

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 213

Date of Decision: *September 18, 2017*

Civil Writ Petition No.23448 of 2013 (O & M)

M.S. Toor, Commandant (Retd.) & Another

..... PETITIONERS

VERSUS

Union of India & others

..... RESPONDENTS

...

Civil Writ Petition No.24384 of 2013 (O & M)

Swinder Singh, Commandant (Retd.) & others

..... PETITIONERS

VERSUS

Union of India & others

..... RESPONDENTS

...

Civil Writ Petition No.7429 of 2014 (O & M)

Sardul Singh Sandhu, Commandant (Retd.)

..... PETITIONER

VERSUS

Union of India & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. P.S. Thiara, Advocate, for the petitioners.

Mr. Abhinav Gupta, Advocate, for Union of India in CWP No.23448 of 2013.

Mr. Pankaj Jain, Senior Panel Counsel, for Union of India in CWP No.24384 of 2013.

Mr. Sudhir Nar, Advocate, for Union of India in CWP No.7429 of 2014.

Mr. Mahesh Dheer, Advocate, for respondent No.5 in CWP No.23448 of 2014 and for respondent No.6 in CWP No.24384 of 2013.

Mr. Anil K. Gahlawat, Advocate, for respondent No.6 in CWP No.23448 of 2013.

Mr. Arvind Rajotia, Advocate, for respondent No.7 to 9 in CWP No.24384 of 2013.

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Jaspal Singh, J

1. By this common judgment, this Court intends to dispose of aforementioned three civil writ petitions as these involve commonality of facts, controversy and the applicability of law.

2. Undisputably, pension of the petitioners and other similarly situated persons was fixed on the basis of 33 years of qualifying service. They approached Delhi High Court by way of CWP No.759 of 2001 claiming that their pension be fixed on the basis of 30 years of qualifying service since the retirement age of Commandant and other ranks was 30 years. The petition was allowed vide judgment dated December 6, 2001 on the basis of similar writ petition viz. CWP No.4208 of 1994 titled 'Sant Ram vs. Union of India' which was decided vide judgment dated October 13,

3. Aggrieved by the aforesaid judgment of Delhi High Court, Union of India approached the Hon'ble Apex Court by way of Civil Appeal. The Supreme Court, vide judgment October 25, 2005 passed in the main case i.e. Civil Appeal No.700 of 2005 titled 'Union of India vs. Satish Kumar' set aside the judgment of Delhi High Court. At that time, learned counsel appearing on behalf of Union of India had also suffered a statement before the Hon'ble Apex Court that Government will not recover the pension already paid in pursuance of High Court judgments. It would be essential for the proper adjudication of matter to reproduce the operative part of judgment dated October 25, 2005 passed by the Hon'ble Apex Court:-

“In our view, therefore all the judgments of the High Courts are unsustainable and are hereby set aside. We note that Mr. Sharan has stated that appellants will not recover pension paid in pursuance of the High Courts judgment. We also so direct. We also clarify that we have not considered the wires of Rule 49 and/or the question of discrimination as they had not been raised in any of the matters before us. Accordingly, the appeals will stand allowed and all the petitions will stand dismissed.”

4. Here it would be pertinent to mention that prior to issuance of letter dated March 24, 2012 by respondent – Union of India to the bank with regard to revised/reduced pension w.e.f. June 01, 2006, petitioners were neither served with any show cause notice nor any opportunity of being heard was afforded to any of them. The recovery of the amount already paid on account of revision of pay was ordered to be effected despite the fact that there was rider in judgment dated October 25, 2005 passed by the Hon'ble Apex Court that recovery would not be effected from the petitioners. Subsequently, letter was withdrawn and the amount which was deducted from the pension of petitioners was repaid/re-deposited in their respective accounts on June 14, 2016. Thus, after passing of judgment dated October

right(s) to recover the amount which was already paid to the petitioners but despite that fact, they recovered it, which was subsequently repaid/re-deposited by them on June 14, 2016. So, Union of India committed an error and utilized the amount of pension recovered from the petitioners illegally and unauthorizedly.

5. Now, the question which survives for determination is with regard to the interest on the aforementioned payment(s) during the period, these were utilized by the Union of India and the petitioners were deprived of its use.

6. In view of *Ex. Capt. R.S. Dhull vs. State of Haryana, 1998(2) SCT 729*, the Hon'ble Supreme Court observed that the retiree is entitled to interest @ 12% per annum on the withheld GP Fund and Gratuity etc. from the date the same became payable to him on his attaining the age of superannuation till the date the payment is made to him.

7. Adverting to the facts of the case, respondents issued a letter dated March 24, 2012 regarding revised reduced pension with effect from June 01, 2006. The bank was required to revise the pension notionally and no recovery was to be effected as there was a direction of Hon'ble Apex Court vide judgment dated October 25, 2005. However, the respondents, at their own, after revising pension started making recovery from pension of petitioners. Subsequently, letter dated March 24, 2012 was withdrawn and the amount which was deducted from the pension of petitioners was re-deposited in their respective accounts on June 14, 2016.

8. Taking into consideration the facts & circumstances of the case in hand, this Court is of the view that grant of interest @ 9% per annum, on the recovery of revised reduced pension, is legally and factually justified. Accordingly, this Court awards an interest @ 9% per annum on the

recovered revised reduced pension w.e.f. June 01, 2006 (the date when respondents started recovery of revised reduced pension) to June 14, 2016 i.e. the date when the recovered pension was re-deposited in the banks of petitioners. Amount of interest so awarded be paid within a period of two months from the date of receipt of certified copy of this judgment.

11. All the three petitions stand disposed of accordingly.

September 18, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No