IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-8096-2014

Brij Lal Jindal ..Petitioner

Versus

State of Punjab and others .....Respondents

2. CWP-19717-2016

Bhajan Singh ..Petitioner

Versus

State of Punjab and others .....Respondents

Date of decision: - 28.03.2019

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Parveen Kumar Garg, Advocate
for the petitioner in CWP-8096-2014.

Mr. Nitin Kaushal, Advocate
for the petitioner in CWP-19717-2016.

Ms. Deepali Puri Sandhu, Additional Advocate General, Pb.

Mr. Vikas Chatrath, Advocate with
Ms. Jasleen Kaur and Ms. Shilpa, Advocates
for respondent No.4-Bank.

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<u>HARSIMRAN SINGH SETHI, J. (ORAL)</u>

By this common order, above-mentioned two Civil Writ Petitions are being disposed of as they involve the same question of law and have similar facts. For the sake of convenience, the facts are being extracted from CWP No.8096-2014 titled 'Brij Lal Jindal Vs. State of Punjab and others'.

Petitioner in CWP No.8096-2014 joined the service in PCMS cadre on 01.01.1956. In the year 1981, he sought premature retirement from service and he was accordingly retired on 31.08.1981. Vide notification dated 19.05.1988, the pay-scales were revised by the 4th Pay Commission and the pay-scales of the post of Civil Surgeon, which was being held by the petitioner, at the time of his retirement, was revised to 12000-15500 and 14300-18150 after 14 years of regular service. Thereafter, the State Government took a policy decision in the year 2005, vide notification dated 25.08.2005 that the employees, who retired prior to 01.01.1986 are also entitled to the basic pension, which is not less than 50% of the revised pay scale of the post, which they were holding at the time of their retirement and the said benefit was admissible to them w.e.f. 01.01.1996.

Keeping in view the above-said notification, the pension of the petitioner was fixed by the respondents. While fixing the pension, there was some disputes as to whether, the Non Practicing Allowance (for short 'NPA') was to be included into the scale for computing the pension or not. Further, in view of the representation(s) filed by various authorities, ultimately, the pension of the employees, who retired prior to 01.01.1986, was fixed by granting them the pension. The revised pension of the petitioner was fixed vide order dated 31.01.2011 (Annexure P-5).

Counsel for the petitioner states that the petitioner continued getting the same pension till March, 2014, when an order was passed on 26.03.2014 revising the pension of the petitioner. The said act, according to counsel for the petitioner, was taken without following the rules of natural justice as no opportunity of hearing was afforded to the petitioner before refixation of his pay and consequent reduction of the pension. The said order dated 26.03.2014, is under challenge in the present writ petition.

Upon notice of motion, reply has been filed by the respondents-State.

In the reply, the respondents-State stated that the pension of the petitioner was wrongly revised w.e.f. 01.01.2006 as the correct pension for which the petitioner was entitled for was ₹11286/- instead of ₹20,560/-, which was being paid to him wrongly. This rectification was done keeping in view the audit objection taken by the audit department. The relevant portion of the reply is as under: -

> "7. That in reply to the contents of Para No.7, it is submitted that a copy of legal notice dated 10-4-2008 was received in this office and copy of the same notice was also endorsed to the Accountant General (A&E) Punjab Chandigarh (Respondent No.3). The petitioner was duly informed by the Accountant General, Punjab Chandigarh vide their letter no.PEN-8/B-15/84-85/2634-35 dated 4-6-2008 (R-1). It was stated that the petitioner was drawing basic pension of ₹5405/- w.e.f. 1-1-1996, but his revised pension was worked out to ₹5364/- as per Govt. Letter No.1/7/98-3FPPC/6884 dated 25-8-2005 i.e. 50% of minimum of pay scale 10025-15100 as his qualifying service was 59 half yearly and NPA was not to be counted for revision w.e.f. 1-1-1996. Copy of the same was also endorsed to the petitioner. Thus the petitioner was duly informed about his legal notice at Annexure P-4. In the light of these facts, the petitioner is not entitled for further revision of his

pension w.e.f. 1-1-1996 as per Punjab Govt. notification No.1/7/98-3FPPC/6884 dated 25-8-2005 (P-2).

8. That the contents of para No.8 are admitted. It is, however submitted that the pension @ ₹20560/- was revised wrongly due to utter negligence of the dealing officials w.e.f. 1.1.2006 instead of ₹11286/-. The petitioner was never entitled to the alleged amount of ₹20560/- per month as basic pension in accordance with the law and rules applicable in-respect thereof. Thus the wrong fixation that occurred has been rectified vide letter No.GAD(4)-14/362, dated 26.3.2014 (Annexure P-7) by respondent No.2 and the copy was also endorsed to the petitioner. It is, further, submitted that the dealing officials/officers namely Sh. Ashok Kumar Bhatia, Joint Controller, Finance & Accounts (now retired), Sh. Karnail Singh, Section Officer, Sh. Brij Bhushan, Superintendent (now retired), Smt. Swaran Kaur, Senior Assistant (now retired) due to whose utterly negligent action a huge loss amounting to ₹15,04,124/- was inflicted on the state exchequer have been charge-sheeted under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 by the Government i.e. Finance Department and Health Department. Further on the basis of this letter SBI Centralised Pension Processing Centre, Sector 5, Panchkula which is pension disbursing Bank to the petitioner issued notice to him vide letter No. CPPC/AKM/204 dated 27.5.14 through registered post stating therein that his pension works out at ₹11286/- w.e.f. 1.1.2006 in place of ₹20560/- already fixed. It was mentioned that the over payment amount to ₹15,04,124/- has been paid to him. It was also stated to refund the excess payment paid to him. A copy of the recovery sheet was also enclosed with the letter. Thus the petitioner was been made fully aware about his reduction in pension and excess amount due to him. The said notice stated that in case the petitioner does not agree with revised pension and has some discrepancy, he may advise the pension paying branch for necessary correction.

It is also submitted that the pensioner was given a notice vide letter No.GAD(4)Pb-14/953, dated 7.8.14 and was asked to explain within 20 days as to why the excess amount paid to him may not be recovered. The petitioner replied on 14.8.2014 that he may be given 2-3 weeks time to him as he was not feeling well so that he could present his case properly. Keeping in view the request of the petitioner he was given next date of hearing on 29.8.2014 vide letter dated 19.8.14. The petitioner replied on 27.8.14 that he is 85 year old and suffering from HT/DM and under-gone cardiac bypass surgery and is not keeping well and not able to travel. He further stated that he has already filed CWP-8096 of 2014 in the Hon'ble High Court in the matter and whatever he has stated in that should be treated as written submission for the purpose of personal hearing."

Present case came up for hearing on 24.10.2016, the State was directed to file an affidavit as to how the pay of the petitioner was fixed w.e.f. 01.01.1996 and whether he was entitled for the benefit of higher pay-scale after completing 14 years of service or not.

In pursuance to the said direction given by this Court, an affidavit of Dr. Jaspal Kaur, Director Health and Family Welfare, Punjab, dated 07.03.2018, was filed. Alongwith with the affidavit, special audit report (Annexure R-1) was also annexed. In paragraph 3 of the affidavit, the following was stated: -

"3. It is submitted that audit report from Internal Audit, Department of Finance, have been received in the Department of Health & Family Welfare Punjab on 22.11.2017. It is clearly mentioned in the report para no.4 that Ashok Kumar Bhatia, Joint Controller (Finance & Accounts) now retired from Health & Family Welfare Punjab, Chandigarh. That during his tenure in Health department he issued certificates to the bankers of the

> pensioners regarding the category of doctors. A true translated copy of the Audit Report dated 14.11.2017 is attached herewith as Annexure R-1."

In the said audit report, which was annexed alongwith the affidavit, surprisingly the State had taken a U-turn saying that no discrepancy was found in the fixation of the pension of the petitioner initially which was fixed @ ₹20560/-

Again, this petition came up for hearing before this Court on 05.02.2019, on which date, the following order was passed: -

> "Counsel for the petitioner states that in view of the affidavit filed by respondents No.1 and 2 on 07.03.2018, the claim of the petitioners has been admitted by the respondents in paragraph 3 of the said affidavit read with the audit report dated 14.11.2017 (Annexure R-1).
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> The above-said affidavit is totally cryptic and it is not clear as to whether as per the audit report, which has been attached as Annexure R-1), the petitioners were entitled for the benefits, which were initially given to them in the year 2011 and were withdrawn later on in the year 2014.
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> Let a specific affidavit be filed accepting or rejecting the claim in clear terms by respondents No.1 and 2-Department.
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> Let affidavit be filed by the next date of hearing positively.
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> Adjourned to 28.02.2019.
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> A photocopy of this order be placed on the file of connected case."

In pursuance to the said order, an affidavit of Dr. Jaspal Kaur, Director, Health and Family Welfare, Punjab, has been filed on behalf of respondents No.1 and 2 today in the Court and the same is taken on record. A copy thereof has been supplied to counsel for the petitioner.

In the said affidavit, the respondents-State stated that in view of the audit report dated 14.11.2017, it has been found that the fixation of the pension of the petitioner at the initial stage @ ₹20,560/- was correct and the refixation of the same was not correct and all the recoveries, which has been done from the petitioner, will be refunded and the petitioner will be paid the arrears by taking into consideration his pension as ₹20560/-. The relevant portion of the affidavit is as under: -

> "3. That it is submitted that Audit report from Internal Audit, Department of Finance, has been received in the Department of Health & Family Welfare Punjab (Annexed R-1). It is clearly mentioned in the report para no.4 that Ashok Kumar Bhatia, Joint Controller (Finance & Accounts) now retired from Health and Family Welfare, Punjab Chandigarh during his tenure in Health department he issued certificates to the bankers regarding the corresponding scales w.e.f. 01.01.2006 of the pensioners regarding the category of doctors.
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> According to the report from Internal Audit all of these certificates are as per the instructions issued from time to time by the Government of Punjab vide notification no. 3/13/09-3FPPC/885 dated 17.08.2009, Letter No.3/39/09/-3FPPC/201 dated 22.02.2010 (Annexed P-1), No.1/7/98-1FP3/8709 dated 16.07.1998, No.1/7/98-1FP3/8825 dated 18.08.1998, Letter No.01/07/98-3FPPC/6884 dated 25.08.2005 (Annexed P-2), and Finance Department letter No.13/06-1FPPC/4147 dated 07.06.2007 (Annexed P-3).
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> 4. That it is submitted that above mentioned Audit report dated 14.11.2017 submitted by the Internal Audit, (Department of Finance), the answering respondent will comply the same and recoveries of the concerned pensioner/petitioner will be refunded to them. Similarly pension revision of the petitioner/pensioner will be revised accordingly. The aforementioned compliance will be done

within time frame of four months."

In view of the above, the grievance which has been raised by the petitioner(s) to the impugned orders challenging the revision of their pay stands redressed by the respondents themselves.

Counsel for the petitioner states that the respondents have recovered the amount on refixation of the pension of the petitioner, which is now been refunded by the respondents in the year 2019. The impugned order of recovery was passed in the year 2014. From 2014 onwards, the petitioner is being paid less pension in view of the impugned order which the respondents passed wrongly interpreting the audit report, which never asked the State to revise the pension of the petitioner as was done by them vide impugned order.

Counsel for the petitioner states that once the respondents themselves have found that the impugned order refixing the pension of the petitioner was wrongly passed in the year 2014 and the petitioner has suffered due to the inaction on the part of the respondents, the petitioner is entitled for the interest also on the arrears, which the respondents are responsible to give the petitioner on restoring the benefit of pension to him amounting to ₹20,560/-.

Counsel for the respondents-State, on the other hand, states that the action was taken in a bona-fide manner and on realizing the mistake, immediately the benefits are being restored to the petitioner and therefore, the claim of the petitioner for the grant of interest is not valid one.

In respect of the claim of the petitioner(s) for the grant of interest, I am of the view that once the respondents have found that the impugned orders reducing the pension of the petitioner(s) was not justified and was passed on a mistaken belief, the respondents-State are liable to pay the interest not only on the amount, which they recovered from the petitioner(s) on account of refixation of the pension, but also on the arrears, which they are going to give to the petitioner(s) in view of the affidavit filed today restoring the benefit to the petitioner(s). Further, from the affidavit filed today in the Court, it is clear that the Audit Report was clarified in the year 2017. Despite the fact that the matter got clarified as far back as in 2017, the respondents had taken more than 1½ years to implement the same till this Court intervene to seek the stand of the respondents.

This Court in the case of **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355,** had held that an employee will be entitled for the interest of an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

> "The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the

custody of the State and was being used by it."

In the present case, not only the amount has been retained by the respondents by wrongly refixing the pension but even the recovery was done for the amount, which was already paid to the petitioner(s). The case of the petitioner(s) for the grant of interest is squarely covered by the above-said judgment. Hence, petitioner(s) are held entitled for interest @9% per annum in respect of the amount, which was not only recovered from them, but also on the amount of arrears, which the respondents are now going to pay to the petitioners on restoring their original pension. Petitioner(s) will be entitled for the interest till the payments are released to them.

At this stage, counsel for the respondents-State states that though a decision has been taken to restore the benefit to the petitioner(s) as stated in the affidavit filed in the Court today, but the respondents needs four months time for granting the said benefit to them.

As prayed by the respondents-State, a period of four months from the date of receipt of certified copy of this order is granted to the respondents to implement their affidavit by restoring all the benefits to the petitioner(s) as undertaken by them including the refund of the recovered amount as well as for the payment of arrears alongwith interest as given by this order.

Counsel for the petitioner in CWP No.8096 of 2014 states that petitioner has some other grievances also with regard to the grant of pension from a particular date and prays that a liberty be granted to the petitioner to approach the respondents for the said relief.

Petitioner shall at liberty to approach the respondents by availing appropriate method in this regard.

In view of the above, present writ petitions are allowed.

(HARSIMRAN SINGH SETHI)
JUDGE

March 28, 2019
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Whether reasoned/speaking? Yes
Whether reportable? Yes