

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

1. CWP No.13978 of 2016 (O&M)
Date of decision : March 15, 2017

Dr. Basant Kumar Sharma Petitioner

Versus

Panjab University Respondent

2. CWP No.13963 of 2016 (O&M)
Date of decision : March 15, 2017

Dr. Inder Mohan Joshi Petitioner

Versus

Panjab University Respondent

3. CWP No.14595 of 2016 (O&M)
Date of decision : March 15, 2017

Dr. Nasib Singh Mann and others Petitioners

Versus

Panjab University Respondent

4. CWP No.23764 of 2014 (O&M)
Date of decision : March 15, 2017

A.L. Davessar and others Petitioners

Versus

Panjab University and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.D. Anand, Advocate for the petitioner(s)
in CWP Nos.13963, 13978 and 14595 of 2016.

Mr. Kapil Kakkar, Advocate for the petitioners
in CWP No.23764 of 2014.

Mr. Subhash Ahuja, Advocate for the respondent(s).

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. (ORAL)

This order of mine shall dispose of four writ petitions bearing CWP Nos.23764 of 2014, 13963, 13978 and 14595 of 2016, involving the same issue.

The facts of the case are extracted from CWP No.13978 of 2016 titled as “***Dr. Basant Kumar Sharma v Panjab University***”

The short controversy in the present case is that the petitioner (s) was/were working as Professor. As per Panjab University Calander, Volume-I, 2007, page 133, the age of the superannuation is stated to be 60 years.

It comes out that the University Grant Commission (for short 'UGC) issued a letter dated 24.12.1998 (Annexure P-1), whereby it was stipulated that the teachers will retire at the age of 62 years. The said letter of UGC was implemented on all the Central Universities and institutions. So far as the case of the Panjab University is concerned, it is also claimed that Syndicate of the University in its meeting held on 10.01.1999 adopted the said letter of UGC dated 24.12.1998 (Annexure P-1), extending the age of retirement to 62 years. It is also stated that the Senate had also approved it. However, it required approval from the Government but the same could not be obtained. Consequently, the said Regulation No.17.3 could not be amended. The result remained that in case of teaching staff of the University, the age of retirement remained 60 years.

It further comes out that the teaching staff of the University approached this Court by way of CWP No.8025 of 2007, titled as “***A.C. Julka and others v Panjab University and others***”, reported as 2009(1) RSJ 543, decided on 31.10.2008, claiming that their age of retirement should be

enhanced to 62 years. However, the Division Bench of this Court dismissed the said petition.

Out of all these petitioners, only Dr. Basant Kumar Sharma had approached the Apex Court, which disposed of the SLP vide order dated 20.01.2014 (Annexure P-4), in terms of the case of “**Jagdish Prasad Sharma etc. v State of Bihar and others**”, Civil Appeal Nos.5527-5543 of 2013, decided on 17.07.2013.

In the **Jagdish Prasad Sharma's case (supra)**, the Apex Court in such cases observed as under:

“However, persons who have continued to work on the basis of the interim orders passed by this Court or any other Court, shall not be denied the benefit of service during the said period. The Appeals and Petitions having been dismissed, both the State Authorities and the Central Authorities will be at liberty to work out their remedies in accordance with law.”

The petitioner(s) claim that the benefit of the service stated in **Jagdish Prasad's case (supra)** includes salary, leave encashment, revised gratuity and pension on the last pay drawn.

However, the University in its reply has disputed the same. In the reply, the University has taken the stand that in the interim order passed in **A.C. Julka's case (supra)**, the petitioner was allowed only salary for the period rendered by him beyond the age of superannuation. The said order was not challenged. The service beyond the age of superannuation is treated as re-employment. Therefore, it does not qualify for the pension and other benefits like increment, enhanced gratuity, enhanced leave encashment as per law laid down in the various judgments.

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

Admittedly, all the petitioners on account of interim stay granted by this Court in *A.C. Julka's case (supra)* served beyond the age of 60 years.

Learned counsel for the University has stated at bar that for the period the petitioner(s) served beyond the age of 60 years, they have been paid salary on the last pay drawn.

Now, the question surviving for consideration is as to whether the petitioner(s) are entitled to leave encashment, revised gratuity and pension on the basis of last pay drawn by counting their period of service during which they served on the basis of stay granted by this Court.

Learned counsel for the petitioner(s) have vehemently argued that the words 'service benefits' include all the benefits. Therefore, the said benefits are also available to the petitioners.

However, learned counsel for the University has relied upon a Division Bench judgment of Allahbad High Court delivered in case of ***“Dr. Shiv Singh and others v State of U.P. and others”*, 455**, wherein in such cases, it was held that the petitioners are entitled for the salary for the period, during which they worked in view of the interim order granted by any Court or by the Apex Court even after attaining the age of 62 years.

It is contended that in the Uttar Pradesh, the age of retirement is 62 years. However, Allahabad High Court held that the post-retiral benefits shall be calculated on the basis of salary drawn when the petitioners attained the age of superannuation.

Learned counsel for the University has also placed reliance upon the judgment of this Court delivered in case of ***“Om Parkash v State of Haryana and others”***, 1995(4) SCT.

After considering the rival contentions of learned counsel for the parties, I am of the view that as per ***Jagdish Prasad Sharma's case (supra)***, in case an employee works beyond the age of superannuation on the basis of interim orders granted by this Court, he is entitled to the benefits of service. Now, the question is what benefits of service are to be granted? Further question would arise as to whether such benefits can be granted contrary to the rules governing service of the employee?

Admittedly, if an employee works beyond the age of superannuation on the basis of interim stay granted by the Court, he is entitled to the salary for the said period for the simple reason that he had worked for the said period. So far as the retiral benefits are concerned, these are to be governed by the service regulation governing the employee. Therefore, the said benefits cannot be granted contrary to the service rules governing them. Consequently, the pension is to be calculated as on actual date of superannuation, in terms of the University Regulation and so is the case of gratuity. So far as the leave encashment part is concerned, this Court in case of ***“Paramjit Singh Bansal v Panjab University, Chandigarh and others”***, in CWP No.2873 of 2005, decided on 06.02.2017, has taken the view that leave encashment is the part of salary.

It being so, if any of the petitioner has some earned leave to his credit for the period he worked beyond the age of 60 years, he will be entitled to encash the same, subject to limitation prescribed under the Panjab University Regulation.

Needless to say that the petitioner(S) shall not be entitled to the interest on the arrears. They shall also not be entitled to the increment for the period they served beyond the age of 60 years.

In case of petitioner Nos.5 and 8 in CWP No.23764 of 2014, it is stated that they have not been paid salary on the basis of last pay drawn as per revised UGC scale applicable to the superannuated employees. If it is so, the University shall pay them their salary.

As such, all the aforesaid petitions are partly allowed.

(KULDIP SINGH)
JUDGE

March 15, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes