

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

CWP-3708-2016 (O&M)

Date of Decision:07.03.2018

S.K. Verma and others

... Petitioners

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Ashutosh Kaushik, Advocate
for the petitioners.

Mr. Vishal Gupta, Advocate
for respondent No.1-UOI.

Mr. A.S. Virk, Advocate
for respondents No.2 to 5.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the notification dated 4.7.2014 (Annexures P-4 and P-7 respectively) relating to his claim in respect of entitlement of gratuity on the Central Government pattern to the retirees/pensioners/family pensioners of the institute so also entitlement of Fixed Medical Allowance to pensioners and family pensioners.

2. Petitioners were stated to have been working in the erstwhile Regional Engineering College, Kurukshetra which was re-named as National Institute of Technology, Kurukshetra in the year 2002. They have attained the age of superannuation and retired from service prior to 1.1.2004. Ministry of Human Resource Development issued a notification relating to (The First Statutes of the National Institutes of Technology) on 23.4.2009. Section 29 of the First Statute relates to Provident Fund and Pension Schemes which reads as under:

“29. Provident Fund and Pension Schemes

Employees of the Institute appointed prior to 1.1.2004 will be governed by Central Civil Services (Pension) Rules, 1972 and Central Provident Fund (Central Services) Rules, 1960 and the Employees appointed on or after 1.1.2004 will be governed by New Pension Scheme of Central Government.”

In view of the aforesaid provision, even though, petitioners have attained the age of superannuation and retired from service as on 1.1.2004, the aforesaid clause is applicable for the purpose of extending benefit under the Central Civil Services (Pension) Rules 1972 and Central Provident Fund (Central Services) Rules 1960 (for short “1972 Rules and 1960 Rules”). Petitioners are stated to have demanded difference of gratuity amount and sought for extending the benefit of Fixed Medical Allowance under 1972 Rules. Respondents took a decision that petitioners are not entitled to gratuity amount on the score that they have been extended the benefit of gratuity in terms of the regulation/statutory provisions which were existing as on 1.1.2004 the date on which petitioners stood retired. Insofar as extending the benefit of Fixed Medical Allowance is concerned, they have taken a decision that free medical allowance or facility were made available to the petitioners as and when they were in service and further after their retirement. Therefore, petitioners have been extended the benefit of Fixed Medical Allowances from 4.7.2014 onwards and they are not entitled prior to that date. This decision is under challenge in the present petition.

3. Learned counsel for the petitioner submitted that in view of Section 29 of the First Statute of the National Institute of Technology notification dated 23.04.2009, petitioners fulfill the requisite condition of Section 29 for the purpose of applicability of 1972 Rules and 1960 Rules. Consequently, they are entitled to benefit of gratuity and fixed medical

allowances from the inception. It was submitted that even though gratuity has been extended as per the prevailing statutory provision as on 01.01.2004, at the same time, they are entitled to difference of gratuity amount in view of Section 29 which extends benefit of 1972 Rules and 1960 Rules. It was further submitted that they are entitled to Fixed Medical Allowances on par with retired employees with effect from 1.4.2003 who has been extended the benefit of free medical allowance or facility and Fixed Medical Allowance w.e.f. 1.4.2003. Therefore, the decision of the respondents is contrary to Section 29 of the First Statute of the National Institute of Technology notification dated 23.04.2009.

4. Per contra, learned counsel for the respondents while resisting the petitioner's contentions submitted that the First Statute of the National Institute of Technology was introduced on 23.04.2009 as on the said date petitioners were ceased to be the employees of the National Institute of Technology. Therefore, they have no right to claim any benefit. It was also submitted that Section 29 is not in respect of those who have been retired prior to 1.1.2004. Therefore, benefit under Section 29 has been restricted with reference to the fact that petitioners have been extended the benefit of gratuity as per the prevailing provision as on 1.1.2004. In respect of Fixed Medical Allowance is concerned, till the date of retirement of the petitioners, they have been extended the benefit of medical facilities. Consequently, they are not entitled to benefit from 1.1.2004. It was also submitted that persons who have retired as on 1.4.2003, they formed a separate class of persons. Consequently, they have been extended the benefit w.e.f. 1.4.2003. Petitioners' case cannot be compared with the persons who have retired from service from 1.4.2003.

5. Heard learned counsel for the parties.
6. Core issue in the present petition is whether petitioners are entitled to difference of gratuity amount, if any, and Fixed Medical Allowances with effect from the date of retirement of each of the petitioners or not?

Undisputed facts are that petitioners attained the age of superannuation and retired from service prior to 1.4.2004. Section 29 of the First Statute of the National Institute of Technology of notification dated 23.04.2009 is applicable to such of those employees who are appointed prior to 1.1.2004. It is also undisputed that petitioners have attained the age of superannuation prior to 1.4.2004. In this background, Section 29 of the First Statute of the National Institute of Technology of notification dated 23.04.2009 provides for application of 1972 Rules and 1960 Rules to such of those persons who were appointed prior to 1.1.2004. Consequently, 1972 Rules and 1960 Rules are applicable to the petitioners having regard to their service particulars. As on the date of notification dated 23.4.2009 the date on which the First Statute of National Institute of Technology was notified, petitioners have already retired from service. They have been extended the benefit of gratuity as per the prevailing provision so also free medical allowance or facility. In view of these factual aspects, petitioners are entitled to difference of gratuity, if any, under 1972 Rules and 1960 Rules. Respondent's contention cannot be accepted that petitioners are not entitled for gratuity merely on the ground that they have been extended the benefit of gratuity as and when they retired with reference to relevant statute or statutory provision since Section 29 of the First Statute of the National Institute of Technology of notification dated 23.04.2009 stipulates

applicability of 1972 Rules and 1960 Rules to such of those persons who were appointed prior to 1.1.2004. Therefore, petitioners are entitled to the benefit of 1972 Rules and 1960 Rules as per their date of retirement. Insofar as Fixed Medical Allowances is concerned, it is to be noted that respondents have extended free medical allowance or facility to the petitioners and such of those employees who are employed in the then institute. Therefore, Fixed Medical Allowances cannot be extended to the petitioners while they were in service. If the respondents have extended free medical allowance or facility after retirement from service, in that event also, petitioners are not entitled to benefit of Fixed Medical Allowances. Contention of the learned counsel for the petitioner that Fixed Medical Allowances has been extended to some of retired employees w.e.f. 1.4.2003 including free medical allowance or facility. If the respondents have extended illegal benefit both Fixed Medical Allowances as well as free medical allowance or facility. The said illegal benefit cannot be extended to the petitioners.

7. Having regard to the analysis made supra, Annexures P-4 and P-7 dated 4.7.2014 are set aside. Respondents are hereby directed to examine whether petitioners are entitled to any difference of gratuity with reference to the then statutory provision relating to extend benefit of gratuity read with 1972 Rules and 1960 Rules. If petitioners are entitled to difference of amount, the same shall be calculated and disbursed. Insofar as Fixed Medical Allowance is concerned, if the petitioners have been extended the benefit of free medical allowance or facility from the date of retirement till 4.7.2014, in that event, petitioners are not entitled to Fixed Medical Allowances during the period from the date of retirement till 4.7.2014. The above exercise shall be completed within a period of four

months from today.

Petition stands allowed in part.

07.03.2018
rajeev

(P.B. Bajanthri)
Judge

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