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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28235-2013
Date of decision: 02.03.2020

Bimla Devi @ Bimla Sangwan ...Petitioner(s)

V/s.

State of Haryana and others ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Pardeep Solath, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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<u>RITU BAHRI, J. (Oral).</u>

By this petition, the petitioner is seeking quashing of letter dated 05.12.2013 (Annexure P-4) whereby recovery of over payment of salary is sought to be effected.

The petitioner had joined the respondent department on 09.12.1982 and after serving for more than 30 years, she had retired from the post of Lecturer (History) from Govt. Girls Senior Secondary School, Sector-15 Panchkula on 30.04.2013 on attaining the age of 58 years. Pursuant to instructions dated 26.04.2011 (Annexure P-1) relating to re-employment of retired Lecturers/Teachers, she was re-employed vide order dated 26.04.2013 (Annexure P-3) after submitting medical fitness certificate dated 22.02.2013 (Annexure P-2). One of the conditions of re-employment order dated 26.04.2013 (Annexure P-3) was that as per provisions of CSR Vol-II, the salary will be paid to the petitioner as last pay drawn minus pension. The petitioner joined duty from 01.05.2013 and she was given salary after deducting the amount of pension as Rs.13,200/- per month alongwith dearness allowance in addition as per the condition of re-employment order dated 26.04.2013 (Annexure P-3). However in the first week of December, she was given pay fixation letter whereby her salary was reduced to Rs.5,986/- p.m. and recovery of over payment was ordered to be made vide letter dated 05.12.2013 (Annexure P-4).

When notice of motion was issued on 20.12.2013, recovery was stayed and petitioner continued to get salary of Rs.13,200/- p.m. Today when the case is taken up, learned counsel for the petitioner has informed that petitioner after serving for 11 months, had retired on 31.03.2014.

Written statement of Principal, Govt. Sr. Sec. School Sector-15, Panchkula on behalf of respondents No. 2 to 4 has been filed. In the written statement, reference has been made to Rule 7.18 under note 4 [(a)(i)(ii)(b)] of chapter 7 of Punjab Civil Services Rules, Volume-II which is required to be followed for fixing the pay of retired employee and as per the above said Rule, pension equivalent of death-cum-retirement gratuity should always be taken into account who before re-employment were governed by the New Pension Rules. In para 4, the details of the calculation of death-cum-retirement-gratuity have been given and after counting the same, the salary comes to Rs.5,986/-.

Heard learned counsel for the parties.

This Court in the case of ***Jagat Singh and others V/s. State of Haryana and others 2019(1) PLR 20*** was considering a case of re-employment of a retired employees who had retired prior to 01.01.2016 i.e. before the Haryana Civil Service Pension Rules 2016 came into force. This Court held that in the case of those employees who had retired prior to 01.01.2016 and were re-employed, their cases have to be governed by the old law since as per Rule 8(15) of the new rules, the formula of working out Pension Equivalent to Gratuity (PEG) is being applied.

In the present case, the petitioner had retired on 30.04.2013 and hence she had to be given salary after re-employment as per old rules which is last pay drawn minus pension. Further as per the re-employment order dated 26.04.2013 (Annexure P-3), following conditions were mentioned:-

1. There is no adverse remarks regarding integrity during last three years service and service record during last three years is good or better than that.
2. No charge sheet U/R 7 or 8 of Haryana Civil Services (Punishment & Appeal) Rules, 1987 is pending against him/her.
3. Medical fitness certificate from the Government Medical Officer.
4. No case involving moral turpitude is pending and no charges have been framed by the competent Court.
5. **The salary will be paid as per provisions of CSR Vol-II i.e. last pay drawn minus pension.**

The above said condition No. 5 is very clear that salary is to be paid last pay drawn minus pension. The re-employment order dated 26.04.2013 (Annexure P-3) does not anywhere reflects that the death-cum-retirement-gratuity will also be adjusted at the time of making salary. The respondents now cannot refer to Rule 7.18 to reduce pay of the petitioner by adjusting the death-cum-retirement-gratuity. In any case gratuity is an amount which the petitioner had earned at the age of 58 years and that can never be reduced at the time of re-employment by the department. The petitioner in the present case had retired on 31.03.2014 and was getting salary of Rs.13,200/- as per the re-employment order dated 26.04.2013 (Annexure P-3).

Writ petition is allowed and order dated 05.12.2013 (Annexure P-4) is set aside.

(RITU BAHRI)
JUDGE

02.03.2020
Divyanshi

Whether speaking/reasoned	**:**	**Yes/No**
Whether reportable	**:**	**Yes/No**