

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

CWP No. 12229 of 2017
Date of Decision : 18.02.2020

Bachittar Singh

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Sonia G. Singh, Advocate for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance of the petitioner is that though he has been granted the benefit of the Instructions dated 15.10.2009 (Annexure P-1), in respect of the Military service, which he had rendered prior to the joining the service of Punjab Police with the Government of Punjab by re-fixing his salary but he has not been paid the arrears on account of the said re-fixation. The petitioner is claiming that he is entitled for the benefit of arrears w.e.f. 01.01.2012 keeping in view the re-fixation of the salary upto the date of his retirement.

As per the averments made in the writ petition, petitioner joined Indian Army on 09.10.1972 and he served with the Indian Army till he retired on 30.10.1996. During the period when the petitioner remained in

Army, he served during the second emergency from December, 1971 till 25.03.1977. After the retirement from the Army, petitioner joined Punjab Police as Assistant Sub Inspector of Police on 09.01.1999 and continued working on the said post till he retired on 31.03.2015. The claim of the petitioner in the present writ petition is that while he was in service, respondent-State had issued Instructions dated 15.10.2009 (Annexure P-1) by which, respondents amended Punjab Recruitment of Ex-servicemen Rules, 1982 (hereinafter referred to as '1982 Rules'). As per the said Instructions dated 15.10.2009 by which 1982 Rules were amended and were applicable from the date of Notification, an employee, who was appointed against the reserve vacancy of ex-servicemen, was entitled for the grant of increment and pension by taking into consideration the period spent by the ex-serviceman in the Indian Army. Petitioner claims that while he was in service, benefit of the Instructions dated 15.10.2009 (Annexure P-1) was not extended to him though he was entitled for the grant of increment for the service which he had rendered in Indian Army.

Thereafter vide Notification dated 10.04.2012, 1982 Rules were further amended and in the said amendment, the fixation of the salary by the grant of benefits of increment was to be done notionally up to 01.01.2012 and no arrears were to be paid on account of the grant of increment in respect of Military service rendered, due to which the salary of the employee stands enhanced.

The claim of the petitioner in the present writ petition is that he is entitled for the grant of increment for the service which he had rendered with the Indian Army as well as the arrears upon the re-fixation of the salary

w.e.f. 01.01.2012 till he retired on 31.03.2015 on attaining the age of superannuation.

Upon notice of motion, respondents have filed the reply. In the reply, respondents have stated that the benefit of increment for the service which the petitioner had rendered with the Indian Army during the second emergency, has already been given to the petitioner and his pay has already been fixed and even the pensionary benefits have been re-computed and the arrears have been granted to him. With regard to the arrears from 01.01.2012 onwards till 31.03.2015, the same are being denied on the basis of the proviso, which was added by the Government in the Notification dated 10.04.2012, according to which, no arrears were to be paid as the pay was to be fixed notionally.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Claim of the petitioner invokes the interpretation of the proviso in the Instructions dated 10.04.2012. Petitioner is claiming the benefit of arrears from the date of Instructions till the date of his retirement, which benefit is being denied to him by the respondents by placing reliance on the proviso to the Instructions dated 10.04.2012. According to the respondents, on the revision of pay by the grant of increment for the Military Service rendered by an employee, no arrears are to be granted. Before proceeding further, Instructions dated 10.04.2012 are reproduced for ready reference.

*“Government of Punjab
Department of Defense Services Welfare
(Defense Welfare Branch)*

Notification

The 10th April, 2012

No. G.S.R. 20/Const./Arts.309, 234 and 318/Amd.(9)/2012.-

In exercise of the powers conferred by the proviso to Article 309 read with Articles 234 and 318 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab Recruitment of Ex-servicemen Rules, 1982, namely:-

RULES

1. (1) *These rules may be called the Punjab Recruitment of Ex. Servicemen (First Amendment) Rules, 2012.*

(2) *They should be deemed to have come into force on and with effect from the 1st day of December, 2011.*

2. *In the Punjab Recruitment of Ex-servicemen Rules, 1982 (hereinafter referred to as the said rules), in rule 8 B.*

(i) *in clause (a), in the second line, the words “joined and” shall be omitted; and*

(ii) *in clause (b), after sub clause (iii), the following para shall be added, namely :-*

“These benefits shall be available to all the persons who were appointed in Government Service against reserved vacancies and were in service as on 1st December, 2011 or are appointed thereafter :

Provided that these benefits shall be admissible for pay fixation on notional basis with effect from 1st January, 2012 and arrears on account of pay shall not be paid.”

3. *In the said rules, after rule 8-B, the following rule shall be inserted, namely:-*

“8-C (i) Increments and pension- Short Service Commission Officer, who joined Government Service

shall be granted increments equal to the member of completed years of service rendered by them in Armed Forces on basis pay at the time of entry into Government Service. They shall also be entitled to counting of military service rendered by them in armed forces for the purpose of Pension in Government Civil Service. The period, if any, between the date of release from military service and the date of appointment to civil service or post under the Government shall also count towards pension.

(ii) Gratuity- The gratuity drawn by Short Service Commissioned Officer in the armed forces shall be adjusted against the gratuity that becomes due to total service rendered in army and civil service.

These benefits shall be available to all the persons who were appointed in Government Service against reserved vacancies and were in service as on Ist December, 2011 or are appointed thereafter.

Provided that these benefits shall be admissible for pay fixation on notional basis with effect from Ist January, 2012 and arrears on account of pay shall not be paid.”

*C. Roul,
Principal Secretary to Govt. of Punjab,
Department of Defence Services Welfare.”*

A bare perusal of the Instructions would show that according to the proviso, the pay was to be fixed on notional basis w.e.f. 01.01.2012 and the arrears on account of pay shall not be paid. Once, the pay of an employee is to be fixed notionally, the arrears for which an employee becomes entitled for the period, which is prior to the issuance of the Notification dated 10.04.2012, are not to be paid. An employee becomes entitled for fixation of his/her salary immediately upon the issuance of the

Notification dated 10.04.2012. From the date of fixation, the employee becomes entitled for the release of the pay as per the re-fixation. Had the respondents given effect to Notification dated 10.04.2012 immediately upon the issue of the same, no grievance would have been raised by the petitioner because the petitioner would have been getting the re-fixed salary according to the Notification dated 10.04.2012 and thus, petitioner would have withdrawn the re-fixed salary.

As the respondents did not grant the benefit of the Notification dated 10.04.2012 to the petitioner, he had to approach this Court. Though, the benefit of the re-fixation of the pay as envisaged under the Notification dated 10.04.2012 has been granted to the petitioner but the arrears after the re-fixation of the salary after 10.04.2012 are being denied by placing reliance upon the proviso, which is not the correct interpretation of the proviso. The proviso only states that pay is to be fixed notionally, which means no arrears for the period, which is prior to the issuance of Notification dated 01.01.2012. After the said date, it was incumbent upon the respondents to fix the salary and release the re-fixed salary to the employee till the date of his/her retirement. That being so, petitioner is entitled for the arrears after the re-fixation of his salary by granting him the benefit of increment after 01.01.2012 onwards till 31.03.2015.

Keeping in view the above, the claim of the petitioner for the grant of arrears from 01.01.2012 onwards till 31.03.2015 is allowed. Respondents are directed to release the arrears of the salary of the petitioner from 01.01.2012 onwards till 31.03.2015.

Learned counsel for the petitioner further argues that even the

arrears on re-fixation of the pensionary benefits have not been released by relying upon their proviso. Once the petitioner was entitled for re-fixed salary and consequential arrears after 01.01.2012, petitioner will also be entitled for the arrears of the re-fixed pension as well.

Let the respondents calculate the arrears for which the petitioner becomes entitled for under this order within a period of three months from the date of receipt of certified copy of this order and the arrears so calculated will be released to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.

February 18, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*