235 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CWP No. 18727 of 2013 (O&M)**
Date of Decision: 27.09.2018.

Mukhtiar Singh Gill
... Petitioner
Versus

State of Punjab and others ... Respondents

(2) **CWP No. 12944 of 2015 (O&M)**
Harjit Singh and others
... Petitioners
Versus
State of Punjab and others ... Respondents

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan**

Present: Mr. Vikas Chatrath, Advocate and
Mr. Dhirinder Chopra, Advocate,
for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of aforementioned two civil writ petitions as common questions of facts and law are involved therein.

The facts are being taken from C.W.P. No. 18727 of 2013. The petitioner had joined the Police Department on 20.10.1971 and after rendering more than 33 years of service, he retired as Sub-Inspector/Accountant from the office of Senior Superintendent of Police, Ferozepur on 30.11.2004. While working as such, he had been drawing special pay of Rs.160/- however, the same was stopped with effect from 01.03.1980 following instructions issued by the State government vide letter No. 7/1/97/FPI/314 dated 16.01.1998. The said action of the respondents was challenged by the similarly situated employees of the Police Department by way of ***CWP No. 3593 of 1992 Kamal Kishore and others vs. State of Punjab and others decided on 28.04.2004 (Annexure P-1)*** which was disposed of with the following direction:-

> *In view of what has been stated above, this writ petition is disposed of with a direction to the respondent-authorities to find out as to whether the petitioners or other similarly situated members of the executive Police cadre, on revision of their pay scales pursuant to the circular dated 18.10.1979 (Annexure R-2) were given notice-cum-option to the effect as to "whether or not they would like to continue to perform duties against ministerial/clerical posts even without payment of Special Pay after 29th February, 1980?" If such an option was given and some members of the executive Police cadre still wanted to continue against the ministerial/clerical posts in the executive clerical wing, they shall not be entitled for payment of any "Special Pay" with effect from March 1, 1980 onwards. However, if neither any such notice-cum-option was given to them nor they were transferred to their executive Police cadre posts despite recommendations of the Finance Department contained in the afore-mentioned circular, the respondents, in that event, are directed to pay "Special Pay" to the petitioners and other similarly situated persons with effect from March 1, 1980 till they continue to perform such duties. Needful shall be done within a period of six months from the date of receipt of a certified copy of this order. No order as to costs.*

After the decision in ***Kamal Kishore's case (supra)***, the respondents vide letter dated 23.05.2007 (Annexure P-3) decided to count special pay towards the component of pay. However, upon superannuation of the petitioner, special pay was not counted towards the pensionary benefits. The petitioner was compelled to file CWP No. 9022 of 2010. During the pendency of the said writ petition, it was decided that special pay would be counted towards the pensionary benefits. The State of Punjab had filed an affidavit that the special pay would be counted towards pensionary benefits. This was conceded by the State as noticed in the interim order dated 06.02.2013 which is reproduced as under:-

> *Counsel for the State on instruction from Harwinder Singh, Head Constable, Senior Superintendent of Police and Pargat Singh, Head Constable, Senior Superintendent of Police states that petitioners have been sanctioned special pay for the purpose of pensionary benefit, the matter has been sent to the Accountant General, Punjab on 19.03.2012 and thereafter various reminders have been sent but no final order has been still passed by the Accountant General, Punjab.*
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> *In the light of the statement of the counsel for the State on instructions, I deem it appropriate to direct the Accountant General, Punjab-respondent No.2 to finalise the claim of the petitioner as has been forwarded to him within a period of 3 weeks from today.*
>
> *List for further consideration on 08.03.2013. A copy of this order be given under the signatures of Bench Secretary to the counsel for the State.*

Thereafter on 08.03.2013, the following order was passed:-

> *"In compliance with the order dated 06.02.2013 passed by this Court, Satpal Singh, Senior Assistant, Office of Accountant General (A&E), Chandigarh, Punjab has produced order dated 28.02.2013 granting in favour of petitioners No.1 & 2 to their claim for the sanction of special pay for the purpose of pensionary benefit. He has further stated that now similar benefit has also been granted to Brahm Dutt-*

> *petitioner No.3. He further states that the amount about the entitlement of the petitioners has to be determined by the Senior Superintendent of Police, Ferozepur."*

It has been contended that though, the pension of the petitioner was revised on the basis of revised pay by giving him benefit of Dearness Allowance, his pay was revised from 8375/- to 8650/- however, the component of special pay was not counted towards the benefit of pension and pensionary benefits despite above referred undertaking and direction. The petitioner had submitted representation on 12.04.2013 (Annexure P-12). However, the department declined the same vide impugned order dated 20.05.2013 (Annexure P-13) by observing that as per the instructions issued by the State government vide letter No. 7/1/97/FPI/314 dated 16.01.1998 and No. 7/1/97/FPI/7370 dated 19.05.1998 further endorsed by Accountant General, Punjab vide No. Pension-6/M-16/2004-05/4524-27 dated 27.08.2004 and No. Pension-6/M-16/2004-05/14034-35 dated 27.08.2004, it has been directed that special pay should not be calculated for the fixation of pay for grant of pension. It has been further contended that 'pay' and 'special pay' have been defined in Rule 2.44(a) and 2.52 of Punjab Civil Services, Volume 1, Part 1. Emoluments for the purposes of 'pay' has been defined in Rule 6.19 and Rule 6.24 of Punjab Civil Services Rules, Volume 2, Part 2 defines average emoluments and holds that average of last 10 months has to be considered for the purpose of qualifying service and pension.

On the other hand, the stand taken by the respondents is that as per instructions dated 16.01.1998 (Annexure R-1) and 19.05.1998 (Annexure R-2), issued by the Government of Punjab 'special pay' cannot be calculated for fixation of pension. Further, as per the opinion received from the office of Accountant General, Punjab dated 23.08.2004 (Annexure R-3) and 29.02.2008 (Annexure R-4) 'special pay' cannot be calculated for fixation of pay.

Heard.

The issue regarding as to whether 'special pay' is counted towards pension and pensionary benefits is no longer *res integra*. In ***CWP No.2239 of 1991 Radhey Krishan Sharma vs. State of Haryana 1993 (1) S.C.T. 58,*** it was held that 'special pay' forms the part of pay and emoluments and as such has to be included towards pay for computing pension. Further, in ***J.S. Yadav vs. State of Haryana and others, 2002(1) SLR 244 (P&H) DB***, it was held as under:-

> *"7....A perusal of the definition of expression pay as given in Rule 2.44 (a) (i) of the CSR makes it absolutely clear that the element of special pay has to be added to the pay and it cannot be excluded and treated differently than the pay. This view is supported by the judgment in the case of Union of India vs. L.V. Vishwanathan 1998(1) SCC 479. Once this is the conclusion then the appellants would be entitled to dearness allowance on the total amount of pay by adding the special pay as well. As a logical, it must be held that they would also be entitled to revised pensionary benefits.*
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> *8. Hence, the appeals are allowed. The order of the learned single judge is set aside, it is declared that special pay paid to the appellants shall be treated as part of their pay for the purpose of dearness allowance and also for the purpose of pensionary benefits..."*

Same view was reiterated in ***Wazir Singh Garg vs. Chief Secretary to the Government of Haryana and others 2003(2) SCT 143 and Krishna Devi vs. State of Haryana and others 2010(3) SCT 573*** that special pay is counted towards part of pay, consequently, it should be treated for the purposes of dearness allowance and then the revised pension and pensionary benefits.

Still further, in ***Sarwan Singh Mechanic vs. State of Punjab 2014(1) SCT 767,*** it has been held that the 'special pay' is liable to be counted towards the pension and directions were issued to release the arrears of revised pension and pensionary benefits along with 9% interest. Therefore, the claim of the petitioner is liable to be accepted.

Keeping in view the fact that the State had accepted that 'special pay' is countable towards pensionary benefits consciously as referred to above, consequently, the present writ petition is allowed. The respondents are directed to count special pay towards pension and pensionary benefits as well. The impugned order (Annexure P-13) is hereby set aside.

A photocopy of this order be placed in the file of other connected case(s).

27.09.2018. **(JITENDRA CHAUHAN)**
SN **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No