HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.22949 of 2012 (O&M)
Date of Decision: 20.02.2020

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Dr. Harmanjit Singh & Ors. ... Petitioners

VS.

State of Punjab & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

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Present: Mr. Saurabh Arora, Advocate for the petitioners

Mr. Rajesh Bhardwaj, Sr.DAG Punjab

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GIRISH AGNIHOTRI, J. (Oral)

(1) The petitionersDr. Harmanjit Singh & 70 others have filed the present writ petition *inter alia,* praying for quashing the notification dated 10.10.2011 (P5). Learned counsel for the petitioners by making reference to the pleadings in the writ petition submits that the notification dated 10.10.2011 deserves to be quashed to the extent it has granted the benefit of Non-Practising Allowance (in short, 'NPA') to the petitioners w.e.f. 01.10.2011 instead of 01.01.2006 as has been granted to the PCMS doctors of the Department of Health and Family Welfare.

(2) The petitioners' case as per their learned counsel, in brief, is that vide notification dated 06.06.2011 (P4), the Government of Punjab, Department of Finance has given NPA to PCMS doctors on revised pay scales w.e.f. 01.01.2006. The submission of counsel for the petitioners is that PCMS doctors as well as the Ayurvedic doctors are working in the same Department of Government of Punjab. Vide notification dated 10.10.2011 (P5), the Government of Punjab, Department of Finance issued notification whereby NPA has been granted to the Ayurvedic Medical Officers of the Department of Health and Family Welfare (Ayurvedic) only w.e.f.

01.10.2011. The notification further points out that NPA shall be treated as pay for the purpose of grant of Dearness Allowance, entitlement of Travelling Allowance/Daily Allowance and for calculation of retiral benefits only. Further it was clarified that House Rent Allowance shall not be admissible on the NPA.

(3) Learned counsel for the petitioners puts heavy reliance on the notification dated 14.09.2009 (P3) wherein it was observed that the revised rate of NPA would be effective from the date an employee draws pay in the revised pay structure. Para 3&4 of the said notification reads as under:-

> *"3. The revised rate of NPA would be effective from the date an employee draws pay in the revised pay structure applicable to him in accordance with the provisions of Punjab Civil Services (Revised Pay) Rules, 2009.*
>
> *4. The Non-Practising Allowance (NPA) shall also continue to be treated as pay for the purpose of grant of Dearness Allowance, entitlement of Travelling Allowance/Daily Allowance as well as for calculation of retirement benefits."*

(4) Record of the case shows that notice of motion was issued on 17.12.2012. The respondents have filed their reply. In the recent affidavit dated 11.12.2019 filed by Mr. Rakesh Sharma, Director Ayurveda, the reasoning in compliance of this Court's order dated 30.10.2019 has been mentioned. Para 3&4 of the affidavit reads as under:-

> 3. *That the Hon'ble Court passing the following orders on 30.10.2019:-*
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> > *Learned counsel for the petitioners argues that the benefit of NPA has been granted to the Ayurvedic Officer vide notification dated 10.10.2011 (Annexure P-5) prospectively but the said notification is being implemented in such a way that the Ayurvedic Officers, who have retired prior to October, 2011, have not been*

given the benefit of NPA while fixing their pension even after October, 2011.

Learned counsel for the respondents seeks an adjournment to verify this fact as to whether, the notification dated 10.10.2011 (Annexure P-5) is to be implemented qua the Ayurvedic Officer, who were in service on the date of notification or all the Ayurvedic Officers are to be given NPA notwithstanding whether they were retired or in service.

In case, the employees who have retired prior to the date of issuance of notification dated 10.10.2011 (Annexure P-5) are not to be granted the benefits, the reasons for the same be also mentioned in the affidavit so that the same could be examined while deciding the present writ petition.

Adjourned to 11.12.2019.

4. It is submitted that meeting of the implementation Committee was held no 5.9.2011 under the chairmanship of Chief Secretary, Sh. SC Aggarwal, IAS the then Chief Secretary to Government of Punjab for implementation of the recommendation of the 5th Punjab Pay Commission. Other officers of the State of Punjab were also present in the said meeting. Item No.4 pertaining to the Non Practice Allowance to Ayurvedic and Homeopathic Doctors was approved as under:-

Item No.4 Non Practice Allowance to Ayurvedic and Homeopathic Doctors.

"Approved, provided that the Non-practising Allowance Ayurvedic and Homeopathic Doctors will be payable with effect from 1st October, 2011."

The State Government issued notification dated 10.10.2011 (Annexure P-2) whereby the NPA has been sanctioned for the first time and made applicable in the case of Ayurvedic Medical Officers w.e.f. 1.10.2011."

(5) In the said affidavit in para 6 it has been further submitted that *"keeping in view the prevalent financial circumstances in the instant case,*

the State government has fixed up a cut off date for granting Non Practice Allowance to Ayurvedic and Homeopathic Doctors from the 01st October, 2011".

(6) Learned counsel for the petitioners relies upon a judgment of this Court (which is after the aforementioned affidavit) rendered in ***CWP No.7239 of 2015 (Labh Singh Dhaliwal & Ors. vs. State of Punjab)*** decided on 18.12.2019. He has referred to such portion of the judgment which notices a similar stand taken by the Government i.e. "*…keeping in view the financial circumstances prevalent at the time of the issuing the instructions"* is without any basis. In the said judgment, the reliance has been placed on the judgment in CWP No.11373 of 2012 (Rattan I & Ors. vs. State of Punjab) decided on 16.08.2013. The relevant extracts reads as under:-

> *"The ground, therefore, taken by the respondents that the cut-off date has been fixed keeping in view the financial circumstances prevalent at the time of the issuing the instructions is without any basis and is not supported by the record which has been produced in Court nor have the State counsel with the help of officials been able to point out anything from the record which would show that the said financial circumstances were the reason behind fixing the cut-off date as 1.12.2011. In the absence of material on the record which would justify the fixing of the cut-off date, especially with regard to the financial constraints/situation/circumstances, the said decision cannot be said to be in accordance with law and would amount to discrimination amongst the homogenous class of retirees.*
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> *Discrimination is not legally acceptable and the 9 of 23 present is such which need to and can be redressed by granting the writ as sought for by the petitioners in these petitions. It cannot be said that the decision of the Government fulfills the*

basic principle with regard to the concept of valid classification which would justify valid discrimination as has been laid down by the Hon'ble Supreme Court in the case of State of Kerala Versus N.M. Thomas (1976) 2 SCC 310, which has been discussed by the Hon'ble Supreme Court in Kallakkurichi Taluk Retired Official Association's case (supra) in para-27, where it has been stated as follows:-

> *"27. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see, State of Kerala V. N.M. Thomas (1976) 2 SCC 310). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which 10 of 23 has a rational relationship with the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied."*

The present case does not satisfy the two tests, as has been referred to above, and, therefore, the decision of the State Government fixing the cut-off date as 1.12.2011 cannot sustain and, therefore, deserves to be quashed. The question now would be with regard to the date of applicability of the notification dated 15.12.2011, para-3 whereof fixes the date of its *enforceability as 1.12.2011 which has to be struck down in view of the above discussion. The obvious conclusion would be that the said decision would be effective from 1.1.2006 the date which was recommended by the Pay Commission with effect from which the pensionary benefits were revised such as basic pension, commutation of pension, gratuity as per notification dated 17.8.2009. The Government letter dated 15.12.2011 refers to para-3.1 of the Government letter dated 17.8.2009 and it is in continuation thereof where the said decision has been made effective from 1.1.2006, therefore, the letter dated 15.12.2011 would relate back to 1.1.2006 and would be implemented with effect thereof. However, the said decision shall not apply to the employees covered by the new pension scheme as specified in 11 of 23 this letter dated 15.12.2011.*

In view of the above, these writ petitions are allowed. Para-3 of the Government letter dated 15.12.2011, which fixes the effective date of the decision of the Government to be 1.12.2011, stands quashed. Direction is issued to the respondents to consider the claims of the petitioners and similarly placed employees treating the decision of the Government as conveyed in letter 15.12.2011 to be effective from 1.1.2006 and grant consequential benefits to the employees who have retired between 1.1.2006 to 30.11.2011 within a period of four months from the date of receipt of certified copy of this order." (underlining is mine)

4. Letters Patent Appeal was preferred by the State of Punjab i.e. 1857 of 2013 titled as <u>State of Punjab vs. Rattan I and others</u> along with other appeals, where the Division Bench of this Court in its judgment dated 09.07.2014 held as follows:-

> *" The Ld. Single Judge while accepting that financial implications can be a valid ground for fixing a cut- off date for implementing a decision granting liberalized benefits to pensioners, has quashed the cut-off date only on the ground that the record did not reflect*

that the fixing of the cut-off date was resultant to a conscious decision based on financial implications worked out with particular reference to the cut- off date sought to be fixed.

Despite the above, there is no denying the fact that the appellant had sought to justify the fixation of the cut-off date 12 of 23 primarily on the ground of financial considerations/constraints. That was their pleaded case before the Ld. Single Judge and that is the primary argument pressed in appeal. The record also reflects that financial implications were worked out with regard to fixing different lengths of qualifying service for grant of full pension.

Though no exact details have been furnished to the Court, the Ld. State Counsel has sought to project that the financial implications of implementing the decision would be huge, staggering and unbearable. Besides, it would be an annual recurring expenditure. To the contrary, the respondents have submitted that the pensioners who retired between 1.1.2006 and 31.11.2011 are limited in number and the financial implications in implementing the decision would be meager and would not justify the discriminatory treatment meted out to them.

In the light of the above, in our considered opinion the Ld. Single Judge was correct in holding that the records did not reflect that the fixing of the cut-off date of 1.12.2011 was the result of a conscious decision based on financial considerations/ constraints and consequently para 3 of the letter dated 15.12.2011 was rightly quashed. However, in view of the pleaded case of the appellant and the official record reflecting that financial considerations were the dominant factor in fixing the length of qualifying service for grant of full pension, the Ld. Single Judge, instead of, directing that the 13 of 23

> *decision be implemented w.e.f., 1.1.2006 ought to have directed the appellant to reconsider the question of fixation of the cut-off date. Hence to this extent the appeals are allowed. The order of the Ld. Single Judge directing that the benefits conferred vide letter dated 15.12.2011 be implemented w.e.f., 1.1.2006 and, resultantly, the benefits of this letter be also given to employees who retired between 1.1.2006 and 31.11.2011 is set aside.*
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> *The appellant is directed to reconsider the issue and take a fresh decision with regard to the date of implementation of the decision contained in the letter dated 15.12.2011."*

(7) This Court in view of the above noticed facts, therefore, deems it appropriate to direct the competent authority to decide the demand of the petitioners for grant of NPA to the petitioners w.e.f. 01.01.2006 keeping in view the observations made by this Court in ***Labh Singh Dhaliwal and Ors.*** case (supra).

(8) Let the necessary consequential benefits be granted to the petitioners within *one month* of the final orders that the competent authority – respondent No.4 is directed to pass within *2 months* from the date of receipt of certified copy of this order.

(9) The writ petition stands disposed of in above terms.

20.02.2020
Vvishal

(Girish Agnihotri)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*