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

CWP No.15454 of 1992 (O&M)
Date of decision : March 22, 2017

Sant Lal Chopra and another **....... Petitioners**

Versus

The Accountant General (A&E) and others **....... Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. M.K. Tiwari, Advocate for the petitioners.

Mr. R.S. Pathania, DAG, Punjab.

Mr. Deepak Agnihotri, Advocate for respondent No.4.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Petitioners, namely, Sant Lal Chopra and Bhagwan Dass, deceased, now represented by their legal heirs, had filed the present petition for directing respondent No.1 i.e. the Accountant General (A&E), Punjab, Chandigarh, to release their proper pension on the basis of the salary, which they were drawing at the time of their retirement.

Both the petitioners were working in the Department of Agriculture. Petitioner No.1 was selected as Professor of Chemistry P.A.S. Class I in 1962. Earlier, he was confirmed as Assistant Professor Chemistry as P.A.S. Class II post. Petitioner No.2 was working as Assistant Soil

Chemistry (P.A.S. Class II Post) in 1958 though prior to his selection as such, he was confirmed as Agriculture Inspector (Soil) Class III post.

In the year 1962, the Punjab Agriculture University, Ludhiana (for short 'PAU') was established. Both the petitioners were transferred to PAU in November, 1962.

Section 25 of the Punjab of the Punjab Agriculture University Act, 1961 reads as under:

> *"(1) Employees of the the Teaching and Research Sections of the Department of Agriculture and Animal Husbandary who are either permanent or on probation and are acceptable to the University, shall be taken by the University into its service and treated as on foreign service."*

According to the said Section, the following conditions were mutually agreed

> *"(i) For the duration of foreign service, Govt. will keep shadow post against which liens will continue to be held by the permanent staff going out to the university, for purpose of pension only.*
>
> *(ii) While on foreign service to the University, no deputation allowance will be paid.*
>
> *(iii) Right to pension under the existing rules shall remain intact, irrespective of the fact whether the University is called upon to pay pension contributions to Government or not.*
>
> *(iv) Leave liability will be taken over by the University and, therefore, no contributions on this account shall be payable by it to Government. The employee will, however, continue to be governed by the leave rules applicable to them under Government."*

It also comes out that the service of the petitioners under the Department of Agriculture was pensionable, whereas their job till their retirement under PAU was no pensionable. The petitioners had a lien over their post in the Department of Agriculture.

In October, 1966, in the wake of reorganization of the Erstwhile Punjab State, the permanent posts on which the employees on foreign service with the Punjab Agricultural University were holding lien, were abolished and the employees, inter alia were given the notices either to revert to the parent departments or resign from the Government side. The employee, who may opt to continue to serve in the PAU were offered the benefit of compensatory pension under Rule 5.2 of the Punjab Civil Service Rules, Vol.II. Note 3 of the Rules *ibid,* is reproduced as under:

> *"A Govt. servant in foreign service should be held to have lost his lien from the date of which his post in Government service was abolished and no contribution could be received after that date. He should be regarded as having retired from Government service from that date and he should be permitted to draw the pension to which he is entitled to, in addition to the pay which he received at the time from his foreign employer."*

In this way, the petitioners, who were working in the Agriculture Department and opted to stay in PAU, deemed to have retired on 16.10.1966 when their lien was abolished. At that time, they had rendered more than 15 years, 3 months and 7 days of service. Therefore, they are entitled to pension, in terms of Rule 5.2 of Punjab Civil Services Rules, Vol.II.

The new liberalized Rules of pension were released by the Government vide order No.1/15/89-IFP-III/8078, dated 31.8.89 (Annexure P-2), under which the temporary employees are to be treated at par with the permanent employees, in respect of retiral benefits.

Petitioners claim that the pension of the petitioners was to be calculated on the basis of salary they were drawing or would have drawn while working on the posts when they were sent to PAU in whatever capacity i.e. temporary, officiating etc. It is nowhere provided that pension was to be calculated on the basis of emoluments of substantive posts i.e. the posts against which the petitioners were confirmed i.e. lower posts to the one they were holding at the time of retirement. Petitioner No.1 was earlier confirmed as Assistant Professor Chemistry as P.A.S. Class II post and petitioner No.2 was confirmed as Agriculture Inspector (Soil) Class III post. Though, petitioner No.1 at that time of his transfer to PAU was working as Professor of Chemistry P.A.S. Class I post and petitioner No.2 was working as Assistant Soil Chemistry P.A.S. Class II post. Therefore, the prayer is made for calculating the pension of the petitioners on the basis of the emoluments, which the petitioners were drawing at the time of their retirement from the service in the Agriculture Department i.e. 16.10.1966.

The State in the reply admitted that the petitioners were given the pension w.e.f. 17.10.1966 and as they remained in the service of the Government up to 16.10.1966. It was stated that the instructions dated 31.08.1989 (Annexure P-2) are not applicable to the employees who had retired before 01.01.1986. The liberalized benefits were granted to the pre-1986 pensioners, under the instructions dated 31.08.1989 (Annexure P-2), only the provisions contained in the last sub-para of para 3.2 of Annexure P-2 were applicable to the pre-1986 pensioners.

The pensions of pre-Ist January, 1986 pensioners shall also be re-computed @ 50% of reckonable emolumnets for pesnsion if the same become beneficial to them. While re-calculating the pensions @ 50% of average emoluments of pre-Ist January, 1986 pensioners, additional pension admissible vide letter No.38/52/80-6FR/11687, dated 22.12.1980 shall not be taken into account.

It was further stated that prior to his permanent absorption in the PAU, Sh. Sant Lal Chopra was drawing substantive pay @ ₹475/- P.M. and pension was fixed on the basis of pay of ₹475/- P.M. As regards, Sh. Bhagwan Dass, he was drawing substantive pay of Rs.360/- P.M. and his pension was accordingly fixed.

Now, the petitioners are demanding pensionary benefits on the basis of calculation of the pay which they were drawing in the PAU i.e. on foreign service capacity which is not admissible under Para 3 of Rule 6.19 (C) of Punjab Civil Services Rules, Volume-II.

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

Learned counsel for the petitioners has argued that at the time when the petitioners were sent on transfer to PAU on a foreign service capacity, petitioner No.1 was holding the post of Professor of Chemistry, P.A.S., Class I post and petitioner No.2 was holding the post of Assistant Professor of Soil Chemistry, P.A.S. Class II post. Though, petitioner No.1 was confirmed as Assistant Professor Chemistry, P.A.S. Class II post and petitioner No.2 was confirmed as Agriculture Inspector (Soil), Class III post.

The grouse of the petitioners are that they should be granted pension as per last drawn pay in Agriculture Department. Their grouse is also that their pension has been fixed on the substantive post on which they were confirmed in Agriculture Department. Their claim is that their pension is to be fixed as per salary drawn by them on the last pay and post on which they were actually working i.e. Professor of Chemistry, P.A.S. Class I post and Assistant Professor of Soil Chemistry, P.A.S. Class-II post.

The entitlement of the petitioners for pension is not disputed by the State. Though, reckoning of the same is disputed.

Rule 6.19(C) of Punjab Civil Services Rules, Volume-II reads as under:

> *"6.19-C. The term "emoluments" when used for this purpose shall mean 'pay' as defined in rule 2.44 of the Punjab Civil Services Rules, Volume-I, Part I including dearness pay as determined by the orders of the Government issued from time to time, which the employee was receiving immediately before his retirement, of the date of his death.*
>
> *Note.1* ---
>
> *Note.2* ---
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> *Note. 3 There shall be no change in the existing principle of reckoning those emoluments for pension which are paid by Government. In other words, the entire amount drawn as emoluments by Government employee while on foreign service shall not count for pension and gratuity. In such a case, the pay which the Government employee would have drawn under the*

Government had he not been sent on foreign service, shall alone be taken into account.

Note. 4 ----

Note. 5 ----

Note. 6 ----

Note. 7 ----*”*

In the light of Rule 6.19 (C), the emoluments are to be calculated on the basis of what the employee was receiving, immediately before the retirement. Therefore, in the present case, emoluments of the petitioners are to be calculated which they were receiving on the post of Professor of Chemistry, P.A.S., Class I and Assistant Professor of Soil Chemistry, P.A.S. Class-II respectively on which they were working and not on the basis of substantive posts on which they were confirmed.

It being so, the present petition is allowed to the extent that if the pension of the petitioners has not been fixed on the basis of actual emoluments, which they were drawing on the post they were actually working immediately before they were transferred to the foreign service, their pension shall be calculated on the basis of last drawn salary on the post they were actually working and not on the substantive post, on which they were confirmed. After re-calculating the pension, the same shall be re-fixed and the arrears thereafter shall be paid to the legal heirs of the petitioners. If some arrears are found payable, the same will be released with interest @ 9% per annum from the date of filing of the present petition i.e. 25.11.1992 till actual payment.

(KULDIP SINGH)
JUDGE

March 22, 2017
sarita

Whether speaking / reasoned Yes
Whether Reportable: No