

C.W.P No. 2957 of 1995 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 2957 of 1995 (O&M)

DATE OF DECISION: 23.08.2016

Dr. Harpal Singh Sandhu and others

.....Petitioners

Versus

Punjab Agricultural University, Ludhiana and Ors.

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. JPS Sandhu, Advocate
for the petitioners.

Mr. Deepak Agnihotri, Advocate
for respondents No.1 and 2.

Mr. HNS Gill, Advocate
for respondent No.3.

DAYA CHAUDHARY, J.

The petitioners were working as Assistant Professors in the College of Veterinary Science of respondent-University in the pay scale of ₹ 700-1600. Respondent-University had issued notification dated 6.10.1988 regarding the revision of pay scales of teaching staff of the University w.e.f. 1.1.1986 as per terms and conditions mentioned in Punjab Government memo dated 8.9.1988. The pay scale of Assistant Professors was also revised from ₹ 700-1600 to ₹ 2200-4000 w.e.f. 1.1.1986. The pay of the petitioners along with other similarly situated persons was fixed on the basis of formula laid down by the State Government as per revised pay scale. Subsequently, show cause notices were issued to all the petitioners, wherein, it was mentioned that the benefit of increase of 20% of basic pay

was not admissible to the teachers appointed on or after 1.1.1986 in the unrevised scale while fixing pay in the revised scale. The petitioners were accordingly called upon by way of show cause notice to explain within a period of 15 days as to why their pay should not be refixed according to formula for fixation of the pay in the revised scale and excess payment made to them be recovered. Replies of the show cause notices were filed by the petitioners, wherein, it was mentioned that their pay was rightly fixed. After filing of the reply, no action was taken by the respondent-University. After a period of more than eight years, the order of recovery of the amount was passed, which is subject matter of challenge in the present petition.

Learned counsel for the petitioners contends that there was no concealment or misrepresentation on the part of petitioners and their pay was fixed by the respondent-University itself on the basis of notification dated 6.10.1988 as per terms and conditions mentioned in Punjab Government memo dated 8.9.1988. Learned counsel further contends that nowhere it was mentioned in the notification that benefit of 20% increase of basic pay was not to be given to those employees who were appointed on 1.1.1986 or afterwards. The aforesaid notification deals with only 20% increase of basic pay, which is to be given to the existing emoluments on 1.1.1986. Accordingly, the petitioners were entitled for revision of pay scale from ₹ 700-1600 to ₹ 2200-4000 w.e.f. 1.1.1986 onwards along with 20% increase of basic pay in the unrevised pay scale. Learned counsel also contends that respondent-University could not deny the benefit of revision of pay scale to the petitioners after 1.1.1986. At the end learned counsel for the petitioners contends that the action of the respondents is violative of Articles 14 and 16 of the Constitution of India and the same is also contrary

to the provisions of principles of natural justice as no opportunity of hearing was afforded to the petitioners.

Learned counsel for respondent-University submits that the petitioners were given benefit of fixation of pay inadvertently and subsequently when this fact came to the notice of respondent-University, the petitioners were given show cause notices and it cannot be said that no opportunity was given to them. Learned counsel further submits that the pay of the petitioners was required to be refixed as per pay fixation formula laid down vide notifications dated 6.10.1988 and 27.5.1989 and as soon as the error of inadvertant fixation of pay of the petitioners came to the notice of respondent-University, the same was required to be rectified and thereafter show cause notices were issued to review all such cases. Learned counsel also submits that 20% increase was given inadvertently, which was contrary to the guidelines issued by the UGC. The replies of show cause notices filed by the petitioners were duly considered and thereafter the orders of recovery were passed. At the end learned counsel for respondent-University also brought to the notice of this Court that no recovery could be effected from the petitioners as interim order was passed by this Court in their favour.

During pendency of the writ petition an application under order 1 Rule 10 read with Section 151 CPC was also moved for impleading Guru Angad Dev Veterinary and Animal Sciences University, Ludhiana through its Registrar as party, which was allowed vide order dated 19.2.2015.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

Facts regarding appointment of the petitioners and grant of pay

scale of ₹ 700-1600 are not disputed. It is also not disputed that pay scale of ₹ 700-1600 was revised to ₹ 2200-4000 w.e.f. 1.1.1986 and the pay of the petitioners were fixed in the revised pay scale by the respondent-University and there was no concealment or misrepresentation on the part of the petitioners. Subsequently show cause notices were issued to the petitioners to call upon them to submit reply within a period of 15 days to explain as to why their pay should not be refixed according to formula of fixation of pay in the revised scale and the excess payment made to them inadvertently be not recovered. The petitioners replied to show cause notices to respondent No.2 stating therein that the fitment formula provides for fixation of salary of unrevised scale of ₹ 860 at ₹ 2575. The said fitment formula was part and parcel of the instructions of the revised pay scales. It was also mentioned in the reply that a person who was given starting salary of ₹ 700 and on conversion his pay was to be fixed at ₹ 2200 after taking into consideration the increase of 20% as per provisions of the Rules. The grant of benefit of 20% was to be allowed to all the teachers who were appointed before issuance of notification. Thereafter the replies filed by the petitioners were not found satisfactory and orders of recovery were passed after a period of eight years.

The orders of recovery on refixation of pay of the petitioners have been challenged in the present petition.

The impugned orders have been challenged on the ground that there was no misrepresentation or concealment on the part of the petitioners. Once the benefit was given, the same could not be withdrawn as it was given by the respondent-authorities itself. Rule 7 (a) (i) and (ii) of the Central Civil Services (Revised Pay Scale), 1986 is relevant for resolving

the controversy in hand as it deals with the fixation of initial pay in the revised pay scale, which is reproduced as under:-

“Fixation of initial pay in the revised scale – (1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised scale on and from the 1st day of January, 1986, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his pay in the officiating post held by him in the following manner, namely:-

(A) in the case of all employees-

(i) an amount representing 20 per cent of basic pay in the existing scale, (**Amendments made to these rules within three months of the date of publication of such amendment) subject to a minimum of Rs. 75, shall be added to the “existing emoluments” of the employees;

(ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed:

Provided that-

(a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;

(b) if the amount so arrived at is more than the minimum of the revised scale, the pay shall be

fixed at the maximum of that scale.

Explanation – For the purpose of this clause “existing emoluments” shall include,-

- (a) the basis pay in the existing scale;
- (b) dearness pay, additional-dearness allowance and ad hoc dearness allowance appropriate to the basis pay admissible at index average 608 (1960+100); and
- (c) the amounts of first and second instalments of interim relief admissible on the basis pay in the existing scale;”

The revision of pay scale of the teachers in the Universities and Colleges were notified by the Department of Education, Ministry of Human Resources Development, Government of India and it became effective from 1.1.1986. Rule 30 deals with the pay fixation formula, which is reproduced as under:-

“The pay of teacher in the revised scale on 1.1.1986 will be fixed in accordance with formula recommended by the Fourth Pay Commission while revising pay scales of the Central Govt. Employees. The details of the pay fixation formula are given in Annexure II.

1. Pay in the revised scales should be fixed under this schme only after-

- (a) every teacher has had an opportunity to decide whether he/she will opt for the earlier schme (Para 18-

19); and

(b) the University or College concerned has made necessary changes in their statutes, ordinances, rules, regulations, etc., to incorporate the provisions of this scheme.

II. The pay of teachers in Universities and colleges may be fixed in the revised scale of pay in the following manner:-

(i) An amount representing 20% of basic pay in the existing scale shall be added to the “existing emoluments.”

(ii) After the existing emoluments have been so increased, the pay shall be fixed in the revised scale at the stage next above the amount thus computed:

Provided that:

(a) if the minimum of the revised scale is more than the amount so arrived at the pay shall be fixed at the minimum of the revised scale;

(b) if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scales.

Explanation:

(i) The “existing emoluments” of a teacher on 1st January, 1986 shall include:

(a) basic pay;

(b) dearness pay, additional dearness allowance and ad hoc dearness allowance, if any;

(c) interim relief, if any.

(ii) For the purpose of adding 20% to the existing emoluments:

(a) the basic pay shall be the pay on 1st January, 1986 in the UGC scales;

(b) When a portion of the total emoluments has been merged with the 1973 UGC scales prior to 1st January, 1986, the basic pay may be reckoned notionally in the 1973 UGC scales for the purpose of fixation of pay; and

(c) where the 1973 UGC scales have not been implemented, the actual basic pay, provided that had the basic pay in this case does not exceed the notionally arrived at basic pay if 1973 UGC scales had been given.

A few illustration indicating the manner in which the pay of teachers should be fixed under Rule 1 are given below:-

Illustration-I

- | | | | |
|----|--------------------------------------|---|------------------------------|
| 1. | Existing scale of pay | - | Rs. 700-40-1100-50-1600 |
| 2. | Proposed scale of pay | - | Rs. 2200-75-2800-EB-100-4000 |
| 3. | Existing basic pay | - | Rs. 700 |
| 4. | DA/ADA on 1.1.1986 | - | Rs. 1053/- |
| 5. | Two instalments of interim relief | - | Rs. 140/- |
| 6. | Existing emoluments | - | Rs. 2576/- |
| 7. | Add 20% of basic pay | - | Rs. 188/= |
| | Pay to be fixed in the revised scale | = | Rs. 2800/- |

As per Central Civil Services (Revised Pay Scale), 1986,

revision of pay scales by the Department of Education of Government of

India dated 17.6.1987, revision of pay scales by the University dated 6.10.1988 and as per terms and conditions issued by Punjab Government memo dated 8.9.1988, the increase of 20% was to be given to all the teachers in the basic pay of the existing emoluments w.e.f. 1.1.1986 onwards in the year 1973 UGC scale i.e. ₹ 700-1600 and ₹ 860 of the basic pay to all the petitioners. In the notification issued by State Government regarding revision of pay scale w.e.f. 1.1.1986, nowhere it was mentioned that 20% increase of basic pay was not to be given to those employees who were appointed on 1.1.1986 or afterwards.

Admittedly, the petitioners were appointed after 1.1.1986 and before issuance of the notification by respondent-University dated 6.10.1988. The revised pay scale of ₹ 2200-4000 included 20% increase of the basic pay in the unrevised scale of ₹ 700-1600 and on the basis of that formula, the pay of the petitioners was fixed. They were granted basic pay of ₹ 2575 in the revised pay scale of ₹. 2200-4000 from the date of their respective appointments in the year 1986-87. It is clear that the pay of the petitioners was fixed and same was granted as they were appointed after 1.1.1986. The benefit of 20% increase on the basic pay was to be given to those employees who were appointed on 1.1.1986 or afterwards. Nowhere it was mentioned in the notification issued by State Government that benefit of 20% increase of basic pay was not to be given to those employees who were appointed on 1.1.1986 or afterwards. Said notification deals with only 20% increase of basic pay, which is to be given to the existing emoluments on 1.1.1986 in the 1973 UGC Scales. After considering the spirit of said notification the pay of the petitioners was fixed. The order of recovery was passed subsequently after a period of eight years.

In State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015 (1) RSJ 177, Hon'ble the Apex Court had summarised certain situations whereby recoveries by the employers would be impermissible in law and those situations are reproduced as under:-

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.”

The case of the petitioner is squarely covered by the ratio of law laid down in **Rafiq Masih's case (supra)** wherein it has been held that the recovery from the employees belonging to Class-III and Class-IV service (Group 'C' and Group 'D' service) cannot be effected. The recovery can be effected in case, an employee has wrongfully been required to discharge duties of a higher post and has been paid.

In para No.12 of the **Rafiq Masih's case (supra)**, it has been held that in case, where payments have mistakenly been made by the employer, in excess of their entitlement, then recovery cannot be effected or it is impermissible under law under five situations as mentioned above.

In the present case, the benefit of fixation of pay was given by respondent-University as per notification issued by the State Government. Subsequently, show cause notices were issued to the petitioners, to which replies were also submitted by them but the same were not considered and after a period of more than eight years, the order of recovery was passed. The said order of recovery was stayed by this Court while issuing notice of motion. The pay of the petitioners was fixed and benefit was granted to them but there was no misrepresentation or concealment as the benefit was given as per their entitlement. The case of the petitioners is squarely covered by the decision of Hon'ble the Apex Court in **Rafiq Masih's case (supra)**. It has also been fairly admitted by learned counsel for respondent-University that no recovery has been effected from the petitioners and they even do not intend to effect any recovery.

In view of facts and circumstances of the case as well as law position as explained above, the present petition is allowed and impugned orders dated 9.2.1995 and 25.1.1995 are hereby quashed.

August 23, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes