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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2987-2016

Date of Decision : November 16 , 2018

Nand Lal

.... Petitioner.

Versus

State of Punjab and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. C.M. Chopra, Advocate
for the petitioner.

Mrs. Anju Arora, Addl. A.G., Punjab.
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for quashing the order dated 4.2.2013 (Annexure P/5) whereby pay of the petitioner has been reduced after retirement without affording any opportunity and for counting the un-utilized earned leave earned prior to regularization for the purpose of leave encashment, release of arrears of ACP, restoration of increment and release of revise all the retiral benefit alongwith arrears with interest.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner was initially appointed as workcharge T-Mate on 26.04.1976 and his services were regularized on 1.8.1998. The petitioner

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was promoted as Fitter on 14.12.2005 and he joined his duties as Fitter on 1.2.2006. The petitioner was again promoted as Assistant Foreman Special on 20.8.2010. The petitioner attained the age of superannuation on 30.4.2012.

3. On objections having been raised by the Accountant General (A&E), Punjab, the pay of the petitioner was re-fixed after retirement after retiring one increment on promotion to the post of Fitter w.e.f. 1.2.2006 vide order dated 4.2.2013 without affording any opportunity of hearing. However, the retiral benefits were sanctioned to the petitioner on the basis of last drawn emoluments, which is incorrect. The petitioner was released provisional pension on 26.10.2012 and Death cum Retirement Gratuity on 30.1.2013 and even those payments were made after unreasonable delay, though there was no delay on the part of the petitioner. As such, the present writ petition before this Court has been filed by the petitioner for quashing order dated 4.2.2013 (Annexure P/5) whereby pay of the petitioner has been reduced after retirement without affording any opportunity to him and for issuance of directions to restore the increment after changing the date of promotion. The petitioner has also claimed that his 73 days un-availed earned leaves be also encashed and arrears of ACP be also released to him and his pay be re-fixed after releasing the above benefits.

4. In the reply filed by respondent No.1 to 3, it has been mentioned that inadvertently, earlier the pay of the petitioner on his promotion as Fitter was fixed by giving him benefit of two increments, but he was entitled to one increment on his promotion as Fitter as per revised

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Pay Rules and there being objection from the office of Accountant General, Punjab, his pay was rightly re-fixed by giving him the benefit of one increment on promotion.

5. Respondents also took the plea that the work-charge employee is not entitled to leave except short casual leave upto a limit and not exceeding 15 days in a calendar year subject to a maximum of 10 days at any one time on full pay at the discretion of the Sub Divisional Officer. This leave is not to be cumulative and the work-charge employee is not entitled to any earned leave and as such the claim of the petitioner to leave encashment for the work-charge period is without any basis and prayed that the writ petition deserves to be dismissed.

6. In a separate reply filed by respondent No.4, plea has been taken that the reduction of pay after retirement was consequent to the order dated 2.8.2012. The Pension Sanctioning Authority i.e., respondent No. 3 agreed with the observations made by the office of respondent No.4 as bona fide and re-fixed the pay of the petitioner and re-submitted the complete pension case of the petitioner and the pension case was finalized.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the first grievance of the petitioner is regarding reduction of his pay with retrospective effect without affording any opportunity of being heard on the ground that the same had been wrongly fixed. To this extent, facts are not disputed that the respondents have passed the impugned order without affording an opportunity of being heard, thereby withdrawing

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his one increment as the petitioner was earlier given two increment on his promotion as Fitter and the said order was to take effect retrospectively. The same resulted in adverse civil consequences to the petitioner. No opportunity of hearing was given to the petitioner at that stage.

8. Similar matter was before Hon`ble Apex Court in **Bhagwan Shukla Vs. Union of India and others, 1994(4) SLR 614,** and the Hon`ble Apex Court observed as under:-

“3. We have heard learned Counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative

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Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs. 190 to Rs. 181 w.e.f. 18.12.1970.”

9. As regard to payment on account of earned leaves having been earned during the period of more than 22 years i.e. from 26.4.1976 to 1.8.1998, learned State counsel placed reliance upon Rule 1.132 of Public Works Department Code Chapter-I pertaining to “Establishment – Temporary and Work-charged” and as per the said rule, the petitioner is not entitled for the same. For ready reference, Rule 1.132 reads is extracted below :-

“1.132. xx xx xx

(i)(a). Short casual leave up to a limit not exceeding 15 days in the calendar year, subject to a maximum of 10 days at any one time, on full pay at the discretion of the Sub-Divisional Officer and under the ordinary rules for casual leave to ordinary establishment. This leave will not be cumulative and will not be given in combination with leave without pay. This leave will be calculated on the basis of the calendar year, but where an appointment is made during the course of a year the amount of leave admissible will be calculated proportionately for the broken period.”

10. However, this controversy was before Hon`ble Division Bench of this Court in **Harbhajan Singh Vs. Punjab State Electricity Board and others,** **CWP No. 2885 of 2010**, decided on 22.05.2012, wherein, Hon`ble Division Bench held as under:-

“(18). For the reasons afore-stated, the writ petition is allowed and it is held that the work-charge service rendered by the

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petitioner under the Beas Construction Board from 29.04.1963 to 20.12.1977 has to be counted towards 'qualifying service' for the purpose of pension and other retiral benefits.

(19). Ordered accordingly.

(20). Let the petitioner's pension, leave encashment and other service/retiral benefits be re-fixed and consequential arrears be paid to him along with interest @ 6% from the date of his retirement till actual realization within a period of three months from the date of receipt of a certified copy of this order."

11. As per view taken by Hon`ble Division Bench, the petitioner is certainly entitled to leave encashment of the utilized earned leave during the said period of employment i.e. from 26.4.1976 to 1.8.1998.

12. Resultantly, the present writ petition is allowed with the following directions :-

- (i). The impugned order, date 4.2.2013 (Annexure P/5) stands set-aside and the respondents are not entitled to withdraw the increment already having been granted to the petitioner with retrospective effect. They shall pass consequential order accordingly and grant all consequential benefits to the petitioner.
- (ii). Respondents are also directed to count the unutilized earned leaves of the petitioner for the period from 26.4.1976 to 1.8.1998 and grant the consequential benefit to him.

13. Let the petitioner's pension, leave encashment and other service/retiral benefits be re-fixed and consequential arrears be paid to him along with interest @ 6% from the date of his retirement till actual realization

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within a period of three months from the date of receipt of a certified copy of this order.

(SHEKHER DHAWAN)
JUDGE

November 16, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes