IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10837 of 1996 (O/M)
Date of decision : 15.12.2016

Lt. Col. Kanwar Dharam Pal Singh (Retd.) ....... Petitioner (s)

Versus

The Kurukshetra University, Kurukshetra and others ....... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. O.P.S. Tanwar, Advocate, for the petitioner.

Mr. R.S. Chahar, Advocate, for respondents No. 1 and 2.

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

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KULDIP SINGH, J.

The petitioner joined the Kurukshetra University, Kurukshetra, (in short 'the respondent-University') as a Clerk on 10.2.1961. In the meanwhile, the First National Emergency was declared by the President of India. Therefore, on the call of the nation and after applying through proper channel, the petitioner left the service as a Clerk in the respondent-University on 2.8.1964 and joined the Indian Army on 2.8.1964, where he served and retired from the rank of Lt. Colonel on 30.4.1990. Then, after a gap of about 6 ½ months, he was appointed as a Chief Security Officer in the respondent-University on 19.11.1990 and was working as such at the time of filing of the present writ petition. However, during the pendency of the present writ petition, the petitioner retired from service on 30.4.1998. The petitioner claims that his services were regularized as a Chief Security Officer with effect from 20.11.1991, vide order 15.1.1992 (Annexure-P-2). Vide Executive Council ('EC') Resolution No. 60, dated 22.7.1991 (Annexure-P-3), the criteria for fixing the pay of the ex-servicemen, who are re-employed, was fixed and in view of the same the pay of the petitioner was fixed, vide EC Resolution No. 44, dated 30.8.1991 (Annexure-P-4). The petitioner was getting the minimum pay scale of Rs. 3700 plus pension per month. He was also getting house rent allowance and scooter allowance etc., but the monthly recurring loss in the form of annual increments was not given to him, whereas the petitioner was entitled to maximum salary of Rs. 7600, but the petitioner was getting Rs. 3700/- as basic pay plus Rs. 2680/- as pension. The petitioner levelled the allegations of harassment that after his appointment in the respondent-University as a Chief Security Officer, on the orders of the then Vice Chancellor Lt. Gen. K. Balaram, he had sealed the office of Rajiv Arora, IAS (respondent No. 3), who was suspended by the then Vice Chancellor. He claims that he was put under a junior officer of the rank of Deputy Registrar. The office of the petitioner in the Administrative Block was got vacated. He had also given further instances of harassment and the factum of some criminal complaint. In the present writ petition, the petitioner claims the following reliefs :-

(i) that his previous service as a Clerk with the respondent-University with effect from 10.2.1961 to 2.8.1964 should be computed for the purpose of grant of pension ;

(ii) that he should be granted the benefit of first National Emergency for the purpose of grant of pension ;

(iii) that his intervening period from 1.5.1990 to 19.11.1990 when he had left the army and did not join as a Chief Security Officer should be computed for the purpose of pension ; and

(iv) that he should be granted the benefit of small family on account of sterilization operation ;

(v) that he prays for quashing of the letter (Annexure-P-20).

Respondents No. 1 and 2 in the reply have taken the stand that under Chapter-VIII (Appeals and Review) under Clause-33 of Calender Volume-III of the University, if any person is aggrieved by the order passed by the Vice Chancellor, then the appeal lies to the Executive Council and from the original orders passed by the Executive Council, the appeal lies to the Chancellor. Since no such appeal was filed, therefore, the present writ petition is barred. The services of the petitioner as a Clerk and in military were not denied. It was stated that the formula for pay fixation of the military personnel on their re-employment in the University was approved by the Executive Council, vide Resolution No. 60 dated 22.7.1991. The petitioner was allowed to draw usual annual increments till the pay in the civil post plus pension equivalent of other retiral benefits minus Rs. 250/- did not exceed the maximum of the scale of the civil post in which he was re-employed or Rs. 7600/-, whichever is less. Since his pay of Rs. 3700/- plus Rs. 2680/- (basic pay and commuted pension) minus Rs. 250/- exceeded the maximum pay scale of Rs. 5000/-, he was not granted any further increment in his pay scale for the military service rendered by him during the National Emergency period from 26.10.1962 to 10.1.1968. The petitioner claimed that he is entitled to the benefit to the extent of Rs. 7600/-, which was the maximum limit, which was wrong as per the

Executive Council Resolution referred to above.

Regarding the benefit of small family , it was stated that the same was considered and rejected by the Director, Local Audit, Haryana, vide Memo No. XIV (211) Volume 94-95/7593 dated 15.1.1996 and the petitioner was accordingly informed. Regarding the previous service rendered by the petitioner as a Clerk in the University with effect from 10.2.1961 to 2.8.1964, it was stated that the same will be considered as per the University rules at the time of his retirement from the respondent-University service as payment of gratuity for the active service rendered by an employee in the University and the benefit of leave encashment from the earned leave due at his credit are given at the time of retirement and are required to be refunded. Regarding the granting of intervening period with effect from 1.5.1990 to 19.11.1990 between his discharge from military service and joining as a Chief Security in the respondent-University, it was stated that according to the rules of respondent-University, only the period spent by an employee on 'active service' is to be counted for the purpose of payment of gratuity and leave encashment. The active service does not include even the period spent by an employee on extra ordinary leave. Since the said period of service i.e. 1.5.1990 to 19.11.1990 is not the period of service, therefore, it cannot be counted for grant of gratuity and leave encashment. The other allegations of harassment were denied.

I have heard the learned counsels for the parties and have also carefully gone through the file.

First of all, I will take the claim of the petitioner regarding computing his previous service as a Clerk from 10.2.1961 to 2.8.1964.

In the written statement, the University has taken the stand that it will be considered as per the University rules at the time of retirement of the petitioner. The petitioner has now retired from service. The petitioner had left the University service as a Clerk and joined the Indian Army with the permission of the University. Therefore, the said period from 10.2.1961 to 2.8.1964 is to be computed as a qualifying service for the purpose of pension, subject to the rules of the University regarding refund of the gratuity or leave encashment or any other benefit got by the petitioner on leaving his service of the University as a Clerk.

Now, coming to the second point regarding counting the service of the petitioner rendered by him during the first National Emergency, even the respondents have not denied the entitlement of benefit of service of the petitioner rendered by him during the 1st National Emergency from 26.10.1962 to 10.1.1968. The petitioner had actually joined the Indian Army and worked there till 30.4.1990. Therefore, he is entitled to the benefit of 1st National Emergency from 26.10.1962 to 10.1.1968. The only plea taken by respondents is that his pay was to be fixed as per the formula, according to which his pay cannot exceed the maximum of his basic pay plus basic pension and commuted pension, which in this case was Rs. 3700/- plus Rs. 2680 minus Rs. 250/-, which exceeds the maximum pay scale of Rs. 5,000/- and thus, the petitioner is not entitled to the maximum limit of Rs. 7600/-, as claimed by him. The appointment letter of the petitioner (Annexure-P-1) shows that he was appointed in the pay scale of Rs. 3700-5000 plus Rs. 100/- as scooter allowance. In addition to the basic pay of Rs. 3700/-, he was entitled to dearness allowance of Rs. 1505/-, house rent allowance of Rs. 200/- and scooter allowance of Rs. 100/-. Vide Resolution dated 15.1.1982 (Annexure-P-2), his services were confirmed with effect from 20.11.1991 (FN). As per the Resolution No. 60, dated 22.7.1991 (Annexure-P-3), which was after the appointment of the petitioner, it was decided by the Executive Council of the University that when a commissioned officer in the military service obtains employment in civil department, his pay on re-employment, should be fixed at the minimum time scale of civil post in which he is re-employed. He shall be allowed to draw the usual annual increments till the pay in the civil post plus pension equivalent of other retirement benefits taken together, minus Rs. 250/-, not exceeding the maximum scale of the civil post, in which he re-employed or Rs. 7600/-, whichever is less. Vide Resolution No. 44, dated 30.8.1991 (Annexure-P-4), his pay was accordingly fixed as per Resolution No. 60. It is not disputed that later on the said scale was revised to Rs. 12000-16500 and his pay was approved to be Rs. 9705/- on the basis of formula adopted above.

On behalf of the University, it is not denied that the Haryana Civil Services Rules are applicable to the employees of the University in case of fixation of the pay in case of re-employment of pensioner. Rule 7.18 of the Punjab Civil Services Rules (Haryana), Volume-II, lays down as under :-

> "7.18 The authority competent to fix the pay and allowances of the post in which the pensioner is re-employed shall determine whether his pension shall be held wholly or partly in abeyance. If the pension is drawn wholly or in part, such authority shall take the fact into account in fixing the pay to be allowed to him.
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> **Note 1.—** A Head of a Department when delegated powers under Rule 7.17, may not allow the pensioner to draw full pension in addition to the full pay of the post except when the reemployment or continued employment is for bona fide

temporary duty lasting for not more than a year or the pension does not exceed Rs.10 a month, when the power is delegated to any other subordinate authority, such authority may not allow the pensioner to draw in full a pension of more than Rs.10 a month, in addition to the full pay of the post.

**Note 2.─** Where the employment is in service paid from a local fund the authority determining whether the pension shall be wholly or partly held in abeyance shall be either:-

(i) The authority administering the local fund, if so empowered by the competent authority by special or general orders in this behalf; or

(ii) In any other case such other authority as the competent authority may prescribe;

(iii) the provisions of Note 4 below apply mutatis mutandis to retired Government employees re-employed under Local Funds.

**Note 3.─** The restrictions in this rule do not apply to ex-policemen whose pension does not exceed Rs.10 a month.

**Note 4.─** (a) In determining the pay of a re-employed pensioner the following principles shall be observed; namely:-

(i) the initial pay on re-employment shall be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

(ii) in addition to (i) above, the Government employee may be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit e.g. gratuity commuted value of pension etc. provided the total amount of initial pay as at (i) plus gross amount of pension and/or the pension equivalent of other forms of retirement benefits does not exceed the pay he drew before his retirement (pre-retirement pay) or [Rs.24,500], whichever is less.

(iii) in all cases, where either of these limits is exceeded, the pension and other retirement benefits may be paid in full and necessary adjustment made in pay so as to ensure that the total of pay and pensionary benefits is within the prescribed limits.

(iv) once the initial pay of a re-employed pensioner has been fixed in the manner indicated above he may be allowed to draw normal increments in the time scale of the post to which he is appointed, provided that the pay and gross pension/pension equivalent of other retirement benefits taken together do not at any time exceed [Rs.24,500] 12 per month.

(v) in case where the minimum pay of the post in which the Government employee is re-employed is more than the last pay drawn, the Government employee concerned may be allowed the minimum of the prescribed scale of post, less pension and pension equivalent of other retirement benefits.

(vi) where after the pay is fixed at the minimum, it is reduced below minimum as a result of adjustment as at (iii) increase in pay may be allowed after each year of service at the rates of increment admissible, as the pay had been fixed at the minimum.

**Explanation.—** Pay drawn before retirement will be taken to be the substantive pay plus special pay, if any, and pay drawn in an officiating appointment may be taken into account if it was drawn continuously for atleast one year before retirement.

(b) In fixing the pay in accordance with the above principle, the "pension equivalent" of the death-cum-retirement gratuity should always be taken into account, in cases of retired Government employees who before re-employment were governed by the New Pension Rules or had opted for the modified pension rules, - vide alternative (c) under rule 1.2-B. The pension equivalent of the death-cum-retirement gratuity will be determined on the basis of the commutation table applicable to the Government at the time of retirement.

**Note 5.** - xxxxxxx xxxxxxx xxxxxx

**Note 6.** - xxxxxxx xxxxxxx xxxxxx"

The perusal of the said rule shows that as per the Note 4(a) of the said rule, the formula for determining the pay of re-employed pensioner is provided. Under the said formula, the pay of re-employed pensioner shall be fixed at the minimum stage of the scale of pay prescribed for the post, which in this case was Rs. 3700. The Government employee is then permitted to draw the pension provided the total amount of initial pay plus gross amount of pension and/or pension equivalent to other forms of retirement benefits does not exceed the pay he drew before his retirement (pre-retirement pay) or Rs. 24500/-, whichever is less. Sub rule (iv) under Note 4(a) shows that once the initial pay of the re-employed pensioner has been fixed, he may be allowed to draw normal increments in the time scale of the post, in which he is appointed, provided that the pay and gross pension/pension equivalent of other retirement benefits taken together do not at any time exceed Rs. 24500/- per month. The amount of Rs. 24500/- was substituted, vide notification dated 22.2.1999. Earlier, the same was Rs. 7600/-. Therefore, Rule 7.18 of the Punjab Civil Services Rules (Haryana), Volume-II, clearly shows that after the pay has been fixed as per the formula given therein, then he is to be allowed normal increments and the maximum cap has been fixed, which cannot be exceeded. When the petitioner was appointed, vide appointment letter dated 19.11.1990 (Annexure-P-1), Resolution No. 60 was not in existence. The same was passed subsequently 22.7.1991 (Annexure-P-3) and did not exist at the time of appointment of the petitioner on 19.11.1990 as a Chief Security Officer. Therefore, the pay of the petitioner was to be fixed as per the formula laid down in Rule 7.18 of the Punjab Civil Services Rules (Haryana), Volume-II.

The respondents have not denied that the petitioner is entitled to the benefit of first National Emergency i.e. regarding his service from 26.10.1962 to 10.1.1968. Therefore, after fixing the initial salary of the petitioner, the petitioner was to be allowed regular increments after adding the benefit of said military service and the maximum cap was not maximum of the pay scale i.e. Rs. 5000/-, but Rs. 7600/-. Therefore, the respondents erred in capping his maximum pay at Rs. 5000/-, whereas after granting the increments, his pay could not exceed Rs. 7600/-, which was later on modified and enhanced to Rs. 24500/-. Moreover, as per the clarification of the Government dated 26.4.1993 (Annexure-P-47) regarding fixation of pay military pensioners on re-employment in civil department, it is stated that in case an employee whose pay has been fixed at maximum grade, the said employee is eligible for stagnation increments under the normal rules, provided that pay and the gross pension/pension equivalent of other retiral benefits are taken together not at any time exceeds Rs. 7600/- per month. The relevant extract of the clarification of the Government regarding fixation of pay military pensioners on re-employment in civil department is reproduced as under :-

> "2. Clarification on the points raised by them vide their U.O. No. Under reference are as under :-

| Points raised by Deptt. | Clarification |
|---|---|
| (i) Whether these instructions are are also applicable for re-employed military pensioners on adhoc basis | i) The instructions contained in F.D. letter No. 1-/2(3) 91-3FR-I dt. 1.7.92 are also applicable to re-employed military pensioners on adhoc basis. |

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|---|---|
| (ii) Those employees whose pay fixed on the maximum grade are eligible for further annual increment or otherwise. | ii) Those employees whose pay is fixed on the Maximum grade are eligible for stagnation increments under normal rules provided that the pay and gross pension/ pension equivalent of other retirement benefits taken together not at any time exceed Rs. 7600/- per month. |
| (iii) Please also clarify that letter under reference is also applicable to the EXSSM Staff Ex-Servicemen (JCOs/OR) | iii) The instructions contained in FD letter No. 1/2(3)/91-3FR-I dt. 1.7.92 are also applicable to the Ex-Servicemen (JCOs/OR)” |

Regarding the small family benefit, it comes out from the impugned order (Annexure-R-1) that the claim of the petitioner was denied as it was not covered under the said instructions. There is no illegality in the said order. Therefore, the said benefit is not admissible to the petitioner.

Regarding intervening service period from 1.5.1990 to 19.11.1990, the said non-service period cannot be counted for the purpose of grant of pension and any gap between the military service and the civil employment is to be ignored.

As a result of the foregoing discussion, the present writ petition is partly allowed. The service of the petitioner as a Clerk with the Kurukshetra University, Kurukshetra, from 10.2.1961 to 2.8.1964 is to be computed for the purpose of grant of pensionary benefits. For this purpose, the petitioner is directed to deposit the service benefits received from the University alongwith interest. For this purpose, the University is directed to intimate the petitioner within one month the amount, which is required to be deposited by him after computing the same alongwith interest and on receipt of such letter, the petitioner shall deposit the said amount within two months and thereafter the benefit of said service as a Clerk shall be extended to the petitioner. The military service of the petitioner during first National Emergency i.e. from 26.10.1962 to 10.1.1968 is admittedly to be computed for the fixation of pay, grant of increments and other benefits, as per the Punjab Government National Emergency Concession Rules, 1965, which are amended from time to time. However, for fixation of the pay, it is ordered that as per Rule 7.18 of the Punjab Civil Services Rules (Haryana), Volume-II, the basic pay plus pension after grant of increments will not exceed maximum Rs. 7600/-, which was later on modified and enhanced to Rs. 24500/- with effect from 22.2.1999. The remaining part of the relief is declined. The respondents are directed to do the needful within two months from the date of receipt of certified copy of this judgment.

(KULDIP SINGH)
JUDGE

15.12.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes