

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-12093-CWP-2019 in/and
CWP-15005-2015
Date of decision-12.09.2019

Dr. Arun Bansal and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Malik, Sr. Advocate assisted by
Mr. Sandeep Kumar Rana, Advocate
for the petitioner(s).

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab assisted by
Mr. Jasbir Singh, Senior Assistant,
Departmental of Health & Family Welfare.

JITENDRA CHAUHAN, J.

By filing the present civil miscellaneous application, the applicant-petitioners have prayed for allowing the main petition in terms of the law laid down by this Court in judgment dated 23.07.2019 rendered in CWP-11372-2017 titled as *'Harmandeep Singh and others Vs. State of Punjab and others'*.

Learned counsel for the petitioners contends that the petitioners, who are PCMS doctors, were admitted to Post Graduate Courses in State Medical Colleges under 60% quota for the sessions 2013 & 2014.

As per the bond executed between the Government and the petitioners, the

petitioners were entitled for full salary and allowance even during the said course. However, vide order being assailed dated 26.03.2015 (Annexure P4), the Government has deprived the petitioners of non-practicing allowance. Learned senior counsel for the petitioners contends that ex facie the order dated 26.03.2015 can only be prospective nature, as the petitioners having been admitted to the Post Graduate Courses for the sessions 2013 & 2014 were drawing the said allowance during all this while. Secondly, depriving them of the non-practicing allowance, at this stage, would amount to unilateral alteration of the terms of the bond executed between the Government and the petitioners.

Learned counsel for the applicant/petitioners further contends that the case of the petitioners is squarely covered by the judgment passed in ***Harmandeep Singh's*** case (supra).

In ***Harmandeep Singh's*** case (supra), it was observed as under:-

“The definition of 'Pay' and 'Special Pay' as given in the Punjab Civil Services Rules Volume I (Part I), reads thus:-

2.44. “pay” means—

(a) the basic pay, that is the amount drawn monthly by a Government employee in the scale of pay of the post held by him, or to which he is entitled by reason of his position in a cadre; and

(b) includes any other emoluments which may specifically be classed as part of pay by the competent authority.

2.52. Special pay means an addition, of the nature of pay, to the emoluments of a post or of Government employees, granted in consideration of:—

(a) the specially arduous nature of duties;

(b) a specific addition to the work or responsibility and includes non-practising allowance granted to doctors in lieu of private practice.

Explanation.—The circumstances which justify the grant to a Government employee of special pay are entirely different in character from those which justify the grant of a compensatory allowance, a difference emphasised in the definition of those terms embodied in rules 2.13 and 2.52. These definitions should be strictly construed and an exact compliance required with the conditions stated in them as antecedent to the grant of either special pay or compensatory allowance. There is no necessary inter-dependence between special pay and compensatory allowance. It is not the intention of the rules either that where the cost of living would justify the grant to a Government employee of a compensatory allowance, he should be rendered ineligible for such allowance, because he has already been granted special pay in recognition of the duties and responsibilities of his post, or that if the attachment of special pay to a post is justified under the terms of the rules, it should be subject to reduction because for reasons essentially different, a compensatory allowance as defined in rule 2.13 is subsequently granted.

A perusal of the above, reveals that the pay includes any other emoluments which may specifically be termed as part of pay by the competent authority. Whereas, the NPA forms a part of the Special Pay. Thus, the grant of NPA is specifically meant to form part of the 'Special Pay' as defined under Rule 2.52 which in turn forms part of the substantive pay as defined under Rule 2.44 of the Rules. Moreover, the surety bonds submitted by the petitioners clearly stipulate that the petitioners shall be entitled to full pay and allowances during the Post Graduate course. Even otherwise, a statutory

provision cannot be diluted/discarded by an executive order.

It is not in dispute that upto the year 2015 the doctors undergoing the Post Graduate course were allowed the NPA whereas the same has been discontinued vide impugned order dated 26.03.2015, (Annexure P-5). No reasoning has come forth to justify the withdrawal of NPA.

In view of the above, the instant petitions are allowed; impugned order dated 26.03.2015 (Annexure P-5) is hereby set aside; and the petitioners are held entitled to grant of NPA during the course of Post Graduation.

The arrears, if any, shall be released in favour of the petitioners within a period of six weeks from the date of receipt of a certified copy of the judgment.”

Learned State counsel does not dispute the factual aspect of the matter and states that he would have no objection, in case, the prayer made in the CM application is accepted.

For the reasons mentioned in the CM application and in view of the submissions made by learned counsel for the parties, present application is allowed, the main writ petition is taken on today's Board and is disposed of in terms of the law laid down in **Harmandeep Singh's** case (supra).

The respondents are directed to release the consequential benefits to the petitioner within six weeks from the receipt of the certified copy of the judgment.

12.09.2019

ps-I

Whether speaking/reasoned :
Whether Reportable :

(JITENDRA CHAUHAN)
JUDGE

Yes No
Yes No