

303 (7 matters)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 05.05.2022

Sita Ram and others		CWP-27261-2013 (O&M) ...Petitioners
	Vs.	
State of Haryana and others		...Respondents
		CWP-27314-2013 (O&M) ...Petitioners
Balbir Singh and others		
	Vs.	
State of Haryana and others		...Respondents
		CWP-27366-2013 (O&M) ...Petitioners
Ranbir Singh and others		
	Vs.	
State of Haryana and others		...Respondents
		CWP-27817-2013 (O&M) ...Petitioners
Lakhpat and others		
	Vs.	
State of Haryana and others		...Respondents
		CWP-8249-2014 (O&M) ...Petitioners
Jasbir and others		
	Vs.	
State of Haryana and others		...Respondents
		CWP-27897-2013 (O&M) ...Petitioners
Ishwar Singh and others		
	Vs.	
State of Haryana and others		...Respondents
		CWP-16771-2013 (O&M) ...Petitioners
Prem Singh and others		
	Vs.	
State of Haryana and another		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Parveen Gupta, Advocate,
For the petitioners.

Mr. R.D.Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Vide this common order, I intend to dispose of the aforementioned seven writ petitions, as common questions of law and facts are involved therein. For brevity, facts are being taken from CWP No.27261-2013.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to grant/release the enhanced House Rent

Allowance and Medical Allowance to the petitioners on account of pay revision with effect from 01.01.2006 to 31.12.2008 along with arrears and interest thereon.

3. Learned counsel for the petitioners submits that petitioners are working as conductors/drivers in the respondent department for the past several years. After the implementation of 6th Pay Commission recommendations, the pay scales have been revised w.e.f. 01.01.2006 for all categories of the employees of the State Government and the pay scales of conductors and drivers have been merged in the pay scale now structured as Rs.5200-20200. Aforesaid pay scales have been revised w.e.f. 01.01.2006 and the arrears of pay revision have been paid w.e.f. 01.01.2006. The house rent allowance, medical allowance and overtime allowance in the new/revised pay scale of Rs.5200-20200 has also been upgraded and paid to the petitioners w.e.f. 01.01.2009. Grievance of the petitioners herein is that whereas the pay revision has been effected w.e.f. 01.01.2006 and the arrears thereof are also paid w.e.f. 01.01.2006, while releasing the house rent allowance and the medical allowance, the same has been paid only w.e.f. 01.01.2009 and the arrears thereof w.e.f. 01.01.2006 has not been paid to the petitioners as per the enhanced HRA and medical allowance on account of the aforesaid pay revision. Hence, the instant petition.

4. Petition was admitted on 24.01.2018 and it was directed to set down the petition for final hearing within one year.

5. I have heard learned counsel for the parties and gone through the case file.

6. Concededly, what is sought herein is benefit of enhanced allowances with effect from the date of revision of pay of the petitioners i.e. with effect from 01.01.1996 and 01.01.2006. Both though being separate and distinct causes of action having arisen on different dates ought not to have been clubbed together keeping in mind that both are governed by their respective spheres of limitation period.

7. Be that as it may, the writ petition was filed in the year 2013 and qua the arrears of pay revision with effect from 01.01.1996 it is thus after a lapse of around 19

years that indulgence is being sought under extraordinary writ jurisdiction of this Court. Likewise, qua the arrears with respect to second pay revision with effect from 01.01.2006, the writ petition has been filed after a lapse of more than 9 years. No doubt, the petitioners on initial stage must have been pursuing their cause on the administrative side but even the same cannot be a justification for such an inordinate delay though of course, certain reasonable period is justifiable before approaching this Court. Having acquiesced for such long years, ordinarily the writ petition ought to have been dismissed on the ground of delay alone.

8. Even otherwise, on merits when the matter was earlier taken up for hearing, having heard arguments for some time, I had already expressed my disinclination to interfere and at the request of learned counsel for the petitioner adjourned the matter, while passing the following order dated 31.03.2022:-

“Learned counsel for the petitioners seeks time to cite applicable Act or Rules to show that House Rent Allowance and Medical Allowance are statutory rights and the same ought to be proportionally increased on the increase of the salary of an employee.

At his request, adjourned to 28.04.2022.

Photocopy of this order be placed on the connected case files.”

9. On the adjourned date of hearing i.e. 28.04.2022, learned counsel for the petitioners once again sought time that he could not lay hands on the applicable Act or Rules to show that House Rent Allowance (HRA) and Medical Allowance are statutory rights and the same also have to be proportionately increased on the increase of the salary of an employee. In the absence of any Statutory Provisions and/or Rules conferring any rights on the petitioners of which any violation has been alleged, no mandamus can be sought from the Constitutional Court. It is well settled principle of law that mandamus is issued only when statutory authorities fail to comply with the duties as envisaged under the Rule to impinge on the statutory rights having arisen from the same very Act or Rules. Being not so, petitioners are not entitled to any writ of mandamus as has been sought herein. In the absence of any such Act or Rules

having been produced or relied upon, the claim of the petitioner even on merits does not seem to be maintainable.

10. Apart from the above, perusal of the writ petition would reveal that the petitioners have tried to link up the House Rent Allowance and Medical Allowance with the revision of pay scale but the Central 4th Pay Commission based on whose recommendations pay revision was carried out, do not make any such recommendation.

11. In this context, reference may also be had to a definition of Basic Pay as per Rule 3 (1) of Haryana Revised Pay Rules, 1987 which is as under:

“Basic Pay” means pay as defined in Rule 2.44(A)(I) Punjab Civil Services Rules Volume-1 Part-1”.

The pay has been defined in Rule-3(L) which is reproduced as under:-

“Pay” means the amount drawn monthly by a Government servant, other than special pay or pay granted in lieu of his personal qualification or his length of service, in the functional pay scale, which has been sanctioned for a post held by him substantively or in an officiating capacity or in case where no separate functional pay scale is sanctioned for the post held by the Government servants constituting a cadre, in the pay scale to which he is entitled by reason of his position in a cadre.”

12. Again the pay scale of Haryana Government employees were revised in the year 2008 vide Notification dated 30th December 2008 by framing the service rules under the proviso of Article 309 of the Constitution of India titled as Haryana Civil Services (Revised Pay) Rules, 2008, keeping in view the recommendations of **Central Sixth Pay Commission**. The pay has been defined in Rule-3(O) of the said Rules which is reproduced as under:-

“Pay” means the amount drawn monthly by a Government servant, other than special pay or pay granted in lieu of his personal qualification or his length of service, in the functional pay scale, which has been sanctioned for a post held by him substantively or in an officiating capacity or in case where no separate functional pay scale is sanctioned for the post held by the Government servants constituting a cadre, in the pay scale to which he is entitled by reason of his position in a cadre.”

13. Harmonious and conjoint reading of the aforesaid would reveal that pay as defined does not include either the Medical Allowance or the House Rent Allowance.

14. Furthermore, only such other emoluments are treated as pay which have been specifically classed as 'Pay' in terms of Rule 2.44 of the Civil Services Rules Vol I Part I reproduced below:-

“2.44.(a) Pay means the amount drawn monthly by a Government servant as:-

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre, and*
- (ii) overseas pay, technical pay, special pay and personal pay, and*
- (iii) any other emoluments which may be specially classed as pay by the competent authority.”*

15. Again bare perusal of the above reflects that neither the House Rent Allowance nor Medical Allowance are described as pay, nor specially classed as pay by the competent authority. That apart, there is no challenge to the Administrative Instructions issued from time to time by the State of Haryana with effect from 01.01.1986, recital of which has been given specifically in the written statement and are annexed as Annexures R-1 to R-8 respectively. The same are referred to hereinbelow:

- 1. “Letter No.4/7/86-3FR(II) , dated 7th May 1986.*
- 2. Letter No. 52-2FICW-88, dated 12.02.1988*
- 3. Letter No. 419-2FICW-91, dated 28th February 1991.*
- 4. Letter No. 10/2/96-2FICW, dated 27th February 1996*
- 5. Letter No. 10/31/98-2FICW, dated 11th August 1998.*
- 6. Letter No. 10/46/2014-2FICW, dated 17th December 2004*
- 7. Letter No. 10/24/2007-2FICW, dated 25th May 2007*
- 8. Letter No. 1046/2004-2FICW, dated 27th January 2009”*

16. In the overall premise, in the absence of any Statutory Act and/or Rule and/or any Administrative Instructions conferring specific right on the petitioners that the House Rent Allowance and Medical Allowance are part of the pay, the petitioners cannot seek the same as a matter of right and/or by claiming any violation of their fundamental right as envisaged under the Constitution of India. On the contrary, what

emerges is that there are Rules as well as Administrative Instructions to the contrary, which are not under challenge before this Court.

17. My aforesaid views are fortified by a Division Bench Judgment dated 10.06.2016 of Bombay High Court(Bench at Aurangabad) rendered in Writ petition No.3342 of 2014 titled as “**Neelkanth Vishwnath Dabholkar and another Vs. Union of India and others**” against which an SLP No.31152/2016 was dismissed on 07.05.2018. The relevant part of the Division Bench Judgment is reproduced hereinbelow:

“15. Only because the salary has been revised with a retrospective date i.e. 01.01.2006 the benefit of said revised salary is also claimed for grant of house rent allowance from 01.01.2006. The same does not seem to be the intention of the amendment Act, 2009. The intendment of the amendment Act, 2009 with regard to the house rent allowance is to give benefit of the same from 01.09.2008. The amendment act has clearly clarified its intention vide Section 1 (2) of the amendment Act, 2009. The benefit of increased salary for computation for payment of house rent allowance has been covered by independent amending provision. The house rent allowance is a form of a perk and perquisite which has been made applicable qua the revised salary from 01.09.2008. Till 31st August, 2008 the house rent allowance was paid at the rate of 30% on Rs.26,000/- +30% of dearness pay. The petitioners have received the same. On and from 01.09.2008 the words 30% on dearness pay is omitted and from 01.09.2008 the petitioners are paid house rent allowance at the rate of 30% on the revised salary of 80,000/- per mensem. On and from the date house rent allowance is paid at the rate of 30% on the revised salary of 80,000/- per month, house rent allowance is not payable by adding 30% of the dearness pay and the same continues till date as vide amendment Act 2009 +30% of dearness pay is omitted w.e.f. 01.09.2008. If, the contention of the petitioners is accepted then from 01.01.2006 to 31.08.2008 the petitioners would claim house rent allowance at 30% of the revised salary of 80,000/- per mensem + 30% of dearness pay and from 01.09.2008 will only be paid house rent allowance at the rate of 30% on the revised salary of 80,000/- per mensem only i.e. reducing the house rent allowance amount. Such an interpretation would not be in consonance with the intention of the amendment Act, 2009 but on the contrary will result into anomaly.”

18. No grounds are made out to interfere. Dismissed.

19. Photocopy of this order be placed on the connected case files.

(ARUN MONGA)
JUDGE

May 5, 2022

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No