

**213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.26544 of 2016
Date of Decision: 27.1.2020

R.L. Jain and others

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Shreenath A. Khemka, Advocate, for the petitioner.

Ms. Nidhi Garg, Assistant Advocate General, Haryana.

Mr. Amit Rao, Advocate for

Mr. Anurag Goyal, Advocate, for respondents No.2 and 3.

NIRMALJIT KAUR, J.

The present writ petition is filed for setting aside the orders dated 6.10.2016 (Annexure P-9) and 20.10.2016 (Annexure P-10), vide which, the benefit of revised pension to the petitioners was denied being contrary to the instructions dated 14.10.2014 (Annexure P-1) and 18.2.2015 (Annexure P-2) with a further prayer to revise pension by including Non Practising Allowance (for short 'NPA') in in the basic pay for the purpose of revised pension and pay full pension to all the petitioners, who though, have not completed 33 years of service in view of the law laid down by Hon'ble the Apex Court.

The petitioners were appointed by respondent No.1 as 'Teacher' (Medical Education) at respondent No.2-institute. All the petitioners, except Dr. Manju Sharma, petitioner No.2 and Dr. O.P. Sachdeva, petitioner No.6 had retired from service of Haryana Government prior to 1.1.1996 i.e. before enforcement of the 5th Pay Commission report. The petitioners No.2 and 6 retired from Government service before 1.1.2006 i.e. before

enforcement of the 6th Pay Commission report. Thus, petitioners No.2 and 6 are pre-1996 retirees and petitioners No.1, 2 to 5 and 8 are pre-2006 retirees from Health and Medical Education Services of Haryana Government. The petitioners are claiming revision of their pension w.e.f. 1.1.1996 and 1.1.2006 by including the NPA in their basic pay and by giving them full pension instead of reducing their pension on pro-rata basis by counting 33 years of service for full pension. The details of service rendered by the petitioners are given as under:-

Sr. No.	Name of the petitioner	Date of joining	Date of retirement	Qualifying service
1.	Dr. R.L. Jain	31.7.1963	23.1.1993 (VRS) DoB:10.9.1939	33 years
2.	Dr. Manju Sharma	1.9.1978	21.5.2002	23 years 8 months
3.	Dr. (Mrs.) Uma Sabarwal	April 1963	1993	30 years
4.	Dr. R.K. Keswani	16.1.1962	30.4.1989	27 years 3 months
5.	Dr. Mohinder Singh	2.4.1962	31.12.1992	30 years 8 months 29 days
6.	Dr. O.P. Sachdeva	30.7.1971	31.7.2002	31 years
7.	Dr. G.S. Kohli	2.7.1956	30.6.1990	34 years
8.	Dr. R.K. Bansal		August 1988	31 years

The petitioners are, therefore, aggrieved with the fact that the NPA is not being calculated qua those, who retired prior 1.1.1996 or 1.1.2006.

Reply has been filed by the respondents stating that the relief due to the petitioners has already been granted. As per their short reply by way of affidavit of the Special Secretary, Medical Education & Research Department, Chandigarh dated 20.11.2019, the petitioners have been granted benefit of NPA w.e.f 7.12.2001 to 17.4.2006 on actual basis instead of notional basis vide order dated 20.3.2018.

Learned counsel for the petitioner, however, denied the same.

Be that as it may, it is not disputed that the issues involved herein are no more *res integra*. The grant of actual benefit for those, who retired between the years 2001 to 2006 stands settled vide order and judgment dated 6.4.2016 passed in CWP-7848-2002 titled as Dr. G.S. Narula and others vs. State of Haryana and another, which was passed while following the judgment of Hon'ble the Apex Court in the case of K.C. Bajaj and others vs. Union of India and others, passed in Civil Appeal Nos.10640-46 of 2013 decided on 27.11.2013 holding as under:-

“After perusing the judgment of the Supreme Court in K.C. Bajaj and others case (supra), the benefit of NPA has been extended to the doctors for the purpose of calculating the pensionary benefits on the recommendation of the 5th Central Pay Commission. The stand taken by the respondent(s) in the present case that the Haryana Government has broadly followed the central pattern for fixing the pension of the petitioners, who were doctors. During the pendency of this petition, vide notification dated 26.04.2006, a conscious decision has further been taken to include the NPA as part of pay within the meaning of Rule 6.19(c) of the Punjab C.S.R. Volume II on a pensionary benefit. Hence, the necessary benefits have already been granted to the petitioners but w.e.f. 18.04.2006. In view of the judgment of the Supreme Court in K.C. Bajaj and others (supra) case, the grant of NPA as per the O.M. dated 07.04.1998, has been extended to the doctors as per the 5 th pay recommendation. Following the said judgment, the present writ petition is allowed. The instructions dated 07.12.2001 (Annexure P-2) is set aside and the petitioners are held entitled to get their pension after counting the NPA w.e.f. 07.12.2001 to 17.04.2006. The instructions dated 26.04.2006 (Annexure P-5) are accordingly modified to the above said extent.”

The issue with respect to the retirees of pre-1996 and post-1996

has been taken care of by Hon'ble the Apex Court in its order and judgment dated 11.7.2019 passed in Civil Appeal No.10857 of 2016 titled as All Manipur Pensioners Association by its Secretary vs. The State of Manipur and others by holding that pre-1996 shall be entitled to the revision in pension at par with those pensioners, who retired post-1996 i.e. irrespective of the date of the retirement. Para Nos.8.1 and 9 read as under:-

“8.1. As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.”

9. In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely covered by the decision of this Court in the case of D.S. Nakara (supra). The decision of this Court in the case of D.S. Nakara (supra) shall be applicable with full force to the facts of the case on hand. The Division Bench of the High

Court has clearly erred in not following the decision of this Court in the case of D.S. Nakara (supra) and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. 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 pensioners within a period of three months from today.”

The third issue with respect to the grant of full pension to all those pensioners, who retired without completing 33 years of service too deserves to be accepted, inasmuch as, it is evident from the judgment rendered by this Court in the case of Dr. G.S. Narula (supra) that the Haryana Government has adopted the central pattern and adopted the same definition of emoluments which is prevailing in the Central Government and the Central Government, in any case, has already decided to extend the benefit of full pension even to those whose qualifying service was less than 33 years vide their office memorandum dated 6.4.2016 placed on record as Annexure P-3. Para Nos.6 and 7 of the aforesaid memorandum read as under:-

“6. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the pre-revised pay scale as per

fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. Accordingly, para 5 of this Department's OM of even number dated 28.1.2013 would stand deleted. The arrears of revised pension would be payable with effect from 1.1.2006.

7. Ministry of Agriculture, etc. are requested to bring the contents of 'these orders of the notice of Controller of Accounts/Pay and Accounts Officers and Attached and Subordinate Officers under them for revising the pension of all those pre-2006 pensioners who had rendered less than 33 years of qualifying service at the time of retirement in the manner as indicated above on top priority. Revised Pension Payment Orders in all these cases may also be issued immediately.”

The contents of para No.9 of the writ petition have not been specifically denied, therefore, the petitioners, who have not completed 33 years of service are entitled to the full pension instead of pro-rata pension. Nothing contrary has been pointed out to this Court.

In view of the above, the present writ petition is allowed. The respondents are directed to revise the pension of the petitioners by including NPA for the purposes of revised pension and pay full pension to all the petitioners irrespective of the date of retirement even if they have not completed 33 years of service in terms of the judgment rendered in the case of K.C. Bajaj (supra), Dr. G.S. Narula (supra) as well as the instructions dated 6.4.2016 (Annexure P-3), which are stated to have been adopted by the Haryana Government.

(NIRMALJIT KAUR)
JUDGE

27.1.2020
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No