

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

Sr. No.120

CWP No.7317 of 2022

Date of Decision: 18.05.2022

Karnail Singh Brar

.... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashok Paul Batra, Advocate
for the petitioner.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the grievance of the petitioner is that by impugned order dated 31.08.2018 (Annexure P-1), the petitioner has been denied the benefit of fixation of his pensionary benefits on the last drawn pay, which the petitioner was drawing while working on the higher post of Block Primary Education Officer on current duty charge.

Learned counsel for the petitioner argues that while the substantive rank of the petitioner was Head Teacher working in the Education Department, Punjab but the petitioner was given the charge of the higher post of Block Primary Education Officer and while discharging the duties of the said post, the petitioner retired on attaining the age of superannuation on 31.05.2005. Learned counsel further argues that the petitioner is entitled for fixation of his pensionary benefits in respect of the pay which the petitioner was drawing as Block Primary Education Officer on current duty charge rather than that of the substantive rank of Head Teacher, which benefit was not extended to the petitioner at the time of his retirement.

Learned counsel while placing reliance upon a judgment of a Coordinate Bench of this Court rendered in CWP No.17358 of 2015 titled Jagdish Singh and others versus State of Punjab and others, decided on 09.09.2016, contends that once an employee was discharging the duties of a higher post on officiating basis retires, the pay being drawn in the said status is to be taken into account for fixing the pension as last drawn wages by the employee is to be seen and not that of the substantive rank.

I have heard learned counsel for the petitioner and gone through the record with his able assistance.

It is correct that the Coordinate Bench of this Court while passing the order dated 09.09.2016 in CWP No.17358 of 2015 held that the last drawn wages is to be taken into account while computing the pensionary benefits even if, the said last drawn wages is while working on current duty charge on a higher post. But the same question came up for consideration before the Hon'ble Supreme Court of India in Writ Petition (C) No.300 of 2016 decided on 06.09.2019 titled K.Sreedhar Rao versus Union of India through Secretary, Ministry of Law & Justice, New Delhi, wherein, the Hon'ble Supreme Court held that an employee is only entitled for fixation of the pensionary benefits keeping in view the substantive rank held and not that of the current duty charge. The relevant paragraph 7 of the said judgment reads as under:-

“Now so far as the reliance placed upon the decision of this Court in the case of Syad Sarwar Ali (supra) by the learned counsel appearing on behalf of the respondent is concerned, learned counsel appearing on behalf of the petitioner is right to some extent that the said decision is distinguishable on facts. It is true that in the said case, the respondent-Judge retired as a puisne Judge and not as an Acting Chief Justice.

However, in the said decision, it is specifically observed that the substantive portion of Rule 2 read with Rule 7 of the First Schedule deals with the calculation of the pension payable to a Judge during his judicial career and that in computing the pension, the time which he had spent as a Judge or Acting Chief Justice or Chief Justice is taken into consideration. It is further observed by this Court in the aforesaid decision that the rules containing First Schedule are conscious of the fact that the retiring incumbent may be a Judge or a Chief Justice or may have acted as an Acting Chief Justice for a period of time where for the purpose of calculating the quantum of pension, the period spent by a Judge as an Acting Chief Justice is taken into consideration for the purpose of fixing the ceiling. It is further observed that however, an Acting Chief Justice, who is one appointed under Article 223 of the Constitution is not equated with the Chief Justice appointed under Article 217 of the Constitution. The above observation clinch the issue. Even otherwise, we have considered the question posed independently and are of the opinion that the petitioner is not entitled to the pensionary benefits including the ceiling in the pension which may be available to a retired Chief Justice and as observed hereinabove, only that period of service rendered by him as an Acting Chief Justice, i.e., 14 months service as an Acting Chief Justice is required to be considered as service rendered as a Chief Justice for the purpose of computation of pension under Rule 2/as per Rule 2 of the Part I of the First Schedule of the 1954 Act.”

Keeping in view the fact that the Hon'ble Supreme Court of India in ***K.Sreedhar Rao (supra)*** has taken a view contrary to the view

view taken by Hon'ble Supreme Court will prevail over the view taken by the Coordinate Bench of this Court in *Jagdish Singh (supra)*.

Keeping in view the above, once a question of law has been settled by Hon'ble Supreme Court in *K.Sreedhar Rao (supra)*, the same is to be made applicable upon all employees and when the said settled principle of law is applied in the facts and circumstance of the present case, petitioner is not entitled for fixation of his pensionary benefits on the last drawn pay while working on current duty charge. Petitioner's pensionary benefit could only be fixed while taking into consideration his substantive rank. No infirmity can be found in the impugned order (Annexure P-1) keeping in view the settled principles of law mentioned hereinbefore. No ground to interfere in the impugned order is made out.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

18.05.2022
Maninder

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