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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29th January, 2019
Decided on: 12th February, 2019

\+ **LPA 322/2018 & CM No. 24261/2018 (stay)**

NARINDER PAUL KAUSHIK .... Appellant

Through: Mr. A.K. Behera, Advocate with Mr. A.P. Singh, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Ruchira Gupta, Advocate with Ms. Mona Sinha, Advocate.

\+ **LPA 345/2018**

HARENDRA MOHAN VYAS ..... Appellant

Through: Mr. A.K. Behera, Advocate with Mr. A.P. Singh, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Ruchira Gupta, Advocate with Ms. Mona Sinha, Advocate.

\+ **LPA 393/2018**

SUBHASH GUPTA ..... Appellant

Through: Mr. A.K. Behera, Advocate with Mr. A.P. Singh, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Ruchira Gupta, Advocate with

Ms. Mona Sinha, Advocate.

\+ **LPA 397/2018**

DR. VIKRAM KUMAR DABAS ..... Appellant

Through: Mr. A.K. Behera, Advocate with Mr. A.P. Singh, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Ruchira Gupta, Advocate with Ms. Mona Sinha, Advocate.

\+ **LPA 333/2018**

NAINA BAKSHI ..... Appellant

Through: Mr. A.K. Behera, Advocate with Mr. A.P. Singh, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Ruchira Gupta, Advocate with Ms. Mona Sinha, Advocate.

\+ **LPA 334/2018**

O.P.GUPTA ..... Appellant

Through: Mr. A.K. Behera, Advocate with Mr. A.P. Singh, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Ruchira Gupta, Advocate with Ms. Mona Sinha, Advocate.

\+ **LPA 335/2018**

S.S.SIDHU ..... Appellant

Through: Mr. A.K. Behera, Advocate with Mr. A.P. Singh, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Ruchira Gupta, Advocate with Ms. Mona Sinha, Advocate.

\+ **LPA 338/2018**

MANU BALA SHARMA ..... Appellant

Through: Mr. A.K. Behera, Advocate with Mr. A.P. Singh, Advocate.

versus

GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Ms. Ruchira Gupta, Advocate with Ms. Mona Sinha, Advocate.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These appeals are directed against the common judgment dated 11th May, 2018 passed by the learned Single Judge dismissing the writ petitions filed by the Appellants as regards the interpretation of the expression 'last pay drawn' found in the proviso to both Rule 3(1) (b) and Rule 6 (1) (b) of the Delhi Consumer Protection Rules, 1987 (hereafter 'the Rules').

Issue involved

2. Each of the Appellants was a member of either the State Consumer Disputes Redressal Commission ('SCDRC') or the District Consumer Disputes Redressal Forum ('DCDRF') in Delhi. These appeals essentially involve a question of law concerning the interpretation of the above expression in the proviso to both Rule 3 (1) (b) (insofar as it relates to Members of the DCDRF) and Rule 6 (1) (b) of the Rules (insofar as it relates to Members of the SCDRC).

Facts in LPA 322 of 2018

3. Inasmuch as a common question is involved in each appeal, the facts in each of them need not be discussed. Illustratively, the facts of one of the cases, LPA 322 of 2018, are set out hereafter.

4. The Appellant in LPA No.322 of 2018, Shri Narinder Paul Kaushik, superannuated from the Delhi Higher Judicial Service on 30^{th} April, 2013. At the time of his retirement he was on deputation as the Presiding Officer of the Delhi School Tribunal ('DST'). On 20^{th} June, 2013 the Department of Food, Supply and Consumer Affairs, Government of the National Capital Territory of Delhi (GNCTD) issued an advertisement for the post of Member (Judicial) of the DSCDRC. On 11^{th} October, 2013 an offer was made to Shri Kaushik for the post of Member (Judicial) in the DSCDRC. He accepted the offer and joined that post on 19^{th} November, 2013. In terms of the offer of appointment, Shri Kaushik was required to exercise an option to receive a consolidated salary of Rs.30,000/- per month or 'last pay drawn minus pension'. On 16^{th} December, 2013 Shri Kaushik exercised the option

of receiving the salary on the basis of ‘last pay drawn minus pension’.

5. The question as to what constituted ‘last pay drawn’ as occurring in the proviso to Rule 6 (1) (b) of the Rules was referred to the Law Department of the GNCTD on 26th June 2014. On 7th July, 2014 Shri Kaushik received a letter from the Department of Food, Supply and Consumer Affairs (Respondent No.2) that the Finance (Accounts Department) of the GNCTD had opined that he was not entitled to allowances of any type. On 11th August, 2014 in terms of the above opinion of the Finance Department, the remuneration payable to Shri Kaushik was fixed by reducing the amount of pension from his last ‘basic pay’. The last basic pay was Rs. 76,450/- and the pension was Rs. 38,225/-. Accordingly, his remuneration was fixed at Rs. 76,450-38,225/- i.e. Rs.38,225/-.

Orders of this Court

6. Shri Kaushik initially filed WP (C) No. 5270 of 2014 in this Court. This was disposed of by this Court on 20th August, 2014 directing the Respondents to examine his representation dated 24th July, 2014. On 19th January, 2015 the Respondents rejected the representation. On 19th March, 2015 Shri Kaushik filed WP (C) No. 3134 of 2015 in this Court.

7. Shri Kaushik filed CM No. 8968 of 2015 in the said writ petition seeking an early hearing. The said application was dismissed on 18th May, 2015. Shri Kaushik then filed LPA No. 337 of 2015. The said appeal was heard by the Division Bench (DB) on 25th May, 2015. *Inter-alia* while noting the issues involved in the writ petition, the DB by an interim order passed on that date

directed that:

> "Pending further consideration in the writ petition, it is directed that the respondents shall calculate the salary which shall be entitled remuneration at the rate of 'Last Pay Drawn minus Pension'. The last pay drawn would include the dearness allowance component. This payment and its receipt shall be without prejudice to the respective rights and contentions of both parties. The writ court would pass appropriate orders for restitution or payment, if any, upon final consideration".

8. On 11th August, 2015 the GNCTD issued an order fixing Shri Kaushik's salary in terms of the aforementioned order and clarified that it would be subject to the final outcome of W.P. (C) No. 3134 of 2015 and LPA No.337 of 2015 and subject to an undertaking by Shri Kaushik that he would refund the excess amount, if any payable, after the disposal of the petition.

9. LPA No. 337/2015 came up for hearing next on 16th October, 2015. The DB dealt with CM No. 23944 of 2015 filed by the GNCTD seeking clarification of the earlier order dated 8th September, 2015. The DB passed the following order in the said application:

> "1. Having regard to the nature of the application, the learned counsels have been orally heard in this application.
>
> 2. Our attention is drawn to a Gazette Notification dated 17th September, 2013 (page 105) by the Lt. Governor of the National Capital Territory of Delhi whereby an amendment was effected notifying the Delhi Consumer Protection (Amendment) Rules 2013. By this notification, the following amendment was effected in the principal rules, in rule 6 in clause (b) of sub rule (1);-
>
> (a) for the word "thirteen thousand rupees" the

words "thirty thousand rupees shall be substituted;

(b) after proviso, the following proviso shall be inserted namely: "Provided further that the retired government servant will be given option to receive consolidated remuneration or last pay drawn minus pension".

3. Prima facie, there appears to be substance in the contention of the appellant that the person joining the services at consumer forum would be entitled to the entire pay and allowances which he was receiving in his last services minus the pension.

4. The matter is pending consideration in the writ petition before the learned Single Judge. This application is filed on a mis-reading of our order dated 8th September, 2015. On that date, we had clearly noted that the amounts in terms of communication dated 6th April, 2015 (at page 33 of the present record) are paid to the petitioner. Thus, the payment to the petitioner was not confined only to the dearness allowance. Needless to say the pension paid to the petitioner was to be deducted from the amount so computed.

5. Even at the cost of repetition, we reiterate, what has been clearly directed by us on 25th May, 2015. It has been directed that the writ court would pass an appropriate order for restitution or payment of the balance if any, found due and payable to the appellant, upon final consideration. We further clarify that the payment by the respondents and its acceptance by the appellant shall be without prejudice to the rights and contentions of the parties.

6. The respondent shall ensure that all arrears in terms of our orders dated 25th May, 2015 and 8th September, 2015 are cleared within a period of four weeks from today. The

appellant in future shall also abide by these orders. This arrangement will continue during the pendency of the writ petition.

7. This application is disposed of in the above terms."

10. Aggrieved by the above order, the GNCTD filed Special Leave Petition in the Supreme Court of India which came to be dismissed on 23rd October, 2017. Thereafter the writ petition was finally heard along with a batch of similar writ petitions and disposed of by the common impugned order by the learned Single Judge.

Impugned order of the Single Judge

11. The learned Single Judge held that amended Rule 3(1)(b) of the Rules only talked of consolidated honorarium or 'last pay drawn minus pension' and was silent on the aspect of allowances and other perquisites. The same rule expressly granted allowances and other perquisites to the President of the DSCDRC and there was a conscious denial of the same benefit of 'allowances and other perquisites to members.' Inasmuch as no challenge to Rule 3(1) (b) was preferred, the reference to the communication dated 18th July, 2007 was "out of context, for the reason that the concerned officer was sent as Presiding Officer of the Delhi School Tribunal on deputation and it was not a case of re-employment upon retirement." Accordingly, the learned Single Judge granted liberty to the Appellant and other similarly placed Petitioners to challenge Rule 3(1) (b) of the Rules as only thereafter could the grievance of the Petitioners be addressed.

Submissions of counsel

12. This Court has heard learned counsel for the parties. On behalf of the Appellants, it is contended that the matter really involved interpretation of the expression 'last pay drawn' in Rule 6(1)(b) of the Rules and not its constitutional validity. Consequently, the Appellants were not called upon to challenge the Rule itself. It is contended that restricting the expression 'last pay drawn' in the case of the members of the DSCDRC to 'last basic pay drawn' was unreasonable and irrational. The said expression could not be different or be applied differently in different institutions/judicial bodies. The principle of 'last pay drawn minus pension' was also prevalent in the National Consumer Disputes Redressal Commission ('NCDRC') and the Delhi School Tribunal ('DST') and there it was not solely calculated on the basis of 'basic pay' but also included allowances. Illustratively some of the pay slips issued to the members of the NCDRC have been enclosed with the petition. It is further submitted that in service jurisprudence, 'pay' is consideration/compensation which is paid by the employer to the employee in lieu of or in recognition of the services rendered by the latter. It is divided under various heads, such as basic pay, dearness allowance (DA), house rent allowance (HRA) etc. which are all essential ingredients of 'pay' and together comprise what the term signifies. To support the above submission, the Appellants have relied on the decision in ***Bank of India v. Subbaiah (2003) 11 SCC 646***.

13. Counsel for the Respondents on the other hand reiterated that in the same rules governing the terms and conditions of the President and members of the SCDRC, the President is granted allowances and perquisites whereas

the members are not. A conscious distinction was therefore made between what was payable to the President on the one hand and the members of the SCDRC on the other. It was accordingly contended that the expression 'last pay drawn' in so far as it concerned the members of the DSCDRC was not intended to include anything more than the 'basic pay'.

Analysis and reasons

14. Rules 3 and Rule 6 of the Rules speak of the salary and other allowances and terms and conditions of the President and Members of the DCDRF and SCDRC respectively. The Rules have been amended from time to time. The last such amendment was dated 17th September, 2013 which *inter alia* inserted a proviso to both Rule 3 (1) (b) and 6 (1) (b) and gave an option to a retired Government servant who serves as Member of either the DCDRF or SCDRC to receive either a consolidated remuneration or 'last pay drawn minus pension'. Rules 3 and 6 of the Rules, after amendment on 17th September 2013, read as under:

> "**Rule 3** Salary and other allowances and terms and conditions of the President and members of the District Forum.
>
> (l) (a) The President of the District Forum shall receive the salary, allowances and other perquisites as are admissible to a sitting Judge of the District Court, if appointed on whole time basis, or an honorarium of two hundred rupees per day, if appointed on part time basis.
>
> 1 (b) A Member of the District Forum, when appointed on whole time basis, shall receive a consolidated honorarium of twenty-five thousand rupees per month, and, if appointed on part time basis, a consolidated honorarium of one hundred and fifty rupees per day of sitting.

Provided further that the retired Government Servant will be given option to receive consolidated remuneration or last pay drawn minus pension.

Rule 6 Salary and other allowances and terms and conditions of the President and members of the State Commission.

(1) (a) The President of the State commission shall receive the Salary, allowances and other perquisites, as are admissible to a sitting Judge of the high Court, if appointed on whole time basis, or an honorarium of three hundred and fifty rupees per day, if appointed on part time basis.

1 (b) A Member of the State Commission, when appointed on whole time basis, shall receive a consolidated honorarium of thirty thousand rupees per month, and, if appointed on part time basis, a consolidated honorarium of five hundred rupees per day of sitting.

Provided further that the retired Government Servant will be given option to receive consolidated remuneration or last pay drawn minus pension.

15. There is a distinction in the wording of Rule 3 (1) (a) which deals with payment to the President and Rule 3 (1) (b) which deals with payment to the Members. Rule 3 (1) (a) uses the expression "salary, allowances and other perquisites as are admissible' whereas Rule 3 (1) (b) uses the expression "consolidated remuneration or last pay drawn minus pension". There is an identical distinction in the expressions used in the corresponding Rules 6 (1) (a) and 6 (1) (b) for the President and Members of the SCDRC respectively. It is in this context the question arises whether the expression "last pay" includes not just the 'basic' pay but also the allowances that the government

servant was receiving prior to being a Member of either the DCDRF or SCDRC?

16. The above Rules can be compared with Rule 11 deals with salaries and other allowances of the President and members of the NCDRC. The relevant portion of Rule 11 reads as under:

> "11. Salaries, honorarium and other allowances of the President and members of the National Commission
>
> (1) The President of the National Commission shall be entitled to salary, allowances and other perquisites as are available to a sitting judge of the Supreme Court.
>
> (1A) The other members of the National Commission appointed on whole-time basis shall be entitled to the following honorarium and other allowances with effect from the 1st day of April, 2006, namely:
>
> (a) The members shall be paid twenty-three thousand rupees per month by way of honorarium:
>
> Provided that the members, who are retired Judges of High Courts or retired Secretaries to the Government of India shall have the option to either receive consolidated honorarium of twenty-three thousand rupee per month or receive remuneration of 'last pay drawn **less** pension'.

17. It will thus be seen that as far as the Members of the NCDRC are concerned sub-rule (1A) uses the expression 'honorarium and other allowances' but the proviso to Rule 11 (1A) (a) uses more or less the same expression as found in the proviso to Rule 3 (1) (b) viz., 'last pay drawn less pension.' There is only a marginal difference in the expression in the word 'minus' occurring in the provisos to Rules 3 (1) (b) and 6 (1) (b) is

replaced by the word ‘less’ in the provision to Rule 11 (1A) (a). The admitted position is that when it comes to the Members of the NCDRC the Government of India has interpreted the expression ‘last pay drawn less pension’ in a manner that entitles members of the NCDRC to not just the basic pay but Dearness Allowance and House Rent Allowance etc. This is borne out by the copies of the payslips of the Members of the NCDRC which has not been denied by the Respondents.

18. From the documents placed on record, it appears that even within the GNCTD, there was a divergence of views of two Departments, one by the Department of Law and Justice, which supported the view that the expression ‘last pay’ would include not just ‘basic pay’ but also allowances, and the other by the Department of F&S & Consumer Affairs which maintained that it would be just ‘basic pay’ and nothing more. Therefore, it was not even among the Respondents a ‘cut and dried’ position, free from ambiguity.

19. In the written submissions filed, the Appellants have sought to demonstrate the odd situation that would emerge if the viewpoint of the Respondents, that ‘last pay drawn’ would not include allowances, were to be accepted. In the case of Shri Kaushik, it is pointed out, that his last basic pay was Rs.76,450/- whereas his pension works out to Rs.1,05,000. If the pension has to be subtracted from the basic pay, he might have to pay the difference to the GNCTD. Apparently, Appellants Shri O.P. Gupta, Shri S. S. Sidhu and Ms. Naina Bakshi might have to likewise pay the GNCTD the difference. The Appellants are, therefore, right in their contention that the

stand of the GNCTD, as expressed by its Department of F&S & Consumer Affairs, is unworkable.

20. Turning to the decisions relied upon by the Appellants, in ***S.K. Tandon v. GNCTD*** (decision dated 12th May, 2010 in WP (C) No. 1416/2009) it was held that the President of the DCDRF would be entitled to allowances and perquisites he was entitled to while holding the post of District Judge. In ***Delhi School and State Transport Appellate Tribunal Bar Association v. The Lt. Governor of Delhi*** (decision dated 28th January, 2015 of the Division Bench of this Court in WP (C) No.65/2015) the issue concerned the salary to be paid to the Presiding Officer of the DST. This Court was of the view that, the incumbent who was a judicial officer, should till the terms and conditions of service are settled, be paid by accounting for not only the basic pay but other allowances including dearness allowance (DA). This was not a 'final order'. The orders passed by the DB on 25th May and 8th September 2015 in LPA No. 337 of 2015, the appeal of Shri Kaushik at the interlocutory stage, took a *prima facie* view that the expression 'last pay' would mean the basic pay plus DA.

21.1 In ***Bank of India v. Subbaiah*** (*supra*) one of the questions that arose was about protecting the pay last drawn by ex-servicemen who were re-employed in the Bank and in that context, it was explained that :

> "15....in service jurisprudence the expression 'pay' and 'pay scale' are conceptually different connotations. Pay is essentially a consideration for the services rendered by an employee and is the remuneration which is payable to him. Remuneration is recurring payment for services rendered during the tenure of employment.."

21.2 It was further observed in para 16 as under:

> "16. As per *Concise Oxford Dictionary*, 8th Edn. (1990), the word 'pay' in its ordinary significance in relation to service means 'to give what is due for services done'. However, in the service jurisprudence, the expression 'pay' has technical connotation of its own. Fundamental Rule 9 (21) (a) throws some light on this aspect. The definition itself is as follows:
>
> 9.(21)(a) Pay means the amount drawn monthly by a government servant as—
>
> i. the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and
>
> ii. overseas pay, special pay and personal pay, and
>
> any other emoluments which may be specially classed by the President."

22. Thus it is seen that the expression 'pay' has not been construed narrowly to mean just the 'basic pay' but even the allowances. In the present case, the issue is one of interpretation of the expression 'last pay' occurring in the proviso to Rules 3 (1) (b) and 6 (1) (b) of the Rules. The stand of the Respondents provokes the question: is there a rational basis for construing the expression 'last pay drawn' and not contemplating 'allowances' paid to them and in particular the DA? If one went by plain language interpretation, then it is evident that the expression 'last pay' has not been intended to exclude DA. If it were the intention to so limit it, then the expression used should have been 'basic pay'. The intention, on the other hand, was to ensure that a government servant is not worse off financially because he or

she is now serving as a Member of either the DCDRF or SCDRC. The choice is between a fixed honorarium or 'last pay minus pension'. Neither option should prove to be a disincentive to the Member of the DCDRF or SCDRC. This objective is achieved only if the interpretation of the expression 'last pay' as put forth by the Appellants is accepted. The opposite view as advanced by the Respondents if accepted would result in the strange result of the incumbent having to pay a differential sum to the GNCTD. The interpretation as suggested by the Respondents is, therefore, not possible of acceptance from a legal standpoint.

23. In any event, while there may a marginal reduction in the emoluments payable to a Member of the DCDRF or SCDRC in the matter of payment of emoluments vis-a-vis the President of the DCDRF or SCDRC, on the judicial side they have the same powers. Relevant to the present case is the fact that Members (Judicial) and Presidents of either the DCDRF or the SCDRC come from the same stream i.e. former government servants or District Judges. It would be an anomaly if there is too wide a gap in what is paid to the President as compared to a Member (Judicial).

24. Further, considering that in calculating the amounts payable to Members of the NCDRC in terms of the proviso to Rule 11 (1A) (a) of the rules the expression 'last pay' occurring therein is interpreted to include DA, there appears there was no warrant in law for excluding DA from the expression 'last pay' occurring in the proviso to Rules 3 (1) (b) and 6 (1) (b) of the Rules. In view of this conclusion, based on a plain interpretation of the provisions, the need to question the constitutional validity thereof is

obviated. Therefore, this Court disagrees with the learned single Judge that the only remedy available to the Appellants, in the circumstances, is to challenge the said provisions.

Conclusion

25. For the above reasons, the impugned judgment of the learned Single Judge is accordingly set aside. It is declared that the expression 'last pay drawn' occurring in the proviso to Rule 3 (1) (b) and Rule 6(1) (b) of the Rules would include not only basic pay but also Dearness Allowance. The emoluments payable to the Appellants for the period during which they served as Members of the DCDRF or SCRDC shall be re-worked accordingly and the arrears paid to each of them by the Respondents within a period of eight weeks from today, failing which the Respondents would be liable to pay simple interest @ 6% per annum on the said sum till the date of payment.

26. The appeals are accordingly allowed but in the circumstances with no order as to costs. The pending applications are also disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA J.

FEBRUARY 12, 2019

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