

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: May 11, 2018

+ **W.P.(C) 3134/2015 & CMs 5587/15, 41436/17, 33064/17,**
22295/16
+ **W.P.(C) 10512/2015 & CM 26506/2015**
+ **W.P.(C) 10516/2015**
+ **W.P.(C) 10518/2015 & CM 26519/2015**
+ **W.P.(C) 10531/2015 & CM 8884/2016**
+ **W.P.(C) 8423/2015 & CM 18010/2015**
+ **W.P.(C) 8976/2015 & CM 20242/2015**
+ **W.P.(C) 4055/2016 & CM 29582/2017**
+ **W.P.(C) 4508/2016 & CM 18796/2016**
+ **W.P.(C) 9746/2016 & CM 38944/2016**

NARINDER PAUL KAUSHIK
D R TAMTA
PROMILA SETH
NAINA BAKSHI
S.S. SIDHU
O P GUPTA
SUBHASH GUPTA
HARENDRA MOHAN VYAS
MANJU BALA SHARMA
VIKRAM KUMAR DABAS

..... Petitioners

Through: Mr. K.P. Sundar Rao and Ms. R.
Gayathri Manasa, Advocates (in I-11 to 16)
Mr. B. Mahapatra, Advocate (in I-17)
Mr. S.R. Sharma, Advocate (in I-18)
Mr. Arun K. Sharma, Advocate (in I-19)
Mr. Sanjeev Mahajan, Advocate (in I-20)

versus

GOVT. OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Ankur Chhibber, Advocate for
respondent No.1 (in I-11)
Mr. Sanjay Dewan and Ms. Palak Rohmetra,
Advocates for respondent No.3
Mr. Sanjoy Ghose, ASC with Mr. Shwetank
Singh, Advocate for respondent-GNCTD

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. In the above-captioned ten petitions, petitioners are working as Members of *State Consumer Disputes Redressal Commission (SCDRC)* and *District Consumer Dispute Redressal Forum (DCDRF)*, who had opted for '*Last Pay Drawn*' minus Pension.
2. According to petitioners' counsel, '*Last Pay Drawn*' includes the allowances and perquisites also. Petitioners' Representations have been rejected by second respondent by observing that the allowances and perquisites are paid to the President of State Commission and District Consumer Forums and as per Rule 3 (1) (b) of *the Delhi Consumer Protection Rules, 1987* (hereinafter referred to as '*the Rules, 1987*'), Members of State Consumer Commission and District Consumer Forums are not entitled to allowances and perquisites.
3. With the consent of learned counsel for the parties, the above-captioned petitions have been heard together and are being disposed of by this common order.
4. Learned counsel for petitioners submit that the Rules, 1987, relied upon by respondents in the impugned rejection, have been amended on

17th September, 2013 whereby a Proviso has been inserted in Rules 3 & 6 of the aforesaid Rules, 1987, to give an option to the Members of the Delhi State Consumer Commission and District Consumer Forums to opt for '*Last Pay Drawn*' minus Pension in lieu of consolidated remuneration. Learned counsel for petitioners place reliance upon Supreme Court's decision in *State Bank of India and Others v. K.P. Subbaiah and Others*, (2003) 11 SCC 646 to submit that the '*Last Pay Drawn*' would include allowances too.

5. On the contrary, learned counsel for respondents support impugned orders vide which petitioners' Representation have been rejected and submit that without assailing the Rules, 1987, the relief sought by petitioners cannot be granted. So, dismissal of these petitions is sought by respondents.

6. During the course of hearing, petitioners' counsel drew attention of this Court to a Communication of 18th July, 2007 of Govt. of NCT of Delhi to submit that Presiding Officer of Delhi School Tribunal has been granted '*Last Pay Drawn*' with allowances.

7. In rebuttal, learned counsel for petitioners rely upon Division Bench's order of 28th January, 2015 in W.P. (C) 65/2015 titled *Delhi School & State Transport Appellate Tribunal Bar Association v. The Lt. Governor of Delhi & Ors.*, and another Division Bench's order of 16th October, 2015 of this Court in LPA 337/2015 titled *Narinder Paul Kaushik v. Government of NCT of Delhi & Anr.*, to submit that '*Last Pay Drawn*' will include Dearness Allowance and infact, by way of a Circular issued by respondents, allowances payable to petitioners have been

granted in terms of aforesaid Division Bench's order of 16th October, 2015 but it is subject to the outcome of these petitions. Reliance is placed upon FR 21(a) to submit that '*Last Pay Drawn*' includes the amount, which an employee receives monthly. Thus, it is submitted that '*Last Pay Drawn*' includes the Dearness Allowance, HRA, Sumptuary Allowance, Water and Electricity charges, Conveyance Charges, etc..

8. Upon hearing and on perusal of impugned orders vide which petitioners' Representations have been rejected, material on record and the decisions cited, I find that petitioners cannot claim parity with the President of Delhi State Consumer Commission and the District Consumer Forums and the Division Bench's order of 28th January, 2015 of this Court, referred to above, is of no avail to the case of petitioners as the Presiding Officer of the said Tribunal cannot be equated with the Members of Delhi State Consumer Commission or the District Consumer Forums.

9. So far as reliance placed upon Division Bench's order of 16th October, 2015 referred to above, is concerned, I find that it was an interim order and the Circular issued pursuant to the said order, cannot and does not determine the rights of petitioners to get the allowances and perquisites, as the aforesaid Rules, 1987 are silent on this aspect.

10. Amended Rule 3 (1)(b) of the aforesaid Rules, 1987 only talks of consolidated honorarium or '*Last Pay Drawn*' minus Pension and is silent on the aspect of the allowances and other perquisites. This very Rule expressly grants allowances and other perquisites to President of Delhi State Consumer Commission and the District Consumer Forums. It is

quite evident on perusal of aforesaid Rules, 1987 that there is a conscious denial of allowances and other perquisites to the Members of Delhi State Consumer Commission and District Consumer Forums. Reliance placed upon Supreme Court's decision in *K.P. Subbaiah (supra)* is of no consequence for the reason that there is no challenge to Rule 3 (1)(b) of the aforesaid Rules, 1987 in these petitions.

11. In light of the aforesaid, this Court finds it to be a futile exercise to delve upon the aspect of '*Last Pay Drawn*' and to adjudicate upon it, particularly, when there is no challenge to Rule 3(1)(b) of the aforesaid Rules, 1987. Reference by petitioners' counsel to aforesaid Communication of 18th July, 2007, is out of context, for the reason that the concerned Officer was sent as Presiding Officer of Delhi School Tribunal on deputation and it was not a case of re-employment upon retirement. In the facts and circumstances of this case, it is deemed appropriate to grant liberty to petitioners to lay a challenge to Rule 3(1)(b) of the aforesaid Rules, 1987 as, thereafter only, the grievance of petitioners can be redressed.

12. Before parting with this order, C.M. 41436/2017 in W.P. (C) 3134/2015 needs to be adverted to. Upon doing so, I find that by virtue of an interim order in this application, petitioner-Narinder Paul Kaushik is retaining the official residential accommodation of judicial pool.

13. Learned counsel for applicant-Narinder Paul Kaushik submits that petitioner is retiring in November, 2018 and is ready to furnish an undertaking to the effect that on his retirement, he will vacate the accommodation of judicial pool of the District Courts occupied by him.

14. In the peculiarity of this case, the application is disposed of while permitting petitioner-*Narinder Paul Kaushik* to retain the official residential accommodation of the District Courts till 7th December, 2018, subject to his furnishing an undertaking to the effect as noted above, to the District Judge (HQ), within a period of two weeks from today. If it is not so done, then the interim order passed in this application shall stand vacated.

15. The above-captioned petitions and the pending applications are disposed of in aforesaid terms.

**(SUNIL GAUR)
JUDGE**

MAY 11, 2018

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