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

CWP-2866-2014 (O&M)
Date of decision: 30.09.2016

Karanvir Singh and others **…..Petitioners**

versus

State of Punjab and others **……Respondents**

CWP-6394 -2014 (O&M)

Rajnish Kumar and others

…..Petitioners

versus

State of Punjab and others **……Respondents**

CWP-27912 -2013 (O&M)

Gita Devi and others

…..Petitioners

versus

State of Punjab and others **……Respondents**

CWP-3202-2014 (O&M)

Balwant Rai and others

…..Petitioners

versus

State of Punjab and others

……Respondents

CWP-2913-2014 (O&M)

Surjit Singh and others

…..Petitioners

versus

State of Punjab and others

……Respondents

CWP-17710-2016 (O&M)

Raj Bansal and others

…..Petitioners

versus

State of Punjab and others **……Respondents**

CWP-9490-2014 (O&M)

Nar Singh and others

…..Petitioners

versus

State of Punjab and others

……Respondents

CWP-19870 -2016 (O&M)

Teja Singh and others

…..Petitioners

versus

State of Punjab and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present:- Mr. C.M. Chopra, Advocate,
for the petitioner (s) in CWP-2866, 6394, 3202, 2913-2014.

Ms. Neha Sharma, Advocate, for,
Mr. Kapil Kakkar, Advocate, for the petitioners
in CWP-27912-2013.

Mr. Vikas Chatrath, Mr. Khushkaran and Mr. Manikaran,
Advocates, for the petitioner (s) in CWP-19870-2016, 9490-2014.

Mr. Sunny Singla, Advocate, for the petitioners,
in CWP-17710-2016

Mr. R.S. Pathania, Deputy A.G. Punjab.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J.

By this common judgment, I shall dispose of eight connected civil writ petition Nos. 2866 of 2014, 6394 of 2014, 27912 of 2013, 3202 of 2014, 2913 of 2014, 17710 of 2016, 9490 of 2014 & 19870 of 2016 involving similar questions of law and facts.

Petitioners, who are pre and post 1.1.2006 retirees from the Education Department, have impugned the government circular dated 13.6.2012 (Annexure P12). They seek writ of mandamus directing the respondents to re-fix their pension as per circulars dated 17.8.2009, 22.2.2010 and 17.8.2009 (Annexure P9 to P11) after quashing the circular dated 13.6.2012 (Annexure P12) in view of the increase in the pay scales, grade pay and in terms of the decision dated 22.10.2013 rendered by this Court in CWP No.25733 of 2012 tilted as *A.P.Sharma and others v. State of Punjab and others* (Annexure P13).

The facts are extracted from the lead case i.e. CWP No.2886 of 2014.

Petitioners superannuated as Masters, Mistresses, Lecturers, JBT Teachers, C&V Teachers, Headmistress and Junior Assistants on different dates as per Annexure P1. Some of the petitioners retired before 1.1.2006 and some retired after the said date. It is stated that the 5th Pay Commission of the Punjab recommended pay scales of the various categories of the employees and submitted its report on 20.4.2009. The Pay

Commission also recommended higher pay scales to various teachers on Central pattern as under:-

Designation Scale	*Pre Revised*	*Pay Scale as per general conversion table*	
		Pay Band	*Grade Pay*
JBET/ETT/Head Teacher	*4550-7200*	*5910-20200*	*3000*
Craft and vernacular teachers	*5000-8100*	*10300-34800*	*3200*
Centre head teacher/ Master/ Mistress	*5480-8925*	*10300-34800*	*3600*
BPEO/School Lecturer/ Vocational Master	*6400-10640*	*10300-34800*	*4200*
Head Master High School	*7000-10980*	*10300-34800*	*4400*
Principal Senior Secondary	*10025-15100*	*15600-39100*	*6600*

It is stated that due to typographical error, the pay scales were not mentioned in the original report dated 20.4.2009. Thereafter the Commission itself informed the government that there are certain typographical errors in the report in para Nos.5.31, 5.64, 8.5 at pages Nos.85, 102 and 159- 162. The Commission also addressed a communication dated 21.4.2009 requesting the government that above said errors may be rectified so that the report becomes error free. Following errors were requested to be corrected:-

Designation	*Present Pay Scale*	*Revised pay scale as per general conversion table*		*Revised upgrade pay scale as per general conversion table*	
		Pay Band	Grade Pay	Pay Band	Grade Pay
JBET/ETT Head Teacher	*4550-7200*	*5910-20200*	*3000*	*10300-34800*	*4200*
Craft and vernacular teachers	*5000-8100*	*10300-34800*	*3200*	*10300-34800*	*4400*
Centre head teacher/master/Mistress	*5480-8925*	*10300-34800*	*3600*	*10300-34800*	*4600*
BPEO/School Lecturer/ Vocational master	*6400-10640*	*10300-34800*	*4200*	*10300-34800*	*5000*
Head Master High School	*7000-10980*	*10300-34800*	*4400*	*10300-34800*	*5400*
Principal Senior Secondary	*10025-15100*	*15600-39100*	*6600*	*15600-39100*	*6600*

The Government of Punjab accepted the recommendations of the 5th Pay Commission and made these applicable w.e.f. 1.1.2006. However, the pay scales were ordered to be accepted without corrections as requested by the Pay Commission. Later on, the Department of Finance, Punjab vide circular dated 5.10.2011 (Annexure P4) made the correction as suggested by the Pay Commission and accepted the pay scales of various categories of teachers. However, the said revision was given effect from 1.10.2011 instead of 1.1.2006 as granted to all other categories. In terms of letter dated 23.12.2011, the grade pay of the Head Teachers was increased to Rs.4400/- and intial pay was increased to Rs.17420/- w.e.f. 1.12.2011 (Annexure P-5), the grade pay of Masters/Mistresses was also increased to Rs.5000/- and accordingly intial pay increased to Rs.18450/- vide letter dated 8.12.2011 w.e.f. 1.12.2011 (Annexure P-6), the grade pay of Lecturers was revised to 5400/- with intial pay Rs.20300/- vide letter dated 9.12.2011 w.e.f. 1.12.2011 (Annexure P-7) and similarly the grade pay of junior assistant was revised to Rs.3600/- with intial pay Rs.14430/- vide letter dated 15.12.20111 w.e.f. 1.12.2011 (Annexure P-8). Thus perusal of these circumstances reveal that the benefit of higher scale has been granted w.e.f. 1.12.2011.

The Punjab Pay Commission recommendations regarding pensionary benefits were rationalized by circular dated 17.8.2009 for pre 1.1.2006 retirees, which were partially modified vide letter dated 22.02.2010 (Annexure P10), wherein it was laid down that full pension in no case shall be less than 50% of the initial pay shown column 8 of in the schedule of Punjab Civil Services (Revised Pay) Rules, 2009. The Finance Department issued a circular dated 13.6.2012 (Annexure P12), instructing that the pension of the pensioners is to be revised only once with reference to the initial pay of revised scale of pay as on 1.1.2006 and subsequent revision of pay scales has no correlation whatsoever with the pension of the pensioners. The net result is that on account of rectification of the error granting new pay scale w.e.f. 1.12.2011, the petitioners, who retired before the said date or before 1.1.2006 are not entitled to revision of the pension in view of the letter of the Finance Department dated 13.6.2012 (Annexure P12).

In the written statement, the respondents took the plea that the instructions dated 13.6.2012, 17.8.2009 and 22.02.2010 (Annexure P10 to P12) have been issued by the Department of Finance, which has not been made as party in the present case. It was stated that LPA has been filed against the judgment in the case of *A.P.Sharma's case (supra)* and the operation of the said judgment has been stayed. The respondents prayed that in view of the instructions, pension cannot be refixed as prayed for by the petitioners.

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

Admittedly, the report of the 5th Pay Commission was accepted by the government vide notification dated 27.5.2009 and the Punjab Civil Services (Revised Pay) Rules, 2009 came into force w.e.f. 1.1.2006. Pay scales were accordingly revised. It also comes out that the Pay Commission addressed a communication dated 21.4.2009, pointing out typographical errors in para Nos.5.31, 5.64, 8.8 at pages Nos.85, 102 and 159-162. Typographical errors pointed out have been reproduced in preceding paragraph of this judgment

It is also not a denying fact that vide different letters Annexure P5 dated 23.12.2011, Annexure P6 dated 8.12.2011, Annexure P7 dated 9.12.2011 and Annexure P8 dated 15.12.2011, the pay scales of Head Teachers, Masters, Mistresses, Lecturers, Clerks and Junior Assistants were revised effective from 1.12.2011. It is stated in the said letters that the pay scales have been further revised w.e.f. 1.12.2011. If the pay scales mentioned in the said letters Annexure P5 to P8 are examined, it comes out that these are the same, regarding which errors were pointed out by the Pay Commission vide letter dated 21.4.2009 (Annexure P2).

Learned counsel for the petitioners has argued that the Department of Finance has issued a letter (Annexure P12), wherein, it was instructed that the revised pension of pre 1.1.2006 pensioners, in no case, shall be less than 50% of the initial pay of the revised scale of corresponding to the pre-revised scale of pay, in which the pensioners had last worked and at the same time, it was clarified that the subsequent re-revision of scales of pay has no co-relation, whatsoever, with the pension of such pensioners. Similarly, the pension of those petitioners, who retired after 1.1.2006 onwards is relatable only to the pay drawn in the admissible scale of pay at the time of their retirement and it has no co-relation, whatsoever with the revision of the pay scales from any subsequent date. In the present case, there are two categories of employees, one who retired prior to 1.1.2006 and others who retired after 1.1.2006 but prior to 1.12.2011, the date from which the new scales were implemented vide letters Annexure P5 to P8.

The petitioners have claimed the benefit of judgment in the case *A.P.Sharma's case (supra).* The State had filed the appeal bearing LPA NO.352 of 2014 against the judgment of the Single Bench, which has now been finally decided by a Division Bench of this Court on 31.8.2016. The question was raised before Division Bench as to whether the subsequent revision is in fact removal of the anomaly or grant of new scale. In the said case, the petitioners had retired before 1.1.2006. The circular dated 15.12.2011, implementing the revised pay scales qua the petitioners w.e.f. 1.12.2011 was also considered. Stand of the Government was that it was further revision of pay scales with prospective effect. It was also pleaded in the written statement that Anomaly Committee had detected the anomaly in the pay scale of above stated posts in the Finance Department and that a conscious decision was taken to remove the said anomaly. The Single Bench had decided the matter considering it to be the case of pay anomaly which was removed vide circular dated 15.12.2011. The Division Bench directed the Chief Secretary to explain the cause of upward revision of the pay for the posts in the Finance Department and whether such upward revision was granted to other categories of employees also as there was reference made to the Special Committee which examined the claimed before the issuance of the circular?

After examining the entire matter, the Division Bench observed as under:-

> *(20) The purpose and object of the constitution of the Pay Anomalies Committee is well explained in the Preface of the Report authored by the Financial Commissioner (Revenue) and it says as follows:-*
>
> > *"In view of these circumstances, the State Government thought it fit to redress the genuine grievances of its employees in an appropriate way and hence constituted this Committee to examine the pay anomalies, if any, in the recommendations of the Fifth Punjab Pay Commission and Government decisions taken thereon."*
>
> *(21)If the very purpose of constituting the Pay Anomalies Committee was to redress the grievances of employees in an appropriate way and to examine the issues of pay anomalies, the recommendations made by it deserves to be appreciated with reference to these objects of its constitution. In other words, wherever the Pay Anomalies Committee recommended a different higher pay structure, it was with a view to remove the existing anomalies and to rationalise the pay-scales. In the matter of the Department of Treasuries and Accounts, the Pay Anomalies Committee expressly noticed the cause of anomaly and recommended higher pay structure so as to remove the anomalous situation.*
>
> *(22)These very recommendations were accorded approval by the Ministers' Sub Committee culminating into final circular dated 15.12.2011. If one reads para No.3 of the said circular in conjunction with the recommendations made by the Pay Anomalies Committee, it is not difficult to understand as to why the circular expressly restricts the benefit of higher pay-*

scale notionally without granting any arrears of pay? The competent authority was conscious of the fact that it is a case of removal of pay anomaly which must be removed from the date it occurred but to obviate the additional financial burden on the State Exchequer, a decision was taken to remove such anomalies with prospective effect only.

The Division Bench after considering the factum of recommendations made by the Pay Anomaly Committee and Ministers' Sub-Committee, observed as under:-

(27)There may thus be no room to doubt that the object of the Pay Anomalies Committee as well as the Ministers' Sub Committee was to identify the anomalous situations, if any, which had arisen on the implementation of the 5th Punjab Pay Commission and to iron out those creases. This is what precisely has been done by the Ministers' Sub Committee, who recommended re-modulation and upgradation in payscales of various posts in different Departments.

(28) Since such alterations were to be made from the date of occurrence of the anomalous situation and such a recourse would have burdened the State Exchequer with heavy financial liability that the Ministers' Sub Committee in its wisdom took a decision to remove anomalies, prospectively. As no challenge has been laid to the cut-off date, no fault can be found with the same which has been applied uniformly in respect of all categories of employees.

While considering the effect of the circular dated 22.10.2010 and the circular dated 22.2.2010, it was observed as under:-

(31) As a cumulative effect of the two circulars referred to above, it stands crystalized that the amount of pension in the case of pre- 01.01.2006 retirees is not static and is flexible and fluctuating depending upon the pay-scale of the posts held by them while in service. In other words as and when there would be a revision of pay-scale of the posts occupied by them, their

pension would also be favourably re-fixed so as to ensure that it is not less than 50% of initial pay of the posts held by them. To say it differently if the initial pay of the posts of Joint Controller (F&A), Deputy Controller (F&A) or Assistant Controller (F&A) is enhanced in the year 2012, it will also benefit the pre-01.01.2006 retirees as their pension cannot be less than 50% of such initial pay.

Regarding the plea of the State that the Government circular dated 15.12.2011 granting higher pay scales cannot be applied retrospectively, the Division Bench observed as under:-

The expression "Retrospective" is neither synonymous nor identical to the concept of 'retroactive'. The phrase "retroactive" is applied to give effect to a quasijudicial or administrative order though pass prospectively but has its antedated effects. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Ed., 2005) the expression "retroactive" has been defined as "Acting backward; affecting what is past". Where the decision-making authority consciously decides not to give effect to a decision retrospectively but if it is bound to affect the antecedents of such decisions, it is held to have 'retroactive effect' but where the competent authority itself decides to give effect to its decision from a back date, such decision becomes 'retrospective'.

Therefore, the Division Bench while concluding, observed as under:-

(34) In the case in hand though the circular dated 15.12.2011 (P-4) is 'prospective' in nature but by virtue of Para 4.2 of the circular dated 17.08.2009 read with Para 2 of circular dated 22.02.2010, such prospective decision has a retroactive effect on the antecedents, namely, the pension amount of pre-01.01.2006 retirees. As the object and purpose of all the circulars is to grant benefits and as such these are to be classified as beneficial subordinate legislation, they are to be

given effect liberally and widely. Pre-01.01.2006 retirees, therefore, are entitled to re-fixation of their pension as per the circular dated 15.12.2011 but without any retrospective effect, namely, only from the date when the competent authority made it effective w.e.f. 01.12.2011.

(35) Para 3 of the circular dated 15.12.2011 cannot take away the effect and implications of Para 4.2 of the circular dated 17.08.2009 or of Para 2 of the later circular dated 22.02.2010 as both the circulars are meant for re-fixation of pension of pre-01.01.2006 retirees. The circular dated 15.12.2011 neither modifies nor supersedes the previous circulars. Those circulars independently cover and govern their own field of fixation of pension of pre-01.01.2006 retirees.

(36) As a result of the above discussion, it is held that the circular dated 15.12.2011 is retroactive in nature and the benefit of fixation of higher pay of various categories of employees is bound to have its positive effect on the pension of pre-01.01.2006 retirees.

Present case is squarely covered by the said authority of the Division Bench and therefore, it has to be held that the pre 1.1.2006 retirees are entitled to refixation of pension as per circular dated 15.12.2011 and circulars issued by Government from time to time but without restrospective effect, namely, only from the date competent authority made it effect w.e.f. 1.12.2011. Their pension is to be accordingly fixed.

Now, the question would arise what is to be the position regarding post 1.1.2006 retirees. In above noted *A.P.Sharma's judgment*, the Division Bench has held that circular dated 15.12.2011 is retroactive. It is held to be effective from 1.12.2011. The result would be that those employees, who retired between 1.1.2006 and 1.12.2011 shall also be entitled to the same benefit and their pension is to be accordingly fixed to be effective from 1.12.2011 in the revised pay scales which have been made applicable from 1.1.2006.

Hence, it is ordered that the pre 1.1.2006 retirees are entitled to re-fixation of their pension as per circular dated 15.12.2011 and circulars issued by Government from time to time but without any retrospective effect, namely, only from the date when the competent authority made it effective w.e.f. 1.12.2011 in terms of judgment of Division Bench of this Court in *A.P.Sharma's case (supra)*. Consequently, post retirees who retired between 1.1.2006 and 1.12.2011 are also entitled to re-fixation of the pension but without retrospective effect, namely, from the date when competent authority made it effective w.e.f. 1.12.2011. On account of re-fixation of the pension, other consequential benefits will also follow. Necessary follow-up action be taken within three months from the date of receipt of a certified copy of this judgment.

In view of what has been discussed above, all the writ petitions are allowed.

30.09.2016 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes

Whether Reportable: Yes