjab Pay Scales pattern.

2.) The inconsistent, contradictory and abrupt shift in the petitioner-Institute's policy is the hallmark of this litigation.

3.) The facts may be noticed briefly. The petitioner Institute was established at the time when Chandigarh was the capital of erstwhile State of Punjab. On the reorganization of Punjab State w.e.f. 01.11.1966, Chandigarh was declared a Union Territory. Besides the Punjab Re-organization Act, 1966, Parliament also enacted the Post Graduate Institute of Medical Education and Research, Chandigarh Act, 1966 (for short 'PGIMER Act') which came into force on 19.12.1966. The employees who are already in service of the Institute before it became an Autonomous Body under the aforesaid Act were transferred to the Institute and their service conditions were duly protected.

4.) Private respondents No.2 to 40 are the employees who joined the Institute after 19.12.1966 and before 20.09.1975. They were also admittedly granted the pay scale as per Punjab pattern, namely, at par with the erstwhile Punjab Government employees recruited before 19.12.1966 and were then allocated to the Institute under the PGI Act of 1966.

5.) In the year 1975, the matter regarding pay scale and allowances of the employees of Institute was considered by the governing body and pursuant its decision, the employees were asked to exercise option as to whether they wished to draw their salary on Punjab pattern or as per the pay-scale(s) admissible in AIIMS, New Delhi. Out of 760 employees who were drawing the pay scale on

Punjab pattern, only nine Class-IV employees are said to have opted for AIIMS pay scale and that too conditionally.

6.) The matter was again taken up in the meeting of Standing Finance Committee of the Institute on 20.09.1975 where it was decided that the categories of staff who were drawing Punjab Pay Scale/ allowances be allowed to continue on the Punjab pattern and they be delinked from Union Territory of Chandigarh. For future recruitments, the pay scales of AIIMS were adopted.

7.) As regard to the employees like private respondents who were recruited before 20.09.1975 and who did not opt for AIIMS scales, they were brought at par with the employees who were recruited before the PGI Act came into force in the year 1966.

8.) The employees appointed between 1966 to 20.09.1975 thus continued to draw their pay and allowances on the Punjab Pay Scale pattern as per the options previously exercised by them.

9.) The employees appointed after 1966 and before 20.09.1975 started retiring on superannuation in the year 2000-2001. Then arose the question of granting pensionary and other retiral benefits to them. Since the pensionary benefits as per pattern of the Central Government were more beneficial at that point of time, the petitioner Institute was inclined to grant such pensionary benefits to the retirees like private respondents who were otherwise entitled to retiral benefits as per Punjab Pay Scales only. The proposal to grant more beneficial pensionary benefits on the pattern of Central

Government was forwarded by PGIMER to Central Government vide letter dated 26.02.2003. However, after some correspondence, the proposal was turned down by the Central Government on the ground that the option once exercised by the employees to opt for Punjab State Government Pay Scales (instead of Central Government Pay Scales) was their conscious decision and such option once exercised is final and cannot be reviewed.

10.) Resultantly, the employees drawing Punjab Pay Scales like the private respondents were granted pension or other retiral benefits as per Punjab pattern as is evident from the order passed by the Director of the Institute on the recommendations of the Standing Finance Committee on 30.10.2004 which reads as follows:-

> *"As recommended by the Standing Finance Committee vide agenda item No.18 in its meeting held on 08.05.2004 and approved by the Governing Body vide agenda item No.24 in its meeting held on 22.09.2004, whereby grant of pensionary benefits to the pensioners drawing Punjab Pay Scale was placed before the Bodies of the Institute. Sanction is hereby accorded to the grant of following pensionary benefits to the retired employees drawing Punjab Pay scale of this Institute as under:-*
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> *1. Restoration of commutation of pension after 12 years instead of 15 years upto 31.12.95 and thereafter after completion of 15 years.*

2. *Old age allowances at the rate of 5% at the age of 70 years and 10% at the age of 80 years as per letter dated 31.08.1989 and thereafter w.e.f. 01.01.2001 at the age of 65 years and 70 years respectively.*
3. *Travel concession payable after every two years and as per letter No.1/15/89-IFP.III/8078 dated 31.08.1989 minimum pension @ Rs.1310/- P.M. instead of Rs.1275/- P.M. w.e.f. 01.01.1996."*

11.) All of a sudden, w.e.f. 01.09.208, the petitioner Institute stopped payment of pension or related benefits to private respondents on the Punjab pattern. No show cause notice was given; no reason was also assigned. Some of the retirees, therefore, rushed to the Central Administrative Tribunal and their Original Applications were disposed of with a direction to the Institute to take its final decision and convey to them.

12.) Pursuant to those directions only that the employees, who were drawing pay as per Punjab pattern, came to know that payment of pension was stopped due to an audit objection. Finally, that audit objection eventually prevailed and the petitioner-Institute informed that their claim to continue the pension as per Punjab pattern stood rejected. They were further informed that their pension has been re-fixed on the Central Government pattern though no recovery of the excess amount of pension paid to them, was being effected.

13.) It may be mentioned here that the audit objection was based upon Section 28 of the 1966 Act read with Regulation 40 of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967 as amended on 26.12.1984.

14.) The aggrieved retirees again approached the Tribunal who vide the impugned order set aside the unilateral decision taken by the petitioner Institute and has directed to restore the pension and financial benefits on the Punjab Pay Scale pattern.

15.) We have heard learned counsel for the petitioner Institute and gone through various relevant documents and decisions referred to above.

16.) We are of the considered view that no interference with the order passed by the Tribunal is called for. The petitioner Institute has initiated vexatious litigation, may be to wriggle out of the audit objection raised against the grant of pension and other pensionary benefits to the private respondents on Punjab pattern.

17.) We firstly deal with the audit objection which is statedly based upon Section 28 of the 1966 Act read with Regulation 40 of 1967 Regulations. Both these provisions are to the following effect:-

Section 28

"Subject to the provisions of this Act, every person who is employed in the Post Graduate Institute of Medical Education and Research Chandigarh immediately before the commencement of this Act shall on and from such commencement, become an employee

of the Institute and shall hold his office or service therein by the same tenure at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of commencement of this Act as if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions as are duly altered by regulations.

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government."

Regulation 40

"40. Other conditions of service:- *In respect of matters not provided for in these regulations, the rules as applicable to Central Government servants such as regarding the general conditions of service, pay, allowances including traveling and daily allowance, leave salary, joining time, foreign service terms, and orders and decision issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Institute."*

Proviso to Regulation 40

*"Provided that **in the case of employees appointed in the Institute who are drawing pay at the rates admissible to the corresponding categories of employees of the Government of Punjab**, it shall be competent for the Institute to revise the scales of pay of such employees **so as to bring the said scales at par with the scales of pay sanctioned by the Govt. of Punjab from time to time for such corresponding categories of employees."*** (emphasis applied)

18.) According to the audit objection, Section 28 pertains to transfer of services of existing employees, namely, the Punjab Government employees appointed in the Institute before it became an autonomous body under the 1966 Act w.e.f. 19.12.1966 and that the aforesaid provision does not apply to the employees appointed after 19.12.1966. As regard to Regulation 40, it is claimed that the proviso pertains to the grant of 'pay' only and it cannot be applied to determine the 'pensionary' or 'retiral benefits'.

19.) Both the objections are totally misconceived and misdirected. Section 28 undoubtedly relates to the transfer of services of the existing employees of erstwhile Punjab State to the petitioner Institute after it acquired the status of an autonomous body. By virtue of this provision, their conditions of service were protected. However, the audit objection has overlooked the fact that service conditions of the employees who came to be appointed after 19.12.1966 till 20.09.1975 were also kept at part with the Punjab Government employees transferred to the Institute under Section 28 of the PGI Act. Since the pay scale, pay structure or other conditions of service of the employees appointed between 1966 to 1975 were identical to those who came to be appointed prior to 1966, we are unable to find out any reasonable classification, object or nexus for segregating the two sets of employees for the purpose of post retiral benefits. We may hasten to add that nothing precluded the Institute to prescribe different conditions of service for those who were appointed after 19.12.1966. Albeit, the Institute chose to appoint them on identical terms and conditions by taking a conscious decision to that effect. It is thus too late for the Institute now to turn around and say that the employees appointed before 19.12.1966 or thereafter constitute two separate and distinct class of persons.

20.) The audit has deliberately or otherwise overlooked the fact that the employees were asked to exercise option to adopt the Punjab pay pattern or AIIMS pattern. They had opted for the Punjab pattern. Not only this, when the Institute at a later stage on their retirement wanted the employees to switch over the Central Government pattern for better retiral benefits, it was the Central Government who objected to it on the ground that once an option was exercised, it could not be reviewed or revoked. The same principal which the authorities applied against the employees, is enforceable against the authorities too.

21.) Regulation 40 has been completely misconstrued and misunderstood. Once the proviso enables the Institute to grant pay scale on Punjab pattern and the Institute has actually exercised such discretion, the pension and other retiral benefits are liable to be determined on the same pattern only. It is the pay structure and the last pay drawn by an employee which lay the basis for determination of his pension or other retiral benefits.

22.) The Institute having accepted the decision of Central Government that the retirees who were drawing their pay on Punjab pattern are entitled to pension or other retiral benefits as per Punjab pay pattern only, ought not to have succumbed under the unwarranted objection raised by the Audit and that too in such an arbitrary and uncalled for manner that the monthly pension to the old retirees, whom might not be having any other source of sustenance, was unilaterally stopped. We disapprove such an action of the authorities.

23.) For the reasons aforestated, we do not find any merit in the writ petition which is dismissed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

May 07, 2015.

sandeep sethi