

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

CWP No.9187 of 2016 (O&M)
DATE OF DECISION : 13th AUGUST, 2018

Budh Dev Yadav

.... Petitioner

Versus

State of Haryana & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

* * * *

Present : Mr. Pardeep Solath, Advocate for the petitioner.

Mr. Gagandeep Singh Wasu, Addl. Advocate General,
Haryana.

* * * *

A. B. CHAUDHARI, J.

By the present writ petition the petitioner has put to challenge orders dated 16.08.2013 (Annexure P-3), 01.04.2017 (Annexure P-5) and 19.12.2014 (Annexure P-7), made by respondent No.2 by which upon re-employment of the petitioner, his pay was fixed deducting the amount towards pension he was getting from his last employment as government servant.

We have heard learned counsel for the parties and perused the case file with their assistance.

In support of the petition learned counsel for the petitioner vehemently argued that the petitioner is an Advocate enrolled in the Bar Council and that a post that was advertised for the District Consumer Forum was for the category of Advocate, he applied for the post and was selected and appointed. Though it is true that he was appointed as District Attorney earlier and served for about 29 years and was also Government servant of Government of Haryana, the same has nothing to

do with his employment/re-employment as the President of the Consumer Forum and therefore, there was no cause or reason for respondent No.2 to deduct the amount of pension from his salary while fixing his pay while working as President of the District Forum. At any rate according to him the amount towards gratuity could not be deducted as gratuity is totally different from pension. At least in the alternative the petitioner is entitled to relief in part.

We have carefully considered the submissions made by learned counsel for the petitioner. At the outset we find that there is admission in the petition itself that the petitioner was a Government servant and served for 29 years and now is receiving pension. The fact that advertisement was issued by the Government inviting application from the Advocates for the post in question, is sought to be made use of by the petitioner and in our opinion not in a bona fide manner. Fact remains that the petitioner was a Government servant and is also receiving the pension. The payment of salary/honorarium to such post by way of re-employment is always after deducting the pension amount and that is what has been done by the Government in the present case. What the petitioner wants is that he should be paid entire salary plus pension. In our opinion, that would be nothing but unjust enrichment which the petitioner is claiming.

We, therefore, reject the submission made by learned counsel for the petitioner that the amount of pension cannot be deducted from his salary/honorarium while working as President in the Forum.

We, however, find as submitted by learned counsel for the petitioner that the amount of gratuity has also been deducted. If that is correct, we think the amount of gratuity cannot form the part of pension as such and should not be deducted from the salary. But then we leave it

to the Government to verify and find out whether gratuity amount is being deducted or not and if it is not deducted nothing further is required to be done but if it is being deducted the amount should not be deducted from the salary/honorarium. In the result, we make the following order:

ORDER

- (i) The CWP No.9187 of 2016 is partly allowed.
- (ii) The claim by the petition that pension amount should not be deducted from his salary/honorarium as President of District Consumer Forum, is rejected.
- (iii) Respondent No.2 shall verify whether the gratuity amount is being deducted from salary/honorarium and if it is being deducted the same should not be deducted.
- (iv) No order as to costs.

(A. B. CHAUDHARI)
JUDGE

13TH AUGUST, 2018
'raj'

(KULDIP SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>