

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24255-2015 (O&M)

Date of decision: - 24.01.2019

Balbir Gulshan Gupta

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. S.S. Narula, Advocate,
for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the claim of the petitioner is for the grant of minimum pay band of ₹37400-67000 with AGP of ₹9000/- while fixing the pension of the petitioner w.e.f. 01.01.2006.

The facts as pleaded in the writ petition are that the petitioner was appointed as a Librarian with the Department of Economic and Statistical Organization Punjab at Chandigarh by way of direct recruitment on 25.01.1974 in the pay scale of ₹.220-500. The pay-scales of the employees of the State of Punjab were revised on 01.01.1978 and the revised pay scale of ₹700-1200 was given to the Librarian. In paragraph 3 of the writ petition, it has been pleaded that keeping in the view the decree passed in favour of the petitioner in Civil Suit No.215 of

1986, decided on 30.01.1989, the petitioner was to be treated equivalent to the Librarian in the State of Punjab for the purpose of pay and allowances.

In the next revision, which was granted to the employees of the State of Punjab w.e.f. 01.01.1986, a pay-scale of ₹2200-4000 was granted to the Librarians. Librarians, who had completed eight years of service were granted pay-scale of ₹3000-5000. The selection grade of ₹3700-5700 was given to Librarian w.e.f. 25.01.1990. As per the averments made in the writ petition as per Annexure P-8, the petitioner was drawing the pay-scale of ₹3700-5700 w.e.f. 25.01.1990.

The next revision of pay-scale in respect of employees of the Government of Punjab was effected w.e.f. 01.01.1996. The pay-scale of ₹3700-5700 was revised to ₹12000-18300. It is a matter of fact, which has been admitted by the respondents that pay-scale of ₹12000-18300 was given to petitioner w.e.f. 01.01.1996 and he continued getting the same till he superannuated on 30.09.1998.

After the retirement of the petitioner, the recommendations of the 5th Pay Commission were implemented by the Government of Punjab w.e.f. 01.01.2006. As per the recommendations of the Government, the pay-scale of ₹12000-18300 was revised to ₹37400-67000 with AGP of ₹9000/-. In the said revision, the pensioners were given the benefit that their pension will be fixed @ 50% of the minimum scales, which have been given to the corresponding posts, which they were holding at the relevant time of their retirement. A condition was put up that in order to

get the revised pay-scale, a retired employee should have got the pre-revised pay-scale for atleast three years.

As there were number of employees, who had not got the benefit of revised pay for a period of three years after 01.01.1996 though they had the service of more than three years on the same post in the un-revised pay-scales, started making representations that they cannot be denied the benefit of the revised pay-scales as revised by the Government w.e.f. 01.01.2006 on the ground that an employee should have three years of service after the revision of pay-scale and should have got the actual revised pay-scale for a period of three years starting from 01.01.1996

Government of India issued a clarification in this regard on 15.12.2009. In the clarification, it was made clear that three years service in pre-revised pay-scale of ₹12000-420-18300 will be good enough to grant the pay-scale of Rs.37000-400-67000. The relevant instructions are as under:-

“F.No.15-1/2009-IFD/U.II
Government of India
Ministry of Human Resource Development
Department of Higher Education

New Delhi the 15th December 2009

To

The Secretary, University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi.

Sub: *Revision of Pension of Pre-2006 Pensioners/Family Pensioners who retired as Readers/Lecturers*

(Selection Grade) & equivalent cadres and Deputy Registrars/equivalent cadres in Central Universities and Colleges.

Sir,

I am directed to refer to the Government's decision regarding pension/family pension of all pre-2006 pensioners/family pensioners issued vide Department of Pension and Pensioner's Welfare O.M. No. 38/37/08-P&PW(A) dated 1.9.2008. In this connection a question has arisen about the Pay Band applicable to pre-2006 pensioners in Central Universities/colleges who had retired from the posts in the pre-revised scale of pay of Rs 12000-420-18300 (or corresponding pay scales applicable prior to 1.1.1996) mentioned below to determine their pension/family pension in terms of para 4.2 of Ministry of Personnel, Public Grievances and Pensions (Department of Pension and Pensioners' Welfare) O. M. No. 38/37/08-P&W(A) dated 1.9.2008.

Category (A)

Readers/Lecturers (Selection Grade)

Category (B)

- (i) Deputy Librarian/Assistant Librarian(Selection Grade)/
College Librarian (Selection Grade)
- (ii) Deputy Director of Physical Education/Assistant Director of
Physical Education (Selection Grade), College Director of Physical
Education (Selection Grade)

Category (C)

- (i) Deputy Registrar
- (ii) Deputy Finance Officer
- (iii) Deputy Controller of Examinations

2. According to the revised pay scales applicable to Teachers/Equivalent Cadres in Central Universities/Colleges as notified vide Ministry's letter No. 1-32/2006-U.II/U.I(i) dated 31.12.2008, incumbents of the post mentioned at categories (A) and (B) above who had completed 3 years of service in the pay scale of Rs. 12000-420-18300 on 1.1 2006 have been placed in Pay Band of Rs. 37400-67000 with Academic Grade Pay (AGP) of Rs. 9000.

Similarly, in terms of this Ministry's letter No. 1-32/2006 U.II/U.I (ii) dated 31.12.2008, incumbents of the posts of Deputy Registrars/Deputy Finance Officers, Deputy Controllers of Examinations were placed in Pay Band of Rs. 37400-67000 with Grade Pay (GP) of Rs. 8700.

3. Accordingly, the Government has decided that in the case of teachers and equivalent cadres, the pre-2006 pensioners mentioned at categories (A) and (B) above who had completed 3 years of service in the pre-revised pay scale of Rs. 12000-420-18300 (and/or the corresponding scale(s) applicable prior to 1.1.1996) shall be placed at the minimum of the Pay Band of Rs. 37400-67000 with AGP of Rs. 9000, for the revision of their pension/family pension with effect from 1.1.2006. Similarly, in the case of non-teaching posts/cadres, the pre-2006 pensioners mentioned at category (C) above who had completed 5 years of service in the pre-revised pay scale of Rs. 12000-420-18300 (and the corresponding scale(s) applicable prior to 1.1.2006) shall be placed at the minimum of the Pay Band of Rs. 37400-67000 with GP of Rs. 8700, for the revision of their pension/family pension with effect from 1.1.2006. The family pension of these pensioners may be revised accordingly.

4. These orders shall apply to only those pensioners/family pensioners who were drawing pension/family pension on 1.1.2006 under the Central Services (Pension) Rules 1972.

5. This issues with the approval of the competent authority.

Yours faithfully,

sd/-

(R. Chakravarty)

Deputy Secretary to the Government of India"

It is the assertion of the petitioner, which he had supported by placing on record various orders issued by the Government of Punjab, collectively attached as Annexure P-13 that the Government of Punjab implemented the clarification given by the Government of India that

employees, who had three years service in the pre-revised pay-scale of ₹3700-5700 are eligible to be granted the pay-scale of ₹37400-67000 w.e.f. 01.01.2006 for fixing their pensionary benefits. The details of the orders granting the said relief have been appended by the petitioner, which has been supplied to him under RTI by the respondents themselves.

In paragraph 9 of the writ petition, the petitioner had given the names of eight employees, who retired starting from the year 1994 till 1997, who had not actually worked in revised pay-scale of ₹12000-18300 for even a single day during their service career, but were granted the benefit of fixation of pay in the pay-scale of ₹37400-67000 plus AGP ₹9000 for fixation of pension w.e.f. 01.01.2006, as claimed by the petitioner in present CWP keeping in view the clarification given by the Government of India dated 15.12.2009. The averment made in paragraph 9 of the petition is as under:-

“That the said decision was adopted by respondent No.1 vide notification dated 22.02.2010 (Annexure P-1). As the petitioner fall in Category-B as per Annexure P-2, having completed almost 7 years in the Selection Grade of Rs.3700-125-5700 (which was pre-revised pay-scale/equivalent to pay-scale of Rs.12000-420-18300) w.e.f. 25.01.1990 to 31.12.1995 and in the revised pay-scale of Rs.12000-420-18300 (Rs.14940/- CAS) w.e.f. 01.01.1996 to 30.09.1998, the petitioner sought grant of the said pay-scale from the respondents for which he submitted a representation with respondent No.2 on 27.01.2014. The petitioner made several representations time and again, the last representation having been sent on 10.09.2015. True copies of the said representations are appended collectively as **Annexure P-12**. In the last representation, the petitioner gives out details of other similarly placed Librarians who had been granted pension in the pay-scale of Rs.37400-67000

plus (+) AGP Rs.9000/-, most of the said employees/persons/Librarians having been retired prior to the petitioner. Names of some of the retirees are reproduced hereunder:-

	Name	Date of retirement
1.	Karamveer Anand	31.08.1994
2.	Mohan Lal	1994
3.	J. Prakash	31.12.1995
4.	Harivnsh Lal	31.10.1995
5.	S.K. Mehta	31.03.1997
6.	J. Kamal	31.07.1995
7.	Kamaljeet Kaur	1995-1996
8.	J.V. Salaria	31.03.1995.

Replies of concerned PIOs pertaining to the said employees obtained by the petitioner under the Right to Information Act (RTI) specifying that the said employees have been granted revised pension as per Pay Grade of Rs.37400-67000 plus AGP Rs.9000/- are appended collectively as **Annexure P-13.**

Keeping in view the above, the petitioner claimed that as he was granted the pay-scale of ₹3700-5700 w.e.f. 25.01.1990 and had three years service in the unrevised pay scale, he is entitled for fixation of his pension w.e.f. 01.01.2006 by taking into consideration the revised pay-scale of ₹37400-67000.

After the notice of motion, the respondents have filed the reply controverting the claim.

In the reply filed, it has been reiterated that though the petitioner was granted the selection grade of ₹3700-5700 w.e.f. 01.01.1990 and the pay-scale of ₹12000-18300 on 01.01.1996, still, his pension cannot be fixed in the pay-scale of ₹37400-67000 w.e.f. 01.01.2006 on the ground that he did not enjoy the pay-scale of ₹12000-

18300 for a period of three years after the same was granted to him on 01.01.1996 as he retired on 30.09.1998. It has been stated in the reply that three years minimum service in the pay-scale of ₹12000-18300 is the requirement for the grant of pay-scale of ₹37400-67000 with AGP of ₹9000/- for fixation of pension w.e.f. 01.01.2006. The respondents have defended their action of non-grant of pay-scale of ₹37400-67000 w.e.f. 01.01.2006 for the fixation of pension to the petitioner.

In reply filed by the respondents, in para 9 respondents have admitted the fact that the employees similarly situated as the petitioner have been allowed the benefit, which the petitioner is seeking in this petition. In respect of the averment of the names given by the petitioner of those employees, who have been given the benefit and are similarly situated, following reply has been given: -

“That in reply to para No.9 of the writ petition it is submitted that the petitioner was given the selection grade (3700-5700) w.e.f. 25.01.1990 and w.e.f. 01.01.1996 under the Career Advancement Scheme he was given the scale of Rs.12000-420-18300 & his salary was fixed @ 14940/-. The petitioner retired from service w.e.f. 30.09.1998 & in this manner he do not fulfill the condition of having completed 3 years of service for revision of pension, which were to be completed on 01.01.1999. As per annexure P-8 the petitioner is admitting himself that he was given the benefit of pay w.e.f. 01.01.1996 at par with similarly situated Librarians working in college and district Libraries. Thus clearly he has not completed the condition of three years as referred to in annexure P-11 appended with the writ petition. As per the same the benefit of the said notification dated 15.12.2009 can be given only to those incumbents who had completed three years of service in pay scale of 12000-420-18300. Thus the petitioner does not qualify the said

condition. Therefore, the present writ is liable to be dismissed.

Remaining para is a matter of record and needs no reply.”

A bare perusal of the above would show that in respect of the details given by the petitioner, the same stands admitted by the respondents being a matter of record.

I have heard counsel for the parties and have gone through the record with their able assistance.

The reliance has been placed by the petitioner on the clarification dated 15.12.2009 given by the Government of India, which has been reproduced above, to claim the pay-scale of ₹37400-67000 w.e.f. 01.01.2006 for fixing his pension.

Counsel for the petitioner contends that it is not necessary for an employee to actually serve in the pay-scale of ₹12000-18300 for a period of three years after the said scale was granted w.e.f. 01.01.1996 and the service rendered in the pre-revised scale of ₹3700-5700 is good enough for the grant of benefit.

Counsel for the petitioner further states that even the service rendered in the same cadre in the pay-scale of ₹3700-5700 revised to ₹12000-18300 has to be taken into account as a valid service for the grant of pay-scale of ₹37400-67000. Counsel for the petitioner further submits that once the Government of India has clarified this very position beyond doubt, the objection, which is being taken by the respondents that the petitioner has less than three years actual service in the pay-scale of ₹12000-18300, is liable to be rejected.

Counsel for the respondents states that reliance which is

being placed by the petitioner on the clarification given by the Government of India dated 15.12.2009 is totally misplaced for the reason that the same has never been adopted by the Government of Punjab and therefore, no relief can be claimed by placing reliance on the said instructions.

I am of the view that the argument, which is being raised by counsel for the petitioner has merit. Once, a clarification has been issued by the Government of India on the same aspect, the same cannot be ignored in the absence of any valid justification. Further, once an employee has worked for a minimum period of three years in pre-revised pay-scale of ₹12000-18300, no justification has been given as to why, the same has to be ignored and only the service rendered in revised pay-scale of ₹12000-18300 for a period of three years, fulfills the eligibility requirement for the grant of pay-scale of ₹37400-67000 for fixation of pension w.e.f. 01.01.2006. In the absence of any cogent reason, the argument raised by counsel for the respondents cannot be accepted that the clarification given by the Government of India is liable to be ignored.

Further, the assertion that the clarification given by the Government of India, vide letter dated 15.12.2009 has not been adopted by the Government of Punjab is also incorrect. Petitioner has attached the orders as Annexure P-13 wherein, the employee who has not worked even for a single day in the revised pay-scale of ₹12000-18300 after 01.01.1996, still has been granted the revised pay-scale of ₹37400-67000 while fixing his pension w.e.f. 01.01.2006. As per one such information supplied to the petitioner under RTI, the names of the four officials have

been given, who have been granted this benefit of revision of their pension keeping in view the pay-scale of ₹37400-67000 w.e.f. 01.01.2006. The said chart is reproduced hereunder: -

Sr. No.	Name & Designation	Date of retirement	Pension Revision from 12000-18300 to 37400-67000
1	Sh. J.V. Salaria (Lec. Physics)	31-03-1995	Implemented
2	Sh. Balbir Singh (Lec. English)	31-01-1997	Implemented
3	Sh. Gurdial Singh Randhawa (Lec. Geology)	28-02-1997	Implemented
4	Sh. Harcharan Singh Bedi (Lec. Geology)	31.12.1997	Implemented

A bare perusal of above chart would show that Mr. J.V. Salaria, retired on 31.03.1995 and hence, it cannot be said that he worked even for a single day actually drawing the pay-scale of ₹12000-18300, but as he had more than three years service in the pre-revised scale of ₹12000-18300 i.e. in the scale of ₹3700-5700, the benefit has been extended to him. Similar is the case of other officials, which makes it clear that they had not worked for an actual period of three years actually drawing the revised pay-scale of ₹12000-18300 after 01.01.1996. These averments have not been denied by the respondents. Not only this, averment made in para 9 of the petition, reproduced hereinbefore, wherein the details of the employees who are similarly situated and have been granted relief, has also not been denied by the respondents in their reply.

In view of the above factual position, it cannot be said that the clarification given by the Government of India on 15.12.2009 was never adopted by the respondents. It is a deemed adoption by the State of Punjab by giving the benefit as clarified by the Government of India to its

employees. Therefore, for all intents and purposes, the said clarification stood adopted by the Government of Punjab. Not only adopted, but the benefit given to the similarly situated candidates, as the petitioner, who though had served for more than three years in the unrevised pay-scale of ₹12000-18300 i.e. ₹3700-5700, but not actual for three years the revised pay-scale of ₹12000-18300 while they were in service. Therefore, once the similarly situated personnel have already been extended the benefit, the petitioner is also entitled for the same.

This Court had an occasion to consider a similar matter in respect of the State of Haryana. The State of Haryana granted the benefit to its employees by taking into consideration the service in the pre-revised pay-scale of ₹3700-5700 while computing three years service and fixed their pension in the revised pay-scale of ₹37400-67000 w.e.f. 01.01.2006. Later on, the Government of Haryana was of the same view, as of the State of Punjab in the present case, that an employee needs actual three year's service in the pay-scale of ₹12000-18300 after 01.01.1996 in order to become eligible for the grant of pay-scale of ₹37400-67000 w.e.f. 01.01.2006 for fixing pension in the said scale. Keeping in view the said, the relief already granted to the employees, was withdrawn by the State of Haryana, which action was impugned before this Court. This Court, decided CWP No.19283 of 2010 and other connected petitions on 25.07.2012 and by a detailed order, a controversy was sorted out by taking into consideration the clarification given by the Government of India dated 15.12.2009. After detailed discussion, this Court held as follows: -

“The opinion of this Court finds support from the letter dated 15.12.2009 issued by the Government of India wherein while dealing with the revision of pension of pre-2006 pensioners/family pensioners, it has been clearly specified therein that Readers/Lecturers (Selection Grade) and Deputy Librarian (Selection Grade)/College Librarian (Selection Grade) who had completed 3 years of service in the pay-scale of Rs.12000-18300/- and/or the corresponding pay-scale(s) applicable prior to 1.1.1996 shall be placed in the minimum of the Pay Band of ₹37400-67000 with AGP of Rs.9000/- for revision of the pension/family pension w.e.f. 1.1.2006 which has been reiterated by the Government of India in its letter dated 1.7.2010 wherein it has been further stated that it has been asserted that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay-scale from which the petitioner had retired. These letters although not adopted by the Government of Haryana as such but are in consonance with the decision of the Government of Haryana which is not only just and equitable but flows from Government of India's letter dated 31.12.2008 which has been duly adopted by the Government of Haryana vide letter dated 20.8.2009. Since the petitioners admittedly had completed 3 years of service in the pre-revised scale of Rs.12000-18300, prior to their retirement, although before 1.1.2006, they are held entitled to the fixation of pension by placing them in the minimum pay band of Rs.37400-67000 with AGP of Rs.9000 or revision of their pension/family pension w.e.f.1.1.2006.

In view of the above, writ petitions are allowed; impugned order dated 7.9.2010 passed by the Higher Education Commissioner, Haryana, cannot sustain and is hereby quashed. The consequential benefits, which would include the amount which was recovered by the banks in compliance with impugned order dated 7.9.2010, be released to the petitioners within a period of two months from the date of receipt of certified copy of this order.”

A bare perusal of the above would show that this Court held that in case the employees have completed three years service in the pre-revised scale of ₹12000-18300 prior to the retirement i.e. in the scale of ₹3700-5700, they are entitled for the pay band of ₹37400-67000 plus AGP of ₹9000/- for fixation of their pension w.e.f. 01.01.2006. This is the same relief, which the petitioner is praying for in the present writ petition and is the same relief, which the respondents themselves have given to number of persons, the details of whom have already been mentioned in the preceding paragraph of this order. Therefore, the case of the petitioner for the grant of relief is squarely covered by the above-said judgment.

Counsel for the respondents states that the employees whose details have been mentioned above were granted the benefit wrongly and in contravention of the instructions issued by the Government of Punjab, according to which, only an employee with three years actual service in the pay-scale of ₹12000-18300 is required for fixing pension in the pay scale of ₹37400-67000. Nothing has been pointed by counsel for the respondents as to what action the respondents have taken in respect of those employees to whom the similar benefit has already been extended by the Government of Punjab. Mere statement will not suffice that the employees were given the benefit wrongly/contrary to the instructions. It is not the one employee, who has been extended this benefit. The details of the employees have only been given by way of illustration and there could be number of employees in the other departments also, who were granted the same benefit. Therefore, the arguments raised on behalf of the

respondents that no benefit can be given to the petitioners on the basis of relief wrongly granted to the others, cannot be accepted.

In view of the above, the present writ petition is allowed. The respondents are directed to fix the pension of the petitioners in the pay band of ₹37400-67000 + AGP of ₹9000/- w.e.f. 01.01.2006.

Let the calculation of the revised pension be done by the respondents within a period of two months from the date of receipt of certified copy of this order. However, the petitioner shall be entitled for arrears for three years and two months from the date of filing of the writ petition.

(HARSIMRAN SINGH SETHI)
JUDGE

January 24, 2019
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes