IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 **CWP-11650-2015**
Date of Decision :27.10.2022

Parmod Kumari and another **...Petitioners**

Versus

State of Haryana and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surender Deswal, Advocate for the petitioners.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance of the petitioners is that pay of the petitioners upon their reemployment has not been fixed in accordance with the terms and conditions of their reemployment.

As per the facts mentioned in the writ petition, petitioner No.1 retired as lecturer on 31.05.2013 and keeping in view the service career of the petitioner No.1, the respondents decided to reemploy her in service w.e.f. 01.06.2013 till 31.03.2014. As per the reemployment order, the petitioners were to get their emoluments as per the provisions of the Punjab Civil Services Rules i.e. last pay drawn minus pension. Similar is the case of petitioner No.2, who was also working as Lecturer and retired on 30.04.2015 and was reemployed thereafter on the same terms and conditions as were made applicable upon petitioner No.1.

During their reemployment, the salary of the petitioners was not fixed as required under the law and the conditions stipulated in the reemployment order, which is the grievance raised by the petitioners in the present writ petition.

As per the petitioners, the petitioner's salary upon reemployment was to be computed by deducting pension from the last pay drawn, which was admissible to them while working as lecturer but the respondents did not give the said benefit to the petitioners and rather deducted more amount than permissible under the rules governing the service for fixing their emoluments to be paid upon reemployment. Learned counsel for the petitioners argues that respondents calculated the emoluments by ascertaining the 'pension equivalent'.

Learned counsel for the petitioners argues that the similarly situated employees as the petitioners, have been granted the benefit of the salary upon re-employment, which was ascertained keeping in view the same service rules according to which only actual pension being drawn by them is to be deducted for the salary of the post concerned.

After notice of motion, the respondents have filed reply wherein, it has been mentioned that upon reemployment, the reemployment policy dated 26.04.2021 will be applicable for calculating the salary of the re-employed personnel as per which the salary of the petitioners upon reemployment has to be calculated as per rule 7.18 (b) of the Punjab Civil Service Rules, as applicable to Haryana, hence, the salary of the petitioners has rightly been fixed keeping in view the explanation to Note-4 of the said rule.

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

It is a conceded position that the petitioner No.1 and 2 were given reemployment as per orders dated 26.04.2013 (Annexure P/1) and 06.04.2013 (Annexure P/2) respectively and as per the Clause-V of both the orders, salary was to be paid as per the provisions of Civil Service Rules Vol-II. That being so, respondents were under an obligation to only deduct the pension which was actually being received by the petitioners at the time of their reemployment from last pay drawn while computing their salary upon reemployment.

The respondents misread the rule 7.18 so as to make applicable explanation (b) to Note 4 of Rule 7.18 upon the petitioners, which is as under:-

> " in fixing the pay in accordance with the above principle, the pension equivalent "of the death cum retirement gratuity should always be taken into account, in cases of retired government employment were governed by the new pension rule or had opted for the modified pension rules,-vide alternative (c) under rule 1.2-B. The pension equivalent of the death cum retirement gratuity will be determined on the basis of the commutation table applicable to the government employee at the time of the retirement."

A bare perusal of the said explanation will show that the said explanation is only to be made applicable where an employee is not getting pension under the New Pension Scheme or had opted for modified pension rules under which pension is not admissible to the pensioner and it is only under these circumstances when definite pension admissible to a retiree could not be ascertained then, in order to ascertain the pension of such kind of re-employed pensioner under rule 1.2-B, "pension equivalent" to death-cum-retirement gratuity is to be made applicable upon reemployment. Said rule is not applicable upon the petitioners as the petitioners are actually getting definite amount of pension already ascertained by the authority concerned, so question of ascertaining the same by applying Rule 1.2-B does not arise.

In the present case, the petitioner is getting pension and only the amount of pension which the petitioner is getting should have been deducted from his/her last pay drawn while computing salary upon reemployment, keeping in view the conditions of the reemployment letter, which is inconsonance with the reemployment policy dated 26.04.2011 as well as the rule 7.18 of the Punjab Civil Services Rules therefore, the deductions which have been made from the petitioners by ascertaining "pension equivalent" keeping in view the gratuity awarded to the petitioners for their previous service is totally arbitrary and illegal and is not inconsonance with either the rules governing the service or the re-employment policy issued by the respondents as well as the terms and conditions of re-employment of the petitioners.

Further, it is not denied by the respondents that the similarly situated reemployed personnel, who were also getting pension, only their actual pension has been deducted from the last pay drawn for computing their salary upon re-employment. Once, the benefit being claimed by the petitioner has already been allowed in the case of the similarly situated employee, denial of the same by misreading the rule 7.18 is totally arbitrary and illegal.

Keeping in view the above, the present petition is allowed. Respondents are directed to calculate the salary of the petitioners by only deducting actual pension, which the petitioners were receiving after their retirement and difference of their salary so calculated which was not paid, be paid to the petitioners within a period of two months from the date of receipt of copy of this order.

No other argument has been raised.

October 27, 2022 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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