

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 2495 of 2013

Date of Decision: 17.11.2016

SUDHIR KUMAR ARORA

... Petitioner

V/s

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. P.S. Khurana, Advocate,
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

KULDIP SINGH, J. (Oral)

The petitioner has invoked the writ jurisdiction under Articles 226 of the Constitution of India for issuance of a writ of certiorari for quashing the impugned action of the respondents No. 4 and 5 in reducing the pension of the petitioner from ₹ 23,00/- per month to ₹ 16,194/- per month and effecting the recovery of about ₹ 7.00 lakhs without following proper procedure. Issuance of writ of mandamus to respondents No. 4 and 5 is also sought to directing them to restore the original pension of the petitioner fixed by the respondent Nos. 2 and 3.

Brief facts of this case are that the petitioner retired from the services of the respondent-department as Senior Veterinary Officer on 31.08.1991, after rendering more than 33 years of service. Subsequently, he was allowed pension. The Recommendations of the 5th Pay Commission were accepted w.e.f. 01.01.2006 and the revised pay-scales were given to the employees. Accordingly, instructions dated 17.08.2009 (*Annexure P-1*) were issued regarding revision of pension of pre 1.1.2006 retirees. Rule 4.2 of the

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said notification was to be applied for fixation of pension and the same is reproduced as under:-

“Rule 4.2

The fixation of Pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. This will be reduced pro-rata if the qualifying service of the person falls short of 33 years.”

Accordingly, the pension of the petitioner was fixed and he continued to get the pension as per pension certificate (*Annexure P-3*). The petitioner claimed that the basic pension of the petitioner has been reduced from ₹ 23,000/- per month to ₹ 16,194/- and recovery of about ₹ 7.00 lakh is being affected from his pension. It is also claimed that no order regarding reduction in pension was passed as it was reduced by the State Bank of India, Bathinda Road, Fazilka, on instructions from the District Treasury Officer, Ferozepur.

In the reply respondents No. 1 and 2 have taken the stand that they have not issued any order of reduction in pension of the petitioner. The revision of pension of pre 01.01.2006 retirees is to be done by pension disbursing authorities i.e. District Treasury Officer, Ferozepur/concerned Bank which are respondents No. 4 and 5 in the present case and respondents No. 1 and 2 have no role to play in the same.

Respondent No. 4-District Treasury Officer, Ferozepur has taken the stand in para 2 of its reply of reply, which is reproduced as under:-

“2. In this connection, it is prayed that the petitioner who has retired from Government service as on 31.08.1991 is a pensioner and drawing his pension from the respondent No. 5, vide Pension Payment No. 156986/Pb. And firstly the Pension of the pensioner was re-fixed as on 01.01.2006 as per Para No. 4.2 of Punjab Govt. letter dated 17.08.2009 (Annexure R/1 attached) which was again modified vide letter dated 22.02.2010 (Annexure R/2 attached) by the respondent No. 5. As the petitioner has retired from Govt. Service on 31.08.1991, the govt. issued the instructions vide letter dated 06.12.2011 (Annexure R/3 attached) that “The pensioners/family pensioners who were not in service with effect 01.01.1996 to 31.12.2005 are not entitled revised scales and revised Pay Band+Grade pay as employees”. Thus the petitioner is not entitled to re-fixed his pension in the revised Pay Scales and revised Pay Band and Grade Pay as on 01.01.2006.”

I have heard learned counsel for both the parties.

Rule 4.2 of the instructions dated 17.08.2009 (Annexure P-1) depicts the way in which pension of pre 01.01.2006 retirees is to be fixed. Admittedly, in this case no order of fixation of pension was passed. It appears that on the oral instructions of the District Treasury Officer, Ferozepur, the pension of the petitioner is re-fixed without hearing him. The notification dated 22.02.2010 (Annexure R-2) is regarding implementation of the recommendations of the 5th Punjab Pay Commission-Revision of pension of pre 01.01.2006 retirees, in which the Rule 4.2 has been relied upon and in (Annexure-A) attached therewith, a table for re-fixation of pension has been given. The letter dated 06.12.2011 (Annexure R-3) which is claimed to be the instructions, is reproduced as under:-

“Subject: Regarding Supply of information under RTI Act, 2005.

Your application dated 20.09.2011 on the subject cited above.

2. It is to inform you under R.T.I. act that pensioners/family pensioners who were not in service w.e.f. 01.01.1996 to

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31.12.2005 are not entitled revised pay scale and revised pay band+grade pay as employee.”

The perusal of the above letter dated 06.12.2011 shows that it is a letter regarding information supplied under the Right to Information Act, 2005 by the Finance Department to the District Treasury Officer, Ferozepur and any information supplied under RTI cannot be termed as instructions or cannot amend the earlier instructions. In order to amend the existing instructions, another instructions have to be issued. The Government has to see as to whether the instructions are to be issued prospectively or not and if these instructions are issued retrospectively, whether the same is possible or not?

The relevant Rule 4.2 of the notification dated 17.08.2009 (*Annexure P-1*) has already been reproduced above alongwith letter dated 06.12.2011. I am of the view that merely on the basis of information supplied under RTI, it cannot be treated that the government had issued instructions withdrawing the pension of the pre 01.01.2006 retirees. Further, respondent No. 4, District Treasury Officer, Ferozepur has acted in an arbitrary manner and did not hear the petitioner or passed any order in writing with regard to re-fixing his pension. The said act is otherwise illegal and against the principles of natural justice.

Consequently, the present writ petition is allowed. It is ordered that the act of the District Treasury Officer, Ferozepur wherein reduction in pension of the petitioner and making the recovery from the pension of the petitioner was made, is held to be void and illegal. The State Bank of India, Bathinda Road, Fazilka is directed to ignore the said verbal orders and continue to pay the earlier pension to the petitioner. The recovery already made from the pension of the petitioner shall also be refunded to him along with

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interest @ 9% per annum. In addition to it, in the circumstances, a cost of ₹ 50,000/- is also imposed upon the said District Treasury Officer, Ferozepur for ordering reduction in pension of the petitioner without passing any formal order. The said cost of ₹ 50,000/- is payable to the petitioner on account of harassment of the petitioner and for the litigation expenses paid in the present litigation and for taking the rounds of this Court for about 3 years in the advanced age of 83 years.

In view of the above note observations, the present petition stands allowed.

November 17, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

<i>Whether speaking / reasoned</i>	:	✓ <i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	✓ <i>No</i>