NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4390 of 2019

Dr. Chandra Shekhar Patel S/o Late Shri Y. Patel, Aged About 69 Years, R/o Karbala Road, Juna Bilaspur, Police Station City Kotwali, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education Mahanadi Bhawan, Atal Nagar, Raipur, Police Station Rakhi, District Raipur Chhattisgarh

2. Commissioner, Higher Education, Government Of Chhattisgarh, Block-03, 2nd And 3rd Floor, Indrawati Bhawan, Atal Nagar, Raipur Chhattisgarh

3. Administrative Committee, D.P. Vipra College, Near Old High Court, Bilaspur, District Bilaspur, Chhattisgarh

4. Principal, D.P. Vipra College, Near Old High Court Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Vivek Kumar Agrawal, Advocate.
For State/Respondents 1 & 2	:	Mr. Samir Behar, P.L.
For Respondents 3 & 4	:	Mr. Sudeep Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20.06.2019

1. The relief sought for by the petitioner in the present writ petition is for an appropriate direction to the respondents to grant the pension and

other pensionary benefits at the revised pay scale as recommended by 6th Pay Commission which came into force w.e.f. 01.01.2006.

2. The petitioner herein stood retired from the post of Assistant Professor and HOD of Geography w.e.f. 31.07.2011 working under respondents 3 & 4.

3. The contention of the counsel for the petitioner is that since the benefit of 6th Pay Commission came into force from 01.01.2006, the petitioner had been receiving salary at revised rate as per the 6th Pay Commission recommendation till his retirement. However, the pension has been given to the petitioner at pre-revised rate i.e. as per the recommendation of the 5th Pay Commission.

4. The issue involved in the present writ petition came up for consideration in a bunch of writ petitions, the leading petition of which being WP No. 407/05 and other analogous writ petitions. This Court vide its order dated 05.03.2019 allowed all those writ petitions and directed the respondent authorities to take appropriate steps for releasing the pension to the petitioners at the revised rate that was applicable on the date of retirement which in the said writ petitions was the 5th Pay Commission and in the instant case would be 6th Pay Commission. It was also directed that the petitioners therein would also be entitled for the retiral dues which includes gratuity at the revised rate. While disposing of WP No. 407/05 and other bunch of writ petitions, this Court in paragraph-11 to 20 held as under:

> "11. From the aforesaid undisputed facts what is clearly culling out is that the petitioners admittedly retired from service after 01.01.1996. The State Govt. vide order dated 28.10.1999 held that the teaching and non-teaching staffs of

the aided non-government institutions would also be entitled for the benefits of 5th pay commission and the pension would accordingly be revised in each of the cases. The said order dated 28.10.1999 has not been recalled or cancelled by the State Govt. at any point of time. Undisputedly, the State Govt. was paying pension to teaching and non-teaching staffs of the aided non-government institutions even prior to the implementation of 5th Pay Commission which establishes the liability part of payment of pension by the State Govt. and which further stands established from the fact that even the revised pension is being released to each of the petitioners beyond October, 2010.

12. State counsel, on the other hand, opposing the petitions submits that since the petitioners were directly in employment under the private educational institutions, the liability of payment of pension and gratuity ought to have been saddled upon the private institutions as is evident from the order dated 30.05.1992. Vide order dated 21st September, 1992 the State Govt. is said to have taken a stand that since the teaching and non-teaching staffs would be entitled for pension, they would not be entitled for the benefit of revision of pay scale and the pension also would be paid at the pre-revised rate itself.

13. This contention of the State Govt. is hard to accept for the reason that the liability part of the State Govt. was not in dispute prior to the coming into force of the 5th Pay Commission. The liability has also been accepted by the State Govt. at the revised rate subsequent to October, 2010 itself. In between also it was the State Govt. who were paying pension though under the revised rate.

14. The dispute now stands confined only to the entitlement of the petitioners for pension and gratuity at the revised scale for the intervening period i.e. from the date of retirement till

October, 2010.

15. Counsel for the petitioners as well as the respective colleges have brought before this court the fact that initially the liability was saddled upon Madhya Pradesh Shiksha Anudan Aayog but as per their submission, no committee was constituted at all as was required under the said provision and subsequently the said Commission itself was abolished vide notification dated 02.03.1994 w.e.f. 31St March, 1994 and thereafter the entire liability stood that upon the State Govt.

16. This Court, in the aforesaid factual matrix, has no hesitation in reaching to the conclusion that since the State Govt. has accepted its liability for grant of salary which the petitioners were drawing as per the 5th pay commission from 01.01.1996 onwards and the State Govt. subsequently having accepted the grant of pension at the revised rate from October, 2010 and in the absence of any specific order by the State Govt. cancelling the order dated 28.10.1999 so far as the implementation of 5th Pay Commission is concerned and also the fact that there is no order whereby the State Govt. has passed an order that the petitioners would not be entitled for pension and gratuity at the revised rate till October, 2010, as a natural consequence, the petitioners would be entitled for pension at the revised rate.

17. Moreover, the stand of the State Govt. is also hard to accept for the simple reason that undisputedly most of the petitioners in the instant case had received salary at the revised rate as per the order dated 28.10.1999.

18. If that be so, the pension would have to be calculated on the basis of the average pay that they had received in the preceding year prior to their date of retirement. When the petitioners have received salary at the revised rate, there is

no reason as to why they would not be entitled for pension at the revised rate.

19. Given the aforesaid stand, these writ petitions deserves to be and is accordingly allowed. It is ordered that the respondents shall ensure that the petitioners are paid pension as per the revised rate that they are entitled for on the basis of revised pay. The respondent State is directed to ensure the release of pension at the revised scale at the earliest.

20. So far as the petitioners in WP Nos. 407/05 and 4057/04 are concerned, it is reflected that many of the petitioners herein retired subsequent to 01.01.1996 but before 28.10.1999. In respect of these petitioners also, since there is no specific order of the State Govt. making the applicability of the revised pay scale prospectively from 28.10.1999 and neither there being any order specifically holding that it would not be applicable upon those persons who already stood retired before 28.10.1999, the petitioners in these two writ petitions would also be entitled for pension and gratuity as per the revised pay scale recommended by the State Govt. Needless to mention that since this Court has already ordered that the petitioners would be entitled for pension at the revised rate, as a consequence the petitioners would also be entitled for any subsequent periodical revision of pay implemented by the State Govt. from time to time."

5. Considering the fact that the factual matrix raised in the present writ petition is similar if not identical to the issue decided in the bunch of writ petitions referred to above, this Court is of the opinion that the present writ petition also can be disposed of in similar terms.

6. Accordingly, the respondents 1 & 2 are directed to consider and decide the claim of the petitioner so far as granting of pension and pensionary benefits as per the recommendation made by the 6th Pay Commission is concerned, particularly taking note of the fact that the petitioner had been receiving salary till his retirement as per the recommendations of the 6th Pay Commission. Let appropriate steps be taken at the earliest preferably within a period of 4 months from the date of receipt of copy of this order.

7. The writ petition accordingly stands allowed and disposed of.

Sd/-
P. Sam Koshy
Judge

Khatai