

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(245)

CWP-32598-2019

Date of Decision : March 16, 2022

Gurdev Singh and others

.. Petitioners

Versus

State of Punjab and another

.. Respondents

(245-2)

CWP-10498-2020

Karan Vir Singh and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

(245-3)

CWP-11285-2020

Navroop Singh and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

(245-4)

CWP-12330-2020

Saroj Bala and others

.. Petitioners

Versus

State of Punjab and another

.. Respondents

(245-5)

CWP-15404-2020

Raj Kumar Arora

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(245-6)

CWP-15468-2020

Varinder Kumar Sharma and others

.. Petitioners

Versus

State of Punjab and another

.. Respondents

(245-7)

CWP-16074-2020

Karmjit Singh and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

(245-8)

CWP-20544-2020

Dharm Paul Sharma

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(245-9)

CWP-20168-2020

Inderjit Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(245-10)

CWP-15265-2020

Sant Ram Garg

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(245-11)

CWP-15271-2020

Major Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(245-12)

CWP-14880-2020

Paramjit Singh and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

CWP-32598-2019 and other connected cases	4
(245-13)	CWP-18431-2020
Mulkh Raj and another	.. Petitioners
Versus	
Punjab State Power Corporation Ltd and others	.. Respondents
(245-14)	CWP-14993-2020
Raj Kumar Chauhan and others	.. Petitioners
Versus	
Punjab State Power Corporation Ltd.	.. Respondent
(245-15)	CWP-16353-2020
Malagar Singh	.. Petitioner
Versus	
State of Punjab and another	.. Respondents
(245-16)	CWP-15931-2020
Har minder Singh and another	.. Petitioners
Versus	
State of Punjab and others	.. Respondents

(245-17)

CWP-16349-2020

Alvin Masih

.. Petitioner

Versus

State of Punjab and another

.. Respondents

(245-18)

CWP-15224-2020

Prem Sagar Bali

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(245-19)

CWP-15233-2020

Surinder Kaur Jawanda and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

(245-20)

CWP-22679-2020

Hari Sharma and others

.. Petitioners

Versus

Principal Secretary and others

.. Respondents

(245-21)

CWP-6249-2021

Shashi Kant Sodhi and another

.. Petitioners

Versus

State of Punjab and another

.. Respondents

(107)

CWP-25322-2021

Jaspinder Pal Singh Sandhu

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(256)

CWP-8626-2021

Hardev Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gaurav Sharma, Advocate, for the petitioners,
(in CWP-32598-2019).

Ms. Gitanjali Chhabra, Advocate, for the petitioners,
(in CWP Nos. 14993, 15468, 15931, 16349 and
16353 of 2020).

Mr. C.M. Chopra, Advocate, for the petitioners,
(in CWP Nos. 10498, 14880 and 11285 of 2020).

Mr. Sunny Singla, Advocate, for the petitioners,
(in CWP Nos. 12330 of 2020 and 8626 of 2021).

Mr. N.S. Swaitch, Advocate, for the petitioners,
(in CWP Nos. 15934, 15271, 15404, 15224, 15233, 20168 of
2020, 15265 of 2020 and 25322 of 2021).

Mr. Nitesh Singla, Advocate, for the petitioners,
(in CWP Nos. 16074 and 20544 of 2020).

Mr. Sukhwinder Singh, Advocate, for
Mr. Surmukh Singh, Advocate, for the petitioners,
(in CWP No.22679-2020).

Mr. Vipin Mahajan, Advocate, with
Ms. Gaganbir Kaur, Advocate, for the petitioners,
(in CWP No.6249-2021).

Mr. Kannan Malik, Assistant Advocate General, Punjab.

Ms. Anju Sharma Kaushik, Deputy Advocate General, Punjab.

Ms. Monica Chhiber Sharma, Advocate,
for the respondents-PSPCL (in CWP Nos. 14880, 14993
and 18431 of 2020).

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, 23 petitions, the details of which have been given in the heading of the order, are being disposed of as all these petitions arise on the same question of law. For the sake of convenience, facts are being extracted from CWP No.32598 of 2019.

In the present petition, the grievance of the petitioners is that by the date of attaining the age of superannuation, they had already completed 12 months continuous service so as to become eligible for the grant of increment as envisaged under Rule 4.7 of the Punjab Civil Services Rules Volume 1 Part 1 but the said benefit has not been extended to them only on the ground that the benefit of increment, for which, they had become entitled for, could have only been granted to refix their pay on the very next

day of completion of 12 months but as they retired from services before the said date and as they were not in service on such date, the question of re-fixation of their pay by the grant of increment for services for continuous 12 months prior to the date of retirement cannot arise and therefore, the emoluments which the petitioners were drawing on the last date of their service, are to be taken in consideration for the purpose of computing their pensionary benefits. The grievance being raised by the petitioners is that once they have completed 12 months continuous service prior to their retirement, an increment has to be granted to them in the cadre in which they were working and it is only thereafter, by re-fixing their pay by adding the increment to their pay, the retiral benefits of the petitioners should have been calculated. The claim which is being made by the petitioners is raised by placing reliance on the judgment of the Madras High Court passed in ***CWP No.15732 of 2017 titled as P. Ayyamperumal versus Central Administrative Tribunal, Madras Bench, Chennai and others on 15.09.2017***, which judgment on the said question of law has attained finality upto the Hon'ble Supreme Court of India. The said claim of the petitioners did not find favour with the respondents and the same was rejected vide impugned order dated 19.08.2019 (Annexure P-5). The said order is under challenge in this petition with further prayer that their pensionary benefits be calculated by the respondents after adding the increment to their salary.

Learned counsel for the petitioners presses that once by the time the petitioners attained the age of superannuation, they had already completed 12 months continuous service in the cadre in which they were working and since one year of continuous service is required for the grant of increment as envisaged under Rule 4.7 of the Punjab Civil Service Rules

Volume 1 Part 1, their last drawn salary has to be fixed by granting them the increment for the service which they had rendered for 12 months prior to their retirement and the pensionary benefits are to be calculated only thereafter. Learned counsel for the petitioners argues that the same question of law came up for consideration before the Madras High Court and the Madras High Court while passing orders in *CWP No.15732 of 2017 titled as P. Ayyamperumal versus Central Administrative Tribunal, Madras Bench, Chennai and others on 15.09.2017*, held that an employee, who has rendered 12 months continuous service prior to the retirement, is entitled for the grant of increment and the same has to be taken into account while fixing the salary of the employee for the purpose of computing the pensionary benefits. Learned counsel for the petitioners submits that the said judgment has already attained finality and therefore, as the law laid down by the Madras High Court is fully applicable in the case of the petitioners as well, appropriate direction be given to notionally grant the petitioners one increment in respect of the continuous 12 months service rendered by them prior to their retirement and fix their last drawn salary accordingly and thereafter compute their pensionary benefits and grant the petitioners the consequential benefits.

After notice of motion, the respondents have filed the reply. In the reply, the respondents have relied upon Rule 4.9-A of the Punjab Civil Services Rules Volume-1 Part-1 and submit that as per the said Rule, after completion of 12 months of service, the employee is to be granted the benefit on the next day on which, 12 months period is completed and therefore, by the implication of the said Rule itself, the petitioners will only be entitled for the increment on the very next day of completion of 12

months continuous service and as all the petitioners stood retired before the said date, the question of first fixing their last drawn salary by granting of increment, as being claimed and thereafter computing the pensionary benefits is beyond what has been envisaged under the said Rule 4.9-A of the Punjab Civil Services Rules Volume 1 Part 1 and the claim is not permissible.

Learned counsel appearing on behalf of the respondents submits that the judgment of the Madras High Court being relied upon by the learned counsel for the petitioners, is also by misreading the same as in the said case, there was a finance circular issued by the Department of Finance, Government of Tamil Nadu dated 31.12.2014 wherein, it was mentioned that where an employee has completed 1-2 year of service prior to the superannuation, a notional increment only for the purpose of computing pensionary benefits is to be given and not for any other purpose. Learned counsel for the respondents-State submits that the said benefit is not available as far as rules governing the service of the Government of Punjab employees are concerned and therefore, once the factual aspect qua the petitioners, who are employees of Government of Punjab and the employees of the Government of Tamil Nadu, is different, placing reliance upon the said judgment of the Madras High Court is misplaced and the prayer of the petitioners that they are entitled for the relief as extended to the employees of the Government of the Tamil Nadu, may kindly be declined.

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

In the present case, the only dispute is that whether, an

employee who completes 12 months of continuous service upto the date of their retirement is entitled for the grant of benefit of an increment so as to fix their last drawn salary.

The said aspect has to be seen and adjudicated keeping in view the rules governing the service. It is not disputed by the learned counsel for the respective parties that the grant of increment is provided under Rule 4.7 of the Punjab Civil Services Rules Volume 1 Part 1. The said Rule along with note is as under:-

“4.7. An increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld from a Government employee by a competent authority if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.

Note.—In the case of an officer/official who does not fulfil the basic condition laid down in the respective Service Rules regarding the minimum number of years of service, in the lower rank and who is promoted to a higher post by invoking an alternative provision in the relevant rules specifying the extent of relaxation of the basic condition, referred to above, the initial pay in his case would be the minimum of the post to which he is promoted/appointed till he fulfils the condition of completing the basic minimum period of service prescribed and the first annual increment will be granted after one year of the date of completion of the minimum length of qualifying service/experience, necessary for appointment to the service, cadre or the post. In other words for the purpose of 1st increment his appointment shall be deemed to have started on the date on which he completes the minimum

qualifying service/experience, as is necessary for appointment to the service, cadre or the post concerned. This restriction will however not apply in cases where the officer/official was drawing pay more than the minimum of the higher post. In such cases pay shall be fixed in accordance with the provisions of rule 4.4 of these rules. The first annual increment in such a case also will, however, be granted after one year of the date of completion of the minimum length of qualifying service/experience.”

A bare perusal of the Rule would shows that an employee becomes entitled for the grant of increment on completion of one year of continuous service.

Rule 4.9-A of the Punjab Civil Services Rules deals as to when the said increment is to be granted to the employee concerned. The said Rule 4.9 A along with the note mentioned therein is reproduced hereunder:

“4.9-A. Notwithstanding anything contained in the foregoing rule, the annual increments shall be allowed with effect from the first day of the month in which they fall due under the normal rules regulating increments.

Note 1.—The increment of an employee on leave due on the first day of the month will be drawn from the date of resuming his duty on return from leave, because during leave the employee gets leave salary only.

Note 2.—In cases in which there is postponement due to employees proceeding on leave without pay which is not counted for increment, normal increment will be granted from the first day of the month in which the postponed increment, as worked-out under the existing rules and orders, falls.

Note 3.—In a case where the date of appointment of an employee is 19th December, 1975, he will be given increment on 1st December, 1976 before completing 12 months service. Similarly, when he is promoted to a higher grade on 19th

December, 1976 he will get increment on 1st December, 1977 before completing 12 months service in officiating grade.

Note 4.—The periods of service at the same stage count for increment. In regard to the point whether increment is to be allowed on the specific date when the employee completes one year's service at the same stage or on the first day of the month, when by counting those broken periods the date of next increment falls on a date later than the first day of the month the increment will be payable from the first day of the month in which the next increment falls due, after counting the broken periods equal to one year, provided the Government employee has also been holding the post from the first day of that month to the date it falls due. In case he is not holding the post on the first day of the month, the increment will be granted from the date it falls due.

Note 5.—Where the normal increment is withheld for specific period and the period of such penalty expires after first day of the month, increment will be granted or restored from the date of the penalty ceases.

Note 6.—This rule is not applicable to advance or enhanced increments which are allowed as a result of passing of certain examinations. Such increments, if possible, will be governed by separate rules and orders."

On bare perusal of the Rule 4.9-A which is also being relied upon by the respondents, it comes out that the increment is to be allowed to an employee with effect from the first day of the month in which they fall due under the normal rules regulating the increments. The said Rule means that in case an employee completes 12 months service on the last date of a month, the same has to be given effect to from first date of the said month by notional application. There is no ambiguity for the reason that Note 3 given under Rule 4.9-A clarifies the same wherein, it has been mentioned

that even if an employee completes 12 months period in the middle of the month, the increment has to be granted from the first date of the said month i.e. even before the completion of 12 months.

Now, considering the prayer of the petitioners keeping in view the rules governing the service, it has to be adjudicated whether with respect to the 12 months service completed by the petitioners before their retirement, the increment is to be added to their salary so as to fix last drawn salary.

Before proceeding further, it may be noticed here that there is no dispute between the parties that all the petitioners completed 12 months regular service on the day they attained the age of superannuation. That being so, the argument being raised by the respondents that the increment was to be added to their salary on the very next day of their superannuation and as the petitioners were not in service on the said day, the question of fixing of their last drawn pay by adding the increment, does not arise and therefore, the emoluments as they were drawing on their retirement is to be considered as last drawn salary for computing the pensionary benefits, is not in consonance with Rule 4.9-A.

On the face of it, the interpretation which is being given before this Court by the respondents-State, is not being supported by the rule, on which they themselves are placing reliance upon to deny the relief to the petitioners.

Rule 4.9-A clearly envisaged that the increment is to be granted after completion of 12 months service but the said increment has to be granted from the first day of the month in which 12 months service is completed by the said employee. The Note 3 which is the example given to

clarify Rule 4.9-A supports the said interpretation. That being so, the arguments being raised by the respondents that the pay of the petitioners is required to be fixed on the next day of completing 12 months period of continuous service, is contrary to the plain reading of Rule 4.9-A of the Punjab Civil Service Rules. As per Rule 4.9-A, the increment is to be given from first day of the month in which petitioners completed 12 months service and attained the age of retirement and not the next day of their retirement. That being so, the Rule supports the contention of the petitioners for the grant of increment so as to fix their last drawn salary, which is to be taken for the purpose of fixation of their pensionary benefits.

In fact, the controversy which has arisen in the present case is only due to the interpretation, which is being given by the respondents to the Rule 4.9-A. The said Rule rather envisages the fact that the increment is to be allowed on the first day of the month in which employee complete continuous 12 months service so as to ensure that an employee who is retiring in the same month in which he/she completes 12 months continuous service, is also able to get the benefit of the increment prior to retirement.

The interpretation to Rule 4.9-A, as being extended by the respondents-State that the increment will only be available to the employee on the next day of completion of 12 months continuous service, will cause prejudice to an employee concerned, who will lose the increment despite having 12 months continuous service, which entitles the grant of increment. The interpretation being extended by the respondents keeping in view the simple language of Rule 4.9-A, which also gives the example as to how the increment is to be given, cannot be accepted especially when the same causes prejudice to an employee concerned. Rather, Rule 4.9-A has been

worded in such a manner so as to cover the cases of the employees for the grant of increment, who complete 12 months service in which they are retiring. Hence, the interpretation which is being extended by the respondents, is not supported by the plain language of the rule and also causes prejudice to an employee.

Keeping in view the fact that the petitioners are entitled for the grant of benefit which they are praying for, on the basis of the rules governing the service itself, therefore question whether the judgment of the Madras High Court is applicable in the facts of the present case or not, needs no reference. In the present case, keeping in view the clear cut rule which grant the petitioners the benefit of increment to be extended to them by notional implication from the first day of the month in which they complete 12 months of service so as to calculate the last drawn salary, the petitioners are held entitled for the grant of notional benefit of one increment for 12 months completed service on the date of their retirement so as to fix their last drawn salary only for the purpose of computing their pensionary benefits.

Learned counsel for the petitioners argues that though, as per the interpretation which has been given to Rule 4.9-A by this Court, the petitioners are entitled for an increment by notional grant of the said increment from the first day of the month in which they completed 12 months service but, as their prayer in the petitions is for the grant of notional increment, they will stick to the same prayer that their last drawn salary be fixed notionally after granting the said increment and will not demand the actual benefit of the increment along with the arrears till the date of filing of these petitions.

Learned counsel for the petitioners submits that the petitioners are ready to forego their actual arrears in case, their pensionary benefits are fixed notionally up to the date of filing the petitions by them by giving them the benefit of the increment but the arrears for which they become entitled for be extended to them only from the date, the petitioners had approached this Court for the reason that they were agitating their claim before this Court by filing the present petitions and the delay in adjudicating upon the claim of the petitioners, should not harm them in any manner.

The present petitions are allowed in the above terms. The respondents are directed to grant the petitioners the benefit of one notional increment so as to fix their last drawn pay at the time of their retirement and their pensionary benefits be re-calculated on the basis of said last drawn pay but petitioners, as undertaken by them will not be entitled for the arrears up to the date of filing their respective petitions by them and the actual benefits of arrears upon re-fixation of their pension will be given to the petitioners from the date of filing of the writ petitions. The petitioners are held not entitled for any arrears prior to the date of filing of the writ petitions by the petitioners as agreed by them before this Court at the time of hearing. Let the re-fixation of the pensionary benefits upon revised last pay drawn be done by the respondents within a period of two months from the receipt of copy of this order and the actual arrears for which the petitioners become entitled for under this order be released to them within a period of one month thereafter.

The petitions are allowed in above terms.

March 16, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No