IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A. No.287 of 2017 in
Civil Writ Petition No.4519 of 2009
Reserved on : September 30, 2019
Date of decision: January 31, 2020

State of Punjab and others ...Appellants

Versus

Pyara Lal Garg ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Suveer Sheokand, Additional Advocate General, Punjab for the non-applicant/appellants.

Mr.Ashok Sharma Nabhewala, Advocate for the applicant – respondent.

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HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 02.08.2016 in CWP No.4519 of 2009 titled 'Pyara Lal Garg (Retd.) vs. The State of Punjab and others', whereby, the writ petition filed by the respondent was allowed.

2. The respondent, a PCMS doctor serving in Government Medical College, Patiala retired from service on 31.03.2006 on attaining the age of superannuation.

3. As per circular dated 29.07.2003 (P-1) in respect of employees retiring on or after 31.07.2003 the commuted value of pension would be at 6.21 number of year's purchase. On 31.10.2006, the Department of Finance issued a revised circular, as per which the commuted value of pension would be 10.46 years of purchase. This was to apply to employees retiring on or after 31.10.2006.

4. The respondent submitted an application dated 14.12.2006 seeking commutation of his pension as per the circular dated 31.10.2006, which according to him worked out to Rs.9,07,961/-. The application is reproduced below:-

> "*I, Dr. Pyara Lal Garg retired from Punjab Government Service on 31.03.2006 on Superannuation from your college.*
>
> *My P.P.O. No. is 191180/PB in favour of Dr.Pyara Lal Garg for Rs.18084 per month issued vide No.P IP/P-17/2005-06/742-45 dated 01.02.2006 by Accountant General (A&E) Punjab, Chandigarh.*
>
> *Punjab Government vide its order No.3/13/20033FPPC/6587 dated 31.10.2006, has revised the form Commutation of Pension to the original one which exit before 01.08.2003 and as such has restored the benefit w.e.f. 31.10.2006 by reducing the discount rate for 8% to 4.75%.*
>
> *I hereby opt for commutation of 40% of my pension at revised discount rate of 4.75% under Rule 11.2(2) of Punjab Civil Services Rules Vol.II.*
>
> *The commutation value as calculated at the discount rate of 4.75% is as under:-*
>
> *18084 x 40% = 7233.6 x 10.46 = 75663.456 x 12 = 9,07,961/- (Rs.Nine Lac Seven thousand Nine hundred and*

> *sixty one)*
>
> *The commutation at the discount rate of 4.75 may be done and the amount given to me. The requisite performa duly filled is enclosed."*

5. The Accountant General, Punjab (appellant No. 3) approved the release of commuted value of pension amounting to Rs.5,39,004/- vide PPO dated 24.01.2007. In terms of the said PPO, an amount of Rs.5,39,004/- was deposited in the account of the respondent. On 14.05.2007, the respondent submitted a request to appellant No.3 for reversal of the transaction of the amount lying in the bank. He was informed that the request could not be acceded to in view of Rule 11.7 of the Punjab Civil Services Rules (Vol.II). The respondent then made a request on 16.07.2007 for rectifying the mistake in the commutation and to pay the correct value of commutation of pension at 10.46 in terms of the revised circular. On refusal of the claim of the respondent, he filed the writ petition.

6. The case of the appellants was that the revised circular dated 31.10.2006 was applicable only to employees who had retired on or after 31.10.2006. Accordingly, it was not applicable to the respondent who had retired before that date. It was also their case that as per 11.7 of the Punjab Civil Services Rules (Vol.II), commutation once applied for, sanctioned and given effect to, could not be rescinded i.e. the portion of pension commuted could not be restored on refund of capitalised value.

7. The Ld. Single Judge held that the perusal of the contents of

the application of the respondent clearly revealed that it was a conditional application for commuting the value of pension, as per the notification dated 31.10.2006. In the application, the respondent had even worked out the commutation as per the formula of 10.46. If the respondent was not entitled to the commutation as per the application, the Accountant General (AE) (Appellant No.3) ought to have declined the same by stating that he was not entitled to the benefit of commutation on the formula of 10.46 as per the revised circular. He should not have proceeded to commute the pension as per the old formula of 6.21 without informing the respondent that his application could not be entertained and that he was only entitled to commutation as per old formula of 6.21.

8. Ld. Single Judge thereby concluded that the office of Accountant General (AE) had erred in sanctioning the commutation as per old formula on the conditional application of the respondent. It was concluded that the order commuting the pension @ 6.21 was without any valid request from the respondent, therefore, the commutation order was set aside. The respondent was directed to deposit back the commuted value of pension with the office of Accountant General (AE), Punjab along with the interest at the same rate charged by the office of Accountant General (AE), Punjab in case of commuted value of pension. On the deposit of the said amount, the entry of commuted value of pension was directed to be reversed and the respondent was directed to be paid full pension.

9. There is no infirmity in the order of the Ld. Single Judge. Rule 11.7 of the Punjab Civil Service Rules (Volume II) would have no

application in view of the finding that the commutation of pension had been made without a valid request of the respondent.

10. The appeal is accordingly dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 31, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No