IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15793-2013 (O&M)
Date of decision : 25.07.2019

Amarjit Singh Walia and others
...Petitioner(s)

Versus

State of Punjab and others
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Gill, Advocate,
for Mr. R.P.S. Bara, Advocate,
for the petitioners.

Ms. Bhavna Gupta, DAG, Punjab,
assisted by Ms. Sangeeta, Deputy Secretary, Finance.

JITENDRA CHAUHAN, J. (Oral)

Prayer in the instant petition is for issuance of a direction to the respondents to allow the counting of Secretariat Allowance to be converted to Secretariat Pay for all intents and purposes w.e.f. 01.01.2006 instead of 01.12.2011.

Learned counsel for the petitioner submits that the State has taken a conscious decision that the benefit of secretarial pay/special pay is admissible to the pensioners/family pensions for the purposes of computation of pension/family pension in respect of the employees who retired between 01.01.2006 to 30.11.2011. He has furnished a copy of circular dated 04.07.2019, wherein clarification regarding Secretariat Pay and Special Pay has been issued. The relevant portion thereof is extracted below:-

> *"2. A clarification has been sought as to whether benefit of Secretariat Pay/Special Pay admissible to certain categories of employees is to be taken into account for the purpose of calculation of revised amount of pension/family pension in accordance with Finance Department letter No.4/13/2013/FPPC/1010607/1, dated 27.6.2017 and No.4/13/2013/FPPC/1035969/1, dated the 2nd August, 2017 on the basis of pay scales revised w.e.f. 1.12.2011.*
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> *3. The above instructions were issued to comply with the Hon'ble High Court orders for allowing the benefit of re-revised pay scales for the purpose of pension/family pension to the pre and post 1.1.2006 retirees/family pensioners w.e.f. 1.12.2011. Accordingly it is clarified that the benefit of Secretariat Pay/Special Pay shall also be admissible to the pensioners/family pensioners for the purpose of computation of pension/family pension for post 1.1.2006 retirees i.e. the employees who retired between 1.1.2006 and 30.11.2011. Similarly while working out the minimum basic pension/family pension @ 50% / 30% to pre 1.1.2006 retirees, the Secretariat Pay/Special Pay is also to be included in the initial pay. It is, however, reiterated that such benefit shall be admissible only w.e.f. 01.12.2011.*
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> *4. It is also clarified that the benefit shall not be admissible to those employees/retirees who belong to other cadres or departments and who*

> *are working in Secretariat & drawing the Secretarial Pay but do not belong to Secretariat services."*

Cites LPA No.352 of 2014, titled as ***State of Punjab and others Vs. AP Sharma and others*** and other connected matters**,** decided on 31.08.2016, wherein, a Division Bench of this Court while dealing with an identical matter, observed as under:-

> *"(29) Having held so, the only question with which we are left is whether the respondents who are pre-01.01.2006 retirees are entitled to the benefit of higher pay-scale granted to the posts manned by them while in service, when such upgradation has been made prospectively from a date much after their retirement? This issue has been answered by the learned Single Judge for two reasons. Firstly, it has been held that the pre-01.01.2006 retirees are entitled to pension as per Para 4.2 of the circular dated 17.08.2009, which reads as follows:-*
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> > *"4.2 The fixation of Pension will be subject to the provisions that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. This will be reduced pro-data if the qualifying service of the person falls short of 33 years."*
>
> *(emphasis by us)*
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> *(30) The subsequent circular dated 22.02.2010*

though modifies the earlier circular dated 17.08.2009 but to the advantage of the retirees. Para 2 of the circular dated 22.10.2010 reads as under:-

> *"The Governor of Punjab is pleased to decide further that the benefit of fixation of revised pension envisaged in para 4.2 of the aforesaid letter will be available for fixation of family pension also subject to the condition that the revised family pension, in no case, shall be lower than thirty percent of the initial pay show in column 8 of the Schedule of the Punjab Civil Services (Revised Pay) Rules, 2009, against relevant Pay Band and Grade Pay corresponding to the prerevised scale of pay in which the pensioner/deceased employee had last worked."*

(31) As a cumulative effect of the two circulars referred to above, it stands crystalized that the amount of pension in the case of pre-01.01.2006 retirees is not static and is flexible and fluctuating depending upon the pay-scale of the posts held by them while in service. In other words as and when there would be a revision of pay-scale of the posts occupied by them, their pension would also be favourably re-fixed so as to ensure that it is not less than 50% of initial pay of the posts held by them. To say it differently if the initial pay of the posts of Joint Controller (F&A), Deputy Controller (F&A) or Assistant Controller (F&A) is enhanced in the year 2012, it will also benefit the pre-01.01.2006 retirees as their pension cannot be

less than 50% of such initial pay. (32) At this stage, we may also deal with the contention raised on behalf of the appellant-State that the Government notification-cum-circular dated 15.12.2011 granting higher pay-scales cannot be applied retrospectively. The expression "retrospective" connotes a definite meaning in law. It creates a deeming fiction of assumed existence of something which actually never existed at that particular point of time. The law would still presume that such a thing existed at that point of time and its consequence must flow on such assumption. The expression "Retrospective" is neither synonymous nor identical to the concept of 'retroactive'. The phrase "retroactive" is applied to give effect to a quasijudicial or administrative order though pass prospectively but has its antedated effects. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Ed., 2005) the expression "retroactive" has been defined as "Acting backward; affecting what is past". Where the decision-making authority consciously decides not to give effect to a decision retrospectively but if it is bound to affect the antecedents of such decisions, it is held to have 'retroactive effect' but where the competent authority itself decides to give effect to its decision from a back date, such decision becomes 'retrospective'.

*(33) In somewhat similar circumstances, the Hon'ble Supreme Court in **D.S. Nakara and others Vs. Union of India and others (1983) 1 SCC 305** observed that "It must be remembered*

that pension is relatable to qualifying service. It has correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing...".

(34) In the case in hand though the circular dated 15.12.2011 (P-4) is 'prospective' in nature but by virtue of Para 4.2 of the circular dated 17.08.2009 read with Para 2 of circular dated 22.02.2010, such prospective decision has a retroactive effect on the antecedents, namely, the pension amount of pre-01.01.2006 retirees. As the object and purpose of all the circulars is to grant benefits and as such these are to be classified as beneficial subordinate legislation, they are to be given effect liberally and widely. Pre-01.01.2006 retirees, therefore, are entitled to re-fixation of their pension as per the circular dated 15.12.2011 but without any retrospective effect, namely, only from the date when the competent authority made it effective w.e.f. 01.12.2011.

(35) Para 3 of the circular dated 15.12.2011 cannot take away the effect and implications of Para 4.2 of the circular dated 17.08.2009 or of Para 2 of the later circular dated 22.02.2010 as both the circulars are meant for re-fixation of pension of pre-01.01.2006 retirees. The circular dated 15.12.2011 neither modifies nor supersedes the previous circulars. Those circulars independently cover and govern their own field of

fixation of pension of pre-01.01.2006 retirees.

(36) As a result of the above discussion, it is held that the circular dated 15.12.2011 is retroactive in nature and the benefit of fixation of higher pay of various categories of employees is bound to have its positive effect on the pension of pre-01.01.2006 retirees.

(37) For the reasons aforestated, we do not find any merit in this appeal, which is, accordingly, dismissed."

Learned State counsel, on instructions, does not dispute this factual aspect of the matter.

In view of the above, the respondents are directed to calculate the arrears and disburse the same in terms of notification dated 04.07.2019, within a period of four months from the date of receipt of a certified copy of this judgment.

Disposed of.

25.07.2019 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No