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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2983 of 2009

1. A.K. Agrawal Late G K Agrawal Aged About 60 Years Superintending Engineer, O/o CE (RR) Raipur Chhattisgarh, R/o 14/588 Gayatri Mandir Road L -2, Vinoba Nagar, Bilaspur Chhattisgarh

2. A. N. Agrawal S/o Late G P Agrawal Aged About 60 Years Superintending Engineer, O/o C.E. (RR) Bilaspur Chhattisgarh, R/o Parijat (Extension) B - 24, Nehru Nagar, Bilaspur Chhattisgarh

3. S. B. Gabel S/o Shri P D Gabel Aged About 60 Years Assistant Engineer STM Division Bilaspur Chhattisgarh. R/o Tilaknagar Near Hanuman Mandir, Bilaspur Chhattisgarh

4. L P Kaushik S/o Shri J P Kaushik Aged About 59 Years Executive Engineer (O & M) Mungeli, Bilaspur Chhattisgarh, Green Park Colony, Near Harsh Ashiyan Road, From SBR College, Bilaspur Chhattisgarh

5. K K Mazumdar (Dead) Through LRs.,
   5.1 - (A) Smt. Swapna Majumdar W/o K. K. Majumdar Aged About 59 Years R/o Link Road, Bilaspur, Tahsil And District Bilaspur Chhattisgarh
   5.2 - (B) Koushik Majumdar D/o K. K. Majumdar Aged About 38 Years R/o Link Road, Bilaspur, Tahsil And District Bilaspur Chhattisgarh

6. H. L. Patel S/o Shri Jagatram Patel Aged About 61 Years Assistant Engineer MRT Division, Bilaspur Chhattisgarh., R/o Ganga Nagar , Sector - 2, Near Mahabir Complex Mangla Road Bilaspur Chhattisgarh

7. U K Singh Late U K Singh Aged About 60 Years S E (O And M) Ambikapur Chhattisgarh R/ 0.9/ 719 V N N Colony, Near MP Square, Bilaspur Chhattisgarh

8. S. N. Sao Shri Kotram Sao Aged About 61 Years Superintending Engineer (TE) Korba (East) Chhattisgarh. R/o B - 115, Rama Green City, Bilaspur Chhattisgarh

9. A J Rao S/o Shri A V S Narayana Aged About 59 Years Addl. Chief Engineer (Project) Raipur Chhattisgarh, R/o Ramagreen City, Khamtarai, Bilaspur Chhattisgarh

10. S.L. Kankane S/o Shri M.C. Kankane Aged About 60 Years Superintending Engineer O/o C E (T And C) Raipur Chhattisgarh., R/o H.No. C-2, Kalindi Kunj Colony Ring Road No.2 Bilaspur Chhattisgarh

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Versus

1. Government Of Chhattisgarh, Through Chief Secretary, D K S Bhawan Raipur Chhattisgarh

2. Energy Secretary, Government Of Chhattisgarh D K S Bhavan Raipur

Chhattisgarh

3. Managing Director, Chhattisgarh State Power Holding Company Limited, Dagania, Raipur Chhattisgarh
4. Managing Director, Chhattisgarh State Power Distribution Company Limited, Dagania, Raipur Chhattisgarh
5. Managing Director, Chhattisgarh State Power Transmission Company Limited, Dagania, Raipur Chhattisgarh
6. Managing Director, Chhattisgarh State Power Trading Company Ltd. Dagania, Raipur Chhattisgarh
7. Managing Director, Chhattisgarh State Power Generation Company Limited, Dagania Raipur Chhattisgarh
8. Additional Secretary, Chhattisgarh State Power Holding Company Limited, Dagania, Raipur Chhattisgarh
9. Joint Secretary (S) Chhattisgarh State Power Holding Company Limited, Dagania, Raipur Chhattisgarh

---- Respondents

For Petitioners	:	Shri H.B.Agrawal, Senior Advocate with Shri Pankaj Agrawal and Shri Amit Tirkey, Advocates
For State	:	Shri Ankur Kashyap, Panel Lawyer
For Respondents 3 to 9	:	Shri Pramod Verma, Senior Advocate with Shri Virendra Verma, Advocate

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Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

19/02/2020

By this petition, under Article 226 of the Constitution of India, the petitioners who are retired employees, have ventilated their grievance in so far as fixing of different cut off dates for extension of benefits of revised pension, gratuity and leave encashment is concerned.

2. The petitioners were employees of erstwhile Madhya Pradesh Electricity Board. Upon re-organisation of States under M.P. Re-organisation Act, 2000, separate State of Chhattisgarh was carved out. In the State of Chhattisgarh, new

Electricity Board in the name of Chhattisgarh State Electricity Board was constituted. After coming into force of the Electricity Act, 2003, the assets and liabilities of the Electricity Board were distributed to the newly created companies, namely, Chhattisgarh State Power Holding Company Ltd., Chhattisgarh State Power Distribution Company Ltd., Chhattisgarh State Power Transmission Company Ltd., Chhattisgarh State Power Trading Company Ltd. and Chhattisgarh State Power Generation Company Ltd.

3. The Electricity Board took policy decision towards revision of pay, pension and other pensionary and retiral benefits. The policy decision taken by the Board culminated in issuance of various orders annexed along with the petition as Annexures P/1, P/2, P/3, P/4 and P/5. By these decisions and orders, pay of officers of Class I and Class II was revised w.e.f. 01/12/2005. Consequential orders for revision of travel allowance and daily allowance as also allowance payable at the time of transfer were also revised. Revision of pension of retired employees was also effected w.e.f. 01/08/2008. The Board also revised the criteria for qualifying service for computation of pension w.e.f. 01/09/2008 in the manner that qualifying service of computation of pension shall now be 20 years instead of 33 years. It also decided that computation of pension shall be done, based on last 10 months' average pay or last pay drawn, whichever is beneficial to retiring officers / employees w.e.f. 01/09/2008. The maximum ceiling of Death-Cum-Retirement Gratuity (for short 'DCRG') was also increased from Rs.3.50 Lacs to Rs.10 Lacs. It was also decided to increase ceiling of encashment of earned leave at the time of retirement from 240 days to 300 days. This decision was made effective from the date of issuance of the order. The petitioners ventilated three fold grievances as below -

i). Fixation of cut off date for revision of pension has been arbitrarily fixed as 01/08/2008.

ii). Rule for computation of qualifying service for pension has been arbitrarily made applicable with cut off date of 01/09/2003.

iii). The cut off date for increase of maximum ceiling of DCRG and ceiling of encashment of earned leave have also been arbitrarily fixed from 31/01/2009.

The petitioners have prayed that all these benefits which have been extended from different dates ought to be extended only w.e.f. 01/12/2005, i.e. the date with effect from which, pay scales were revised.

4. During the pendency of the petition, the petitioners' grievance in so far as revision of pension, in respect of which order Annexure P/3 dated 06/8/2008 was issued, has now been redressed and no grievance remains.

5. Vide order dated 22/09/2008 (Annexure P/4), the Board revised criteria for qualifying service towards computation of pension by which, the qualifying service was fixed as 20 years instead of 33 years. But, as this changed criteria is effective only from 01/09/2008, the same is under challenge.

Likewise, the benefit of increase in the maximum ceiling of DCRG and encashment of earned leave is also made effective only from 31/01/2009, the same still remains to be redressed and in respect of which, learned senior counsel made submission.

6. The principal argument of learned senior counsel for the petitioners is that as the pay revisions from Class I and Class II officers were effected by the Board w.e.f. 01/12/2005, the benefits of pension and all other pensionary and retiral benefits were required to be made effective only w.e.f. 01/12/2005 and separate cut off date for extending various benefits could not be fixed by the respondent / Board. He would submit that as per the report of the Sixth Central Pay Commission (Annexure P/16), recommendation in clause 5.1.33 has been made for restructuring the computation formula of qualifying service by reducing it from 33 years to 20 years. As the

recommendation of the Pay Commission stated in Annexure P/16 that, as and when, the Board decides to change the rule with regard to computation of qualifying service with reference to number of computing years of service, it should invariably be from the date of recommendation of Sixth Pay Commission or in any case, from 01/12/2005 i.e. the date on which, the Board decided to revise the pay scale. Referring to Annexure P/15, the rule made by the Central Government in the matter of revision of pay scale, it has been argued that the Central Government, in relation to its employees, having decided to extend the benefit of revised pay scale w.e.f. 01/01/2016, the pensionary benefits in various forms ought to be given effect to from 01/01/2006 itself.

Referring to clause 5.1.37 of the Sixth Pay Commission recommendation Annexure P/16, it has been submitted that recommendation for increase in the limit of DCRG from Rs.3.50 Lacs to Rs.10 lacs has been made. Even though, the Board had taken decision to increase the limit upto Rs.10 lacs, keeping in view recommendation made by the Sixth Pay Commission, it could not fix any cut off date of its own choice and it ought to have fixed cut off date either w.e.f. 01/12/2015 i.e. the date of pay revision or in any case, 01/01/2006 which is the effective date for implementation of Central Pay Commission. Learned senior counsel further submits that as far as DCRG benefit is concerned, it has later on, been made effective from the date as prayed for by the petitioners, therefore, to that extent, the petitioner's grievance is now redressed. According to him, the benefit of increased ceiling limit of DCRG and increased ceiling of leave encashment benefits were given by a common order dated 31/01/2009 (Annexure P/5). Once, the effective date of increasing ceiling limit of DCRG have been increased w.e.f. an earlier date i.e. 01/01/2015, the respondent authority, in all fairness, ought to have also given effect to benefit of increase in ceiling of leave encashment w.e.f. 01/12/2015. In support of submission made, learned senior counsel placed reliance on the Supreme Court decision in the case of **All Manipur Pensioners Association by its Secretary v. The State of**

Manipur and others (*Civil Appeal No.10857/2016 passed on 11th of July, 2019*).

7. On the other hand, the submission of learned senior counsel appearing for the respondent / Electricity Board and its subordinate companies would oppose petitioner's argument. He would argue that as far as grievance with regard to revision of pay scale is concerned, that has already been redressed. He further submits that as far as increase in the ceiling limit of DCRG from Rs.3.50 Lacs to Rs.10 lacs is concerned, that has also been redressed. However, as far as the rule relating to computation of qualifying service with reference to completed years of service, it has no retrospective effect. This benefit would essentially depend upon the rule which was in force on the date of retirement. According to him, the decision to change the rule with regard to computation of qualifying service was taken by the Board on 17/09/2008 and order in this regard was issued on 22/09/2008. Therefore, it was made applicable from the first date of the month, in which the Board had taken the decision. It is submitted that revision of criteria for computation of qualifying service is not directly connected to revision of pay scale. The same also has no direct connection with revision of pension. An employee would be entitled to computation of qualifying service according to the rules which were in force on the date of retirement. Only because the rules were amended subsequent to the date of retirement pursuant to decision taken by the Board on 17/09/2008, claim for altering the cut off date according to petitioner's choice and benefit, could not be accepted and petitioners cannot claim any such alteration as of right in the absence of any arbitrary classification. Lastly, it is submitted that as far as increase in ceiling limit of leave encashment benefit is concerned, that also is based on applicable rules in force on the date of retirement. It is not a continuing benefit like pension payable every month after retirement. Therefore, it cannot be said that fixation of cut off date as the date of order (Annexure P/5) has resulted in any arbitrary classification.

8. I have heard learned counsel for the parties and perused the records.

9. The petitioner's grievance, in view of subsequent development as stated by learned counsel for the parties as also reflected from the records, is now confined only to two aspects. Firstly, the petitioners' grievance is with regard to fixation of cut off date for application of new criteria for computation of qualifying service and secondly, the new criteria / rule with regard to ceiling of leave encashment benefit.

10. As far as change of criteria for computation of qualifying service is concerned, the return of the respondent is that the decision in this regard was taken by the Board in its meeting dated 17/09/2008. Thereafter, on 22/09/2008, the orders were passed. He would submit that the fixation of cut off date as 01/09/08 is based on the premise that the Board had taken decision to change the criteria in the month of September, 2008 and therefore, from the first date of that month, criteria was given effect to.

11. The fixation of cut off date could be held arbitrary only when it is demonstrated by the petitioner that such fixation of cut off date has resulted in unreasonable classification of similarly situated employees. As to what would be the date for granting benefit is essentially a policy matter for the employer. The extension of various benefits which have monetary implications are based on financial condition of the institution. The Board has resolved to change the criteria for computation of qualifying service only on 17/09/2008. True it is that the Sixth Pay Commission had made certain recommendations not only with regard to revision of pay, but also with regard to revision of pension and various pensionary and retiral benefits including change in the criteria for computation of qualifying service, however, the petitioners cannot claim as of right that those recommendations should be given effect to from a particular date. It is not a case where the employees, who retired prior to 01/09/2008, on some count, were given the benefit of revised criteria for computation of qualifying service. The employees, who retired prior to 01/09/2008, constituted a class in so far as computation of qualifying service is concerned. Therefore, qualifying service have

to be computed as per the rule of computation of qualifying service which was applicable and in force on the date of their retirement. Admittedly, till the date of retirement of the petitioners, the criteria for computation of qualifying service provided for computation of full pension was upon completion of 33 years and not 20 years of service. This rule came to be changed only subsequently. Computation of qualifying service has to be done only on the basis of criteria and rules which were prevailing on the date of retirement. Even on the date of retirement of the petitioners, the said criteria was changed, the employee cannot claim that the said criteria should be applied retrospectively, so as to engulf the benefits to all the employees retired on earlier dates. In the absence of arbitrary classification made out or in the absence of violation of the rule, the cut off date fixed for application of revised criteria cannot be held to be arbitrary and violative of Article 14 of the Constitution of India. Reliance on the decision of the Supreme Court in the case of **All Manipur Pensioners Association** (supra) is not only misplaced on facts but also in law. That was entirely different case where the benefit of revision of revised pension was being restricted to retired employees, who had retired prior to the cut off date. It was in this background, the classification was held to be constitutionally impermissible in law. Present is not a case where the benefit of revised pension is being restricted to employees based on their date of retirement by fixing a particular date. Present is not a case where computation of qualifying service of the petitioners has been made on the basis of the criteria which was not in force on the date of their retirement. This is not a continuous exercise but one time exercise undertaken at the time of retirement of an employee.

12. As far as challenge to the cut off date for application of increase in ceiling limit of leave encashment benefit is concerned, the claim of the petitioner is equally misconceived in law. Leave encashment benefit as against earned leave form part of retiral benefits which are applicable and in force on the date of retirement. In that case also, the criteria has been revised only subsequently vide order dated

31/01/2008. Extending the benefit of increase in ceiling limit to those, who have retired after such decision, does not result in any arbitrary classification because the employees like the petitioners who retired prior to 31/01/2008, were entitled to leave encashment benefit upto the limit of 240 days on the basis of rule which was prevailing on the date of retirement. The benefit of leave encashment is available to an employee at the time of his retirement. It cannot be equated to pension which is payable to the employee every month.

13. Reliance placed on Central Government Rules of 2008 (Annexure P/15) is also misplaced in law. The petitioners are not employees of the Central Government but they are employees of Electricity Board and it is an holding company which is separate and distinct from the class of Central Government employees. Therefore, it cannot be said that the benefit extended to the petitioners and those extended to the Central Government employees should be at par.

14. Therefore, this Court does not find that the decision of the respondent authority in fixing cut off date for introduction of new criteria for computation of qualifying service and increasing ceiling limit, suffers from vice of arbitrariness. The petition is, accordingly, dismissed. No order as to costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Deepti