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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10967-2012(O&M)

Date of Decision: March 03, 2020

Jagdish Chander

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.D.R.Sharma, Advocate
for the petitioner.

Ms.Simran Grewal, AAG, Punjab.

Mr.Vikas Suri, Advocate
for respondent No.2.

Mr.I.S.Sidhu, Advocate
for respondent No.3.

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NIRMALJIT KAUR, J. (ORAL)

The petitioner has, *inter alia*, prayed for quashing of two Circulars, dated 17.08.2009 and 22.02.2010, Annexures P-4 and P-7 respectively, issued by State of Punjab. The said Circulars pertain to revision of pension of Pre-01.01.2006 pensioners/family pensioners/recipients of extra-ordinary pension etc.

However, at the outset, learned counsel for the petitioner restricted his prayer to the grant of 50% of the basic + DP of the last pay drawn as opposed to average pay for 10 months of last pay drawn, in view of Circular dated 17.08.2009, Annexure P-5. Clause 3.1 of the said Circular, dated 17.08.2009 reads as under:-

“3.1 Pension shall continue to be 50% of basic pay plus NPA.

It shall also continue to be calculated on the basis of last pay drawn or 10 months average whichever is beneficial to the employees subject to a minimum of Rs.3500/- per month.”

However, the same is applicable to those who have retired in harness on or after 01.01.2006. The main objection of the respondents is that the petitioner having retired prior to 2006, the last Circular was not applicable in his case. However, the said objection does not survive any more in view of the judgment rendered by the Apex Court in the case of All Manipur Pensioners Association by its Secretary vs The State of Manipur and others, passed in Civil Appeal No.10857 of 2016 on 11.07.2019, wherein it is held that pre-1996 retirees shall be entitled to revision in pension at par with those pensioners who retired post-1996 irrespective of the date of retirement. Therefore, the said issue is no more *res integra*. The relevant portion of the said judgment reads as under:-

“.....The judgment and order passed by the learned Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement, viz. Pre-1996 retirees shall be entitled to revision in pension at par with those pensioners who retired post-1996. The arrears be paid to the respective petitioners within a period of three months from today.”

The above said judgment was passed on the basis of the decision in D.S.Nakara and others vs Union of India, (1983) 1 SCC 305 holding therein that what was true prior to 1996 was also true for those who retired in 2006.

No reply has been filed on behalf of respondent Nos.1 and 3, nor they wish to file the same.

Learned counsel for respondent No.2 is not able to dispute the

legal proposition settled by the Apex Court in the case of All Manipur Pensioners Association by its Secretary (supra). Moreover, a perusal of Clause 3.1 reproduced above, categorically states that only the beneficial of the two models of pension shall be paid to the employees, i.e. average pay for ten months of last pay drawn or 50% of the basic + DP of the last pay drawn be paid. This Court vide its order dated 07.12.2019 directed the respondents to place on record the comparative model of pension on the basis of “average pay for ten months last pay drawn” and “50% of the basic +DP”. The comparative chart has been filed by way of an affidavit of the OSD (Litigation), Punjab and Haryana High Court at Chandigarh. The said comparative chart is placed on record as Annexure R-2/1, which shows that the pension calculated @ 50% of the last pay drawn as on 30.04.2005 for full qualifying service, i.e. 66 half yearlies, as on 30.04.2005 was Rs.12,938/- per month, whereas, the average of ten months of last drawn was only Rs.11,780/- per month.

Accordingly, the writ petition is allowed in view of the judgment rendered in the case of All Manipur Pensioners Association by its Secretary (supra) as also Clause 3.1 of the Circular dated 17.08.2009, Annexure P-5. The respondents are directed to refix the pension on the basis of revised pay came w.e.f. 01.01.2006 alongwith all consequential benefits such as arrears etc. The arrears be paid w.e.f. 01.08.2009 alongwith interest @ 6% till it is finally paid.

However, the only dispute is qua the arrears of pension from 01.01 2006 to 31.07.2009. As per the said Circular, the decision about the same was to be taken in due course. In case the said decision has already been taken, the same shall be applicable in the case of the petitioner as well

and if not taken, the needful be done within three months of the date of receipt of a certified copy of this order and thereafter, the petitioner shall be bound by the said decision.

March 03, 2020
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(NIRMALJIT KAUR)
JUDGE

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|---------------------------------------|---------------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |