

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. Date of decision-23.07.2019
CWP-11372-2017(O&M)
- Dr. Harmandeep Singh and others
- ...Petitioners
- Vs.
- State of Punjab and others
- ...Respondents
2. CWP-12854-2018(O&M)
- Dr. Ankush Jindal
- ...Petitioner
- Vs.
- State of Punjab and others
- ...Respondents
3. CWP-15824-2018(O&M)
- Dr. Nirmal Dass and others
- ...Petitioners
- Vs.
- State of Punjab and others
- ...Respondents
4. CWP-12310-2017(O&M)
- Dr. Gurpreet Singh Mahal
- ...Petitioner
- Vs.
- State of Punjab and others
- ...Respondents

5. CWP-16220-2017(O&M)

Dr. Deepak and another

...Petitioners

Vs.

State of Punjab and others

...Respondents

6. CWP-15872-2017(O&M)

Dr. Sukhdeep Kaur and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

7. CWP-16449-2017(O&M)

Dr. Kanwaljit Singh Bajwa and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

8. CWP-24684-2017(O&M)

Dr. Nirmal Singh and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

9. CWP-19527-2017(O&M)

Dr. Jatinder Singh and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

10. CWP-18042-2017(O&M)

Dr. Deepak Garg

...Petitioner

Vs.

State of Punjab and others

...Respondents

11. CWP-6124-2017(O&M)

Dr. Rajiv Aggarwal and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

12. CWP-28454-2017(O&M)

Dr. Gagandeep Kaur and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

13. CWP-16802-2016(O&M)

Dr. Ramiti Gupta

...Petitioner

Vs.

State of Punjab and others

...Respondents

14. CWP-6626-2017(O&M)

Dr. Ajay Kumar and others

CWP-11372-2017 and connected cases		4
		...Petitioners
	Vs.	
State of Punjab and others		
		...Respondents
15.	CWP-2056-2019(O&M)	
Chinky Thukral		
		...Petitioner
	Vs.	
State of Punjab and others		
		...Respondents
16.	CWP-1677-2018(O&M)	
Dr. Lily Singla		
		...Petitioner
	Vs.	
State of Punjab and others		
		...Respondents
17.	CWP-17413-2019(O&M)	
Gagan Preet Singh		
		...Petitioner
	Vs.	
State of Punjab and others		
		...Respondents
18.	CWP-19578-2019(O&M)	
Dr. Sahil Kundal and others		
		...Petitioners
	Vs.	
State of Punjab and others		
		...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. B.D. Sharma, Advocate for the petitioner(s)
in CWP-11372, 28454, 19527 and 6626-2017.

Mr. Varun Katyal, Advocate for the petitioner(s)
in CWP-12854-2018.

Mr. Gurmeet Singh Guri, Advocate for
Mr. N.S. Sidhu, Advocate for the petitioner(s)
in CWP-15872, 18042 & 12310-2017.

Mr. Himanshu Aggarwal, Advocate for
Mr. Sunil K. Nehra, Advocate for the petitioner(s)
in CWP-15824-2018 and CWP-16220, 16449, 24684-2017.

Mr. Rajesh Gupta, Advocate for the petitioner(s)
in CWP-16802-2016.

Mr. Surinder Garg, Advocate for the petitioner(s)
in CWP-6124-2017.

Mr. Aman Bansal, Advocate for the petitioner(s)
in CWP-1677-2018.

Mr. Krishan Kumar Thakur, Advocate for
Ms. Pinky Bangarh, Advocate for the petitioner(s).
in CWP-2056 & 17413-2019.

Mr. Sahil Arora, Advocate and Mr. Ramneek Singh, Advocate
for the petitioner(s) in CWP-19578-2019.

Ms. Anu Chatrath, Addl. A.G., Punjab.

Mr. Manpreet Singh Longia, Advocate for
respondent No.5 in CWP Nos.1677 and 12854 of 2018;
respondent No.4 in CWP-15824-2018, CWP Nos.12310,
16220, 15872, 16449, 24684, 18042 and 6124 of 2017.

JITENDRA CHAUHAN, J.

The above noted batch of 18 writ petitions is being disposed of
by this single judgment as common questions of law and facts are involved
therein. However, the facts are being derived from CWP No.11372 of 2017,
for brevity.

Prayer in the instant petition is for quashing the impugned order dated 26.03.2015 (Annexure P-5) passed by the respondent No.1, whereby, the Non-Practicing Allowance (NPA) being granted to the petitioners had been stopped.

It is contended that the petitioners being members of Punjab Civil Medical Services (PCMS) are serving as Medical Officers with the State of Punjab. They have secured admission to the 3-year Post Graduate courses in different streams at different medical colleges such as Govt. Medical College, Patiala, Govt. Medical College, Amritsar and Govt. Medical College, Faridkot whereas some of the petitioners are undergoing the said course at PGIMER, Chandigarh. They have been admitted in the Post Graduate course under 60% quota meant for PGMS Doctors for the Sessions ranging from 2015 to 2018, 2016 to 2019 and 2017 to 2020.

The grouse of the petitioners is that vide impugned order Annexure P-4, the NPA which was earlier being paid to the doctors undergoing the Post Graduate course stands withdrawn.

Learned counsel contends that the NPA is specifically meant to form part of the Special Pay as defined under Rule 2.52 of Punjab Civil Services Rules, Vol. I, Part I and therefore, ought not to have been withdrawn on account of the fact that the petitioners were undergoing Post Graduate course.

On the other hand, learned State counsel submits that the NPA is allowed to the doctors of the State Govt. while they are providing services in the Govt. Hospitals/Dispensaries with a condition that they will not indulge in private practice after duty hours. Thus, the State has taken a

conscious decision in the meeting held on on 11.06.2014 that the PCMS doctors undergoing Post Graduation sponsored by the Department of Health and Family Welfare, Punjab, will not be allowed the NPA. She further refers to condition No.4 of formal No Objection Certificate dated 10.06.2016 issued to petitioner Nos.3 to 5, wherein it has been specifically stated that *“as per the notification No.27/35/15-5HB2/447931/1 dated 26.03.2015 issued by the Government, the above Doctors sponsored for PG course shall not be given the NPA”*. Therefore, they cannot claim grant of NPA at this stage.

Heard.

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.

Allowed.

Photocopy of this judgment be placed on the files of other connected cases.

(JITENDRA CHAUHAN)
JUDGE

23.07.2019

ps-I

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No