IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2497 of 2015 (O&M)
Date of decision: 29.11.2016

Dr. Ashok Kumar **..Petitioner**

Versus

State of Punjab and others **..Respondents**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Sudhir Nar, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.
for the respondents.

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Daya Chaudhary, J.

The grievance of the petitioner in the present writ petition is that the pay on re-employment on the post was not fixed in accordance with the Punjab Government Instructions dated 23.01.1992 as it was wrongly fixed by taking difference of only the basic pay, which he was drawing at the time of retirement. It was fixed on the basis of basic pension without taking into consideration dearness allowance and other admissible allowances.

The petitioner joined respondent-department on the post of medical officer on regular basis at District Gurdaspur, Punjab on 20.03.1979. Ultimately he retired on 31.03.2010 on attaining the age of superannuation. He rendered approximately 31 years of service before his retirement and thereafter, he was re-employed by the respondent-Department on contract basis on 21.07.2011. At the time of retirement, the petitioner was working as Senior Medical Officer and as per last pay certificate, he was drawing total salary of ₹93,978/-, which included (Pay of ₹57400/- + Non Practicing Allowance ₹14350/- + Dearness Allowance ₹19372/- + A.A. ₹100/- + F.M.A. ₹500/- + R.A. ₹2256/-) in the pay scale of ₹37400-₹67000/-. On the basis of last pay drawn, the pension of the petitioner was fixed at ₹45,496/-, which included basic pension, DA and FMA. As per claim of the petitioner as prayed for in the present writ petition that according to "clause 1" of the re-appointment letter dated 21.07.2011, he was entitled to get the consolidated salary, which was to be calculated as a difference between the last pay drawn minus pension but it was wrongly calculated in a manner by taking difference of only basic pay minus basic pension without DA and other admissible benefits in the consolidated salary, which is contrary to the Punjab Government Notification/Instructions issued with regard to fixation of salary of re-employed pensioners.

The petitioner has approached this Court for issuance of a writ in the nature of certiorari for quashing of impugned reply dated 21.10.2014 (Annexure P-8) whereby by wrongly interpreting the Punjab Government Instructions dated 23.01.1992 (Annexure P-4) issued regarding fixation of pay of re-employed pensioners, being illegal, arbitrary and violative of principles of natural justice. A further prayer has also been made for issuance of direction to respondents to release the difference of salary after granting correct fixation of salary of re-employed petitioner for the period he remained on re-employed post in view of Punjab Government Instructions dated 23.01.1992.

Learned counsel for the petitioner submits that the controversy in the case at hand has already been settled by this Court in a judgment rendered in ***Dr. Kapoor Chand Goyal vs. State of Punjab and others, CWP No.8513 of 2012*** decided on ***15.07.2016*** along with other connected cases.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner but has not disputed the decision rendered by this Court in **Dr. Kapoor Chand Goyal's case (supra)**.

Heard arguments of learned counsel for the parties and have also perused the documents available on the file.

On perusal of appointment letter issued to the petitioner, it is apparent that the emoluments on the contract were fixed on the basis of last pay drawn minus pension and no increment was to be given. There was another condition No.12, which is reproduced as under : -

> *"12. You will not be entitled to get any benefits from govt. like increments/overtime, T.A/D.A or any other benefits."*

The State Government has framed Policy dated 23.01.1992 issued by the Department of Finance for fixation of pay for re-employed pensioners. In said Policy, it is mentioned that the pensioners may be allowed to draw normal increments in the time-scale of re-employed posts if the pay had been fixed at the minimum or the higher stage or the maximum or beyond the maximum of that scale of the post.

The stand taken by the respondent-State is that the service conditions are mentioned in the appointment letter. The benefits contrary to the policy, cannot be granted to the petitioner. The terms and conditions of re-employment are to be governed by the appointment letter, which were duly accepted by the petitioner. Moreover, the petitioner and other similarly situated candidates accepted the terms and conditions. In the appointment letter, it was mentioned that their fixed monthly amount will be last pay minus pension.

However, the issue as to whether the HRA and other allowances are admissible to the petitioner or not, was also subject matter in **Dr. Kapoor Chand Goyal's case (supra)**.

Condition No.12 of the appointment letter clearly shows that the benefits like increments, overtime, T.A/D.A are not to be given. It has also been brought to the notice of this Court that under similar circumstances, another officer, namely, Dr. R.D. Gupta was granted Dearness Allowance.

The relevant portion of judgment rendered in **Dr. Kapoor Chand Goyal's case (supra)** is reproduced as under: -

> *"After considering the rival contentions, I am of the view that the last pay includes the Dearness Allowance also. The last pay never meant to be the basic pay only. Had it been so, for the 'last pay' the word 'basic pay' might have been used. Therefore, the last pay is taken including the Dearness Allowance from which the pension has to be deducted. Accordingly, I hold that the petitioners are entitled to Dearness Allowance also, for the purpose of calculating the last pay. However, Clause 12*

> *clearly bars the other benefits, which deem to include the HRA, which is the benefit granted to the serving employees.*
>
> *It being so, all the three petitions are partly allowed and the impugned orders are set aside to the extent that so as not to allow the Dearness Allowance as a part of last pay. The respondents are directed to release the arrears of salary by including the Dearness Allowance in the last pay along with interest @ 9% per annum within three months from the date of receipt of copy of this order."*

Accordingly, the case of the petitioner is squarely covered by the decision rendered in **Dr. Kapoor Chand Goyal's case (supra)** and the present petition is partly allowed and the impugned order is set-aside to the extent so as not to allow the Dearness Allowance as a part of last pay. The respondents are directed to release the arrears of salary by including the Dearness Allowance in the last pay along with interest @ 9% per annum within a period of three months from the date of receipt of certified copy of this order.

29.11.2016 **(DAYA CHAUDHARY)**
neetu **JUDGE**

Whether speaking/reasoned Yes/No √ (Yes)

Whether Reportable Yes/No √ (No)