

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

Sr. No.286

Civil Writ Petition No.18602 of 2014
DECIDED ON: February 20, 2018

AMRIT KUMARI SOOD

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Amarjit Singh, Advocate,
for the petitioner.

Ms. Deepali Puri, Additional Advocate General, Punjab.

JASPAL SINGH, J.

The precise grievance unfolded by the petitioner through the instant civil writ petition preferred under Article 226/227 of the Constitution of India is that the order dated July 29, 2013 (P-3) passed by respondent No.2, whereby the claim of the petitioner for re-fixation of pension @ 50% of emoluments including the component of Non Practicing Allowance (for short NPA) has been rejected, is illegal void and liable to be quashed. Further petitioner has sought the issuance of a writ of mandamus directing the respondents to include NPA as emoluments for re-fixation of pension as well as release of pension and its arrears along with interest @ 12% p.a.

2. Concededly, petitioner retired from service of Government of Punjab as Medical Superintendent, Guru Gobind Singh Medical College and Hospital, Faridkot on August 31, 1987. On account of the recommendations of the 5th Pay Commission, the State Government issued Punjab Civil Services (Revised Pay) Rules, 2009, (in short 'Rules of 2009'), with effect from 1.1.2006, vide notification dated May 27, 2009, whereby the report of the 5th Pay Commission was implemented. As far as the grant of NPA is concerned, Instructions dated September 14, 2009 were issued by the State of Punjab. The relevant part of the aforesaid instructions which deals with NPA would be profitable for the disposal of the controversy involved in this case, it reads as under:-

“2. After considering the recommendation of the Fifth Punjab Pay Commission, the Governor of Punjab is pleased to decide that the non-practicing allowance (NPA) presently admissible to certain categories of posts in the Department of Health and Family Welfare and Department of Medical Education and Research shall continue to be paid at the rate of 25% of Revised Basic Pay in the revised pay structured subject to the condition that Basic Pay plus NPA shall not exceed Rs. 85000/-.

3. The Revised date of NPA would be effective from the date an employee draws pay in the revised pay structure applicable to him in accordance with the provisions of the Punjab Civil Services (Revised Pay) Rules 2009.

4. The non-practicing allowance (NPA) shall continue to be For Subsequent orders see CM-15071-CWP-2017 treated as pay for the purpose of grant of Dearness Allowance, entitlement of Travelling Allowance/Daily Allowance as well as for calculation of retirement benefits.”

3. Similarly, for revision of the pension of pre-1.1.2006 retirees, the Government of Punjab issued Instructions dated August 17, 2009 vide which, the NPA was not made as a part of pay qua pre-1.1.2006 retirees of Health Department. Clause 4.2 of the said letter creates such a distinction, which is reproduced as under:-

“4.2 The fixation of Pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. This will be reduced pro-rata if the qualifying service of the person falls short of 33 years.”

4. Conjoint reading of the aforesaid provisions/instructions reflected above reveals that the parity has not been maintained on account of non-inclusion of NPA in the initial pay between the pre-1.1.2006 retirees particularly the medical officers and post-1.1.2006. The creation of such a different categories is nothing but a flagrant discrimination with the pre-1.1.2006 retirees by making such distinction, they cannot be deprived of the benefit which they had been earlier availing after the introduction and implementation of the 5th Pay Commission, that too, in view of the Instructions issued by the Government dated May 27, 2009 and August 17, 2009 respectively.

5. Here it would also be pertinent to mention that considering the aforesaid aspects, the matter for the inclusion of NPA in the initial pay for the purpose of fixation of pension was re-considered by the department concerned and the case was recommended by the Principal Secretary to Government of Punjab, Health and Family Welfare, vide letter dated

September 27, 2010, which suggested the inclusion of NPA in the basic pay. But that was declined by the Finance Department, Punjab, vide its letter dated July 01, 2011. Ultimately, some of the pre-1.1.2006 retirees approached this Court vide different CWP Nos.28518 of 2013, 9908 of 2013, 14232 of 2013 and 20865 of 2015 which were disposed of by this Court vide order dated May 24, 2017, whereby the impugned orders dated 1.7.2011, 1.12.2011 and 23.5.2013 respectively were set aside and the respondents were directed to include the NPA in the basic pay of pre-1.1.2006 retirees and also to calculate their pension and pay the arrears w.e.f. 1.1.2006. The operative part of the judgment rendered in the aforesaid writ petitions, which were decided by a common order dated May 24, 2017 reads as under:-

“As a result of the foregoing discussion, the present writ petitions are allowed. The impugned orders dated 1.7.2011, 1.12.2011 and 23.5.2013 (Annexures-P-10, P-13 and P-21 respectively) are hereby quashed. Respondents are directed to include the NPA in the basic pay of pre-1.1.2006 retirees also and accordingly calculate their pension with effect from 1.1.2006. Since the petitioners have approached this Court in the years 2013 and 2015 and the notification was issued on 27.5.2009, therefore, the petitioners shall be entitled to arrears from 1.1.2006, but no interest thereon shall be payable till 38 months before the date of filing the present writ petitions. Respondents shall carry out the exercise of re-fixation of the pension of the petitioners-doctors, who are pre-1.1.2006 retirees and complete the same within three months from the date of receipt of certified copy of this judgment and thereafter release the revised pension with arrears and interest for 38 months before the date of filing of the present writ petitions, as

indicated above till the date of payment. It is further ordered that the same benefit shall also be extended to the other similarly situated employees, who may not have approached this Court.”

6. No doubt, the State of Punjab and another has preferred LPA No.2279 of 2017 (O&M) against the aforesaid order dated May 24, 2017 passed by the Single Bench but neither any notice has been issued in the said appeal nor any other effective order i.e. the stay with regard to operation of the judgment/order dated May 24, 2017 has been passed. Thus, mere pendency of the LPA without there being no order with regard to staying of the operation is itself no ground to keep the instant petition pending just to see the verdict to be given by the Division Bench in the aforesaid LPA.

7. Here it would be pertinent to mention that the similar controversy came up for hearing before the Hon'ble Apex Court in case ***K.C. Bajaj & ors. Vs. Union of India & ors. (Civil Appeal Nos.10647-10648 of 2013 arising out of SLP (C) Nos.3367-68 of 2011 with connected matters), decided on November 27, 2013*** and it was observed as under:-

“10.4 It is not a case where cut-off date has been fixed. The Central Government is entitled for the purpose of determination of pension pursuant to the policy decision to fix a cut-off date. It is also true that such a cut-off date cannot be held to be arbitrary and irrational, as it was not picked out of a hat. However, in the instant case, we are not concerned with any cut-off date, but we are concerned with the question as to whether despite recommendations of the 5th CPC, a discrimination can be made. The very fact that the Central Government accepts that the emoluments would mean basic pay +

N.P.A. in view of its definition as existing in the Rule 9 (21) (a)(i) of the Fundamental Rules, there cannot be any reason whatsoever as to why N.P.A. shall be considered to be a part of pay for post-01-01-1986 retirees and not for pre-01-01-1986 retirees.”

The Apex Court concluded as under :-

“32. This Court treated circular dated 11.9.2001 as clarificatory in nature and held that it neither amends nor modifies circular dated 7.6.1999. The most striking difference between O.M. dated 7.4.1998 issued by Department of Pension and Pensioners’ Welfare, Ministry of Personnel (Public Grievances and Pension) and circular dated 7.6.1999 issued by the Defence Ministry is that the decision of the President conveyed vide O.M. dated 7.4.1998 was that NPA shall count as pay for all service benefits including retirement benefits but no such decision was contained in circular dated 7.6.1999. Therefore, the clarification issued by the Ministry of Defence vide circular dated 11.9.2001 cannot be equated with O.M. Dated 29.10.1999 which had the effect of modifying the decision of the President but was issued without his approval. Unfortunately, the Tribunal and the Division Bench of the High Court overlooked this vital distinction between O.M. Dated 7.4.1998 issued by the Ministry of Personnel (Public Grievances and Pension), Department of Pension and Pensions’ Welfare and Circular dated 7.6.1999 issued by the Ministry of Defence and mechanically applied the ratio of Col. B. J. Akkara’s case for deciding the cases of the doctors, who served in Central Health Services, the Railways and other departments of the Government. Therefore, the impugned order is legally unsustainable.

33. In the result, the appeals are allowed, the impugned order of the High Court as also the one passed by the

Tribunal are set aside and the applications filed by the appellants before the Tribunal are allowed in terms of the prayer made. The respondents shall re-calculate the pension payable to the appellants by adding the element of NPA. This exercise shall be undertaken and completed by the concerned authorities within a period of three months from today.”

8. A careful perusal of the aforesaid observations makes it crystal clear that NPA is a part of the basic emoluments i.e. pay and element of NPA has to be added for the calculation of the pension and cannot be excluded. Thus, the controversy is no more res integra in view of the judgment rendered in K.C. Bajaj’s case (supra) which squarely covers the instant case.

9. Learned State counsel on the contrary could not point out any judgment and reiterated the version unfolded in the written statement that LPA in case ***Dr. Baldev Raj Bhandari & ors. Vs. State of Punjab & ors.*** and connected matters disposed of vide order dated May 24, 2017 is pending.

10. Thus, as an up shot of the aforesaid discussion, instant petition is allowed and impugned order dated July 29, 2013 (P-3) is set aside/quashed. A direction is issued to the respondents to calculate the pension w.e.f. 1.1.2006 by making an addition of NPA in the basic pay of the petitioner (a pre-1.1.2006 retiree) and make the payment of pension as well as arrears of difference of pension already paid and to be paid after re-fixation of same by adding NPA of entire period from the date it was withdrawn. However, the interest @ 9% be paid to the petitioner for the period of 38 months prior to filing of the present petition till the actual

payment of arrears. It would be appreciable that entire exercise be carried out within a period of three months from the date of receipt of a certified copy of this order. However, in case of non compliance of aforesaid order, petitioner shall be at liberty to approach this Court as well as to have recourse to other remedies available under law.

11. No order as to costs.

February 20, 2018
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No