

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.23787 of 2016 (O&M)

Date of Decision: November 17, 2016

Union Territory Chandigarh and others

---Petitioners

Versus

Meet Singh and others

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr.Harkesh Manuja, Advocate and
Mr.Raghav Goel, Advocate for the petitioners.**

HARINDER SINGH SIDHU, J.

1. Challenge in the present writ petition is to order dated 17.3.2016 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, whereby Original Application filed by respondents No.1 to 5 praying for quashing of the orders dated 21.6.2011, 7.7.2011 and 29.10.2013 withdrawing the pay scale of ₹5800-9200 w.e.f. 1.1.1986, which they continued to avail till their retirement and directing recovery of the excess amount paid to them, was allowed.

2. Respondents No.1 to 5 were appointed to the posts of Sanitary Inspector in the Health Department (Malaria Wing), Chandigarh Administration. The post of Sanitary Inspector was re-designated as Multi-purpose Health Supervisor (Male) w.e.f. 23.1.1989 on the Punjab Pattern. Vide notification dated 1.11.1995, the Chandigarh Administration transferred the functions of Malaria and Pest Control to the Municipal Corporation Chandigarh (for short 'MCC') and accordingly, the entire staff

of Malaria and Pest Control, including respondents No. 1 to 5 were transferred to MCC on deputation. Subsequently, the nomenclature of Multi-purpose Health Supervisor (Male) was changed to Sanitary Inspector by the MCC.

3. On 2.4.1996, benefit of higher pay-scale of ₹1800-3200 was extended to respondents No.1 to 5 w.e.f. 1.11.1995. This pay-scale was further revised to ₹5800-9200 w.e.f. 1.1.1996 by MCC.

4. Vide notification dated 7.2.2000, the entire office and staff of Pest Control and Malaria Eradication Programme was re-transferred from MCC to the Director, Health Sciences, Chandigarh Administration. It was stated in the transfer order that the period spent with the MCC will be treated as on deputation.

5. Even after their re-transfer to the Chandigarh Administration the respondents continued to get the pay-scale of ₹5800-9200.

6. On an audit objection raised by the Accountant General (Audit) that the higher pay scale was inadmissible to respondents 1 to 5, after their re-transfer to their parent department i.e. Chandigarh Administration, a show cause dated 5.3.2004 was issued to them. In the show cause notice, it was mentioned that the pay-scale of ₹5800-9200 was erroneously granted to them instead of correct pay scale of ₹4550-7200. They were called upon to show cause as to why recovery of excess payment be not made from their salary.

7. It appears that no action was taken pursuant to the aforesaid show cause notice. Meanwhile, respondents No.1 to 5 retired from service on 31.1.2007, 31.12.2007, 30.11.2007, 29.2.2008 and 30.11.2008,

respectively.

8. After their retirement, an order dated 11.5.2010 was passed by the Director, Health and Family Welfare, Chandigarh Administration, Chandigarh withdrawing the pay scale of ₹1800-3200 w.e.f. 1.11.1995 and ₹5800-9200 w.e.f. 1.1.1996 besides seeking recovery of the over-payment consequently made.

9. Respondents No.1 to 5 filed separate Original Applications challenging the order. In view of the fact that the order had been passed without affording an opportunity of hearing, the O.As were allowed. The impugned orders directing downgrading the pay scale of ₹5800-9200 to ₹4550-7200 was held to be invalid. However, liberty was granted to the Administration to proceed afresh in the matter, after considering the fact based averments made by the respondents in their O.As, which were directed to be treated as representations. It was directed that the competent authority will notice each and every averment made therein and indicate its decision thereupon.

10. Thereafter, order dated 21.6.2011 was passed as per which the pay scale which was granted to respondents No.1 to 5 by MCC as Sanitary Inspectors was to be withdrawn on their re-transfer to the Chandigarh Administration. This order was also challenged by respondents No.1 to 5. As the order had been passed by Assistant Director (Malaria), who was not the competent authority, the order was quashed and the Director, Health Services, Chandigarh Administration (the competent authority) was directed to pass a speaking order after affording opportunity of hearing to them. Thereafter, the Director, Health Services passed order dated 29.10.2013. As

per this order the pay-scales paid by MCC to the respondents were to be discontinued after their reversion to the Chandigarh Administration. The excess payment made to them was directed to be recovered.

11. It is this order, which was impugned in the O.A, which has been allowed vide order dated 17.3.2016.

12. Ld. Tribunal while allowing the O.A took note of the undisputed facts that the respondents drew their pay in the scale of ₹5800-9200 w.e.f. 1.1.1996 to 31.3.2000 i.e. during the period they served with MCC till their re-transfer to the office of Assistant Director, Malaria, UT Chandigarh and even thereafter till the date of their superannuation. Their pensionary benefits were determined on the basis of their last pay drawn i.e. in the scale of ₹5800-9200 (as revised w.e.f. 1.1.2006). Although, the first show cause notice regarding withdrawal of their pay scale was issued to them on 5.3.2004, the first order regarding withdrawal of this pay scale was passed by the Chandigarh Administration only on 11.5.2010, much after their retirement. Thereafter, the matter remained under litigation and finally order dated 29.10.2013 was passed.

13. The Tribunal relied upon a decision of Hon'ble the Supreme Court in **Sushil Kumar Singhal v. Pramukh Sachiv Irrigation Deptt. and others, (2014) 16 SCC 444**, to come to the conclusion that a mistake committed in pay fixation during service could not be rectified long after retirement and pension be refixed. Reliance was also placed on the decision of Hon'ble the Supreme Court in **State of Punjab and others v. Rafiq Masih and others, (2015) 4 SCC 334**, to hold that no recovery of excess payment could be made after retirement.

14. Ld. Counsel for the petitioners while not seriously disputing the order of the Tribunal qua non-recovery of the excess payment made in view of the settled law, however argued that the direction that the respondents are entitled to continue to draw their pension on the basis of their last pay drawn in the scale of ₹5800-9200 and as subsequently revised w.e.f., 01.01.2006 could not be sustained. He argued that after their re-transfer to the Chandigarh Administration the respondents could not continue to draw the MCC pay scales.

15. We have seriously considered the aforesaid submission. Ordinarily, if pension has been sanctioned on the basis of pay incorrectly fixed, there can be no bar in correcting the anomaly after retirement and re-fixing the pension at a reduced rate. It is also true that the facts of **Sushil Kumar Singhal's** case (supra) are not identical to the present case. In that case reliance was placed on Government Order dated 16-1-2007 as per which only the records of 34 months prior to retirement could be examined for the purpose of grant of pension and no correction of the mistake in determining the pay during service tenure could be made beyond that period. It was provided that mistakes in pay determination of an employee could be removed only when the employee was still in service. The appellant therein had retired on 31-12-2003. The mistake committed while fixing the pay of the appellant in 1986 was detected in March 2005. Relying on the said Government Order Hon'ble the Supreme Court held that the mistake in pay fixation beyond the period of 34 months prior to the retirement of the appellant could not have been taken into account by the employer and therefore, neither could there have been any reduction in the

pension on the basis of reduction of salary nor any recovery could be effected.

16. Though no similar instructions have been brought to our notice, but the factual situation of the present case warrants a similar direction.

17. The respondent Nos.1 to 5 continued to draw their pay in the scale of ₹5800-9200 w.e.f. 1.1.1996 to 31.3.2000 i.e. during the period they served with MCC and even after their re-transfer to the office of Assistant Director, Malaria, UT Chandigarh till the date of their superannuation on 31.1.2007, 31.12.2007, 30.11.2007, 29.2.2008 and 30.11.2008, respectively. Their pensionary benefits were determined on the basis of their last pay drawn in the scale of ₹5800-9200 (as revised w.e.f. 1.1.2006). Although, the first show cause notice regarding withdrawal of their pay scale was issued to them on 5.3.2004, the first order regarding withdrawal of this pay scale was passed by the Chandigarh Administration only on 11.5.2010, much after their retirement. Thereafter, the matter remained under litigation and finally the order dated 29.10.2013 withdrawing the pay scale and directing recovery was passed.

18. It is the case of the Chandigarh - Administration that the respondents were not entitled to the pay scale of ₹5800-9200 after their reversion to the Chandigarh Administration w.e.f., 01.04.2000. But the Administration took no action till the issuance of show cause notice on 5.3.2004. Thereafter again there was inexplicable delay of about six years before the first order of withdrawal of pay scale was passed on 11.5.2010 which was about two to three years after their retirement. As the respondents continued to draw their salary in the pay scale of ₹5800-9200, for the entire

length of their service after reversion to the Chandigarh Administration on 01.04.2000 till their retirement and their pension was fixed on that basis, in the facts of this case, it would be inequitable and harsh for their pension to be refixed at the reduced salary at such a late stage.

19. Accordingly, we see no reason to interfere with the order of the Tribunal. The petition is dismissed.

20. However, it is clarified that in this order we have not adjudicated the issue regarding the permissible pay scale of the respondents on their reversion to the Chandigarh Administration on merits. It is further clarified that this order having been passed in the fact situation of this case is not to be treated as a precedent for fixation of pay of any post.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 17, 2016

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No