

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

1. CWP No.8513 of 2012 (O&M)
Date of decision : July 15, 2016

Dr. Kapoor Chand Goyal Petitioner

Versus

State of Punjab and others Respondents

2. CWP No.375 of 2015 (O&M)
Date of decision : July 15, 2016

Tarlochan Singh Petitioner

Versus

State of Punjab and others Respondents

3. CWP No.1556 of 2015 (O&M)
Date of decision : July 15, 2016

Dr. N.R. Duggal Petitioner

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Parveen Kumar Garg, Advocate for the petitioner
in CWP No.8513 of 2012.

Mr. Sudhir Nar, Advocate for the petitioner
in CWP Nos.375 and 1556 of 2015.

Mr. Rajat Bansal, AAG, Punjab.

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. (ORAL)

This judgment of mine shall dispose of three connected civil writ petitions bearing Nos.8513 of 2012, 375 and 1556 of 2015.

The petitioners in all, retired from government service as doctors have filed three separate writ petitions. They were re-employed on different dates, vide their respective appointment letters (Annexure P-2 in case of Dr. Kapoor Chand Goyal and Annexure P-1 in cases of Dr. Tarlochan Singh and Dr. N.R. Duggal). For the purpose of brevity, the facts have been extracted from CWP No.8513 of 2012.

In the appointment letter (Annexure P-2), the following condition No.1 is mentioned:

“1. This appointment will be on contract basis and during re-employment period the fixed monthly amount (last pay – pension) will be paid per month. No increment etc. will be given.”

The petitioners remained on service on contract basis for two years and admittedly further extension was denied to them. Now, the petitioners claim that they were wrongly denied the Dearness Allowance and the House Rent Allowance.

The plea of learned counsel for the petitioners is that as per policy of the Government (Annexure P-2), such allowances were admissible to the contract employees.

The State has taken the stand that the petitioners were not entitled to any other allowance. The N.P.A. was treated as part of basic pay and their pay was accordingly fixed. They served on the contract basis and

did not raise any objection. When their extension was refused, they filed the present writ petitions.

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

The condition No.1 of the appointment letter, reproduced as above, clearly shows that the emoluments on the contract were fixed on the basis of last pay – 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 for any service benefits like increments/overtime/TA/DA or any other benefits from government.”

Learned counsel for the petitioners have relied upon the policy of the Government dated 23.01.1992 (Annexure P-1) issued by the Department of Finance for fixation of pay for re-employed pensioners.

On behalf of the State, the said policy is not denied.

In the policy, there is mention that 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 on behalf of the State is that the service condition shall be governed by the appointment letter and that the benefits of terms and conditions of the policy to the contrary, cannot be availed by the petitioners.

After considering the policy relied upon by the learned counsel for the petitioners and the appointment letter, I am of the view that the terms and conditions of re-employment are to be governed by the appointment

letter, which were duly accepted by them and on which they continued to work. In the appointment letter, it was mentioned that their fixed monthly amount will be last pay – pension. In my view, the last pay includes the Dearness Allowance also.

However, the question would remain whether the HRA and other allowances are admissible to the petitioners or not. Condition No.12 of the appointment letter, reproduced as above, clearly shows that the benefits like increment, overtime, TA, DA are not to be given.

Learned counsel for the petitioners contend that the TA and DA mentioned in Condition No.12 of the appointment letter are Travelling Allowance and Daily Allowance not the Dearness Allowance.

Reliance has been placed on Annexure P-12, wherein in the similar circumstances, another officer Dr. R.D. Gupta was granted Dearness Allowance.

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.

(KULDIP SINGH)
JUDGE

July 15, 2016
sarita