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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-12812-1996 (O&M)
Date of Decision:27.07.2023

MANJIT SINGH

.....Petitioner

V/s.

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Ms. Aarushi Garg, Advocate,
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition has prayed for issuance of directions to respondents to grant the petitioner the benefit of sterilization operation under the family planning scheme.

2. The issue raised by the petitioner in the present petition is no more *res integra*.

3. The short conspectus of the case is that the petitioner underwent a sterilization operation on 17.11.1969. The Punjab Government on 25.10.1983 promulgated a Policy to grant an extra increment to Government Servants who have already undergone sterilization operation making it prospective to those who undergo the sterilization operation on or before the date of issue of the said letter. It was also specifically clarified in letter dt.16.04.1984 that the benefit would not be available to those Government Servants who had undergone sterilization operation prior to the date of issue of the Government letter dt.25.10.1983.

4. A similar circular was issued by the Government of Haryana on 20.07.1981 and the same came up before this Court for challenging the said

condition whereby the benefit was advanced to the Government employees who underwent sterilization operation on or after 20.07.1981.

5. This Court in CWP-9344-1989 decided on 19.01.1993, after discussing all the aspects relating to the said circular which was similar to the terms as that issue by the Government of Punjab, reached to the following conclusion:-

6. A clarification application was also filed before the Court wherein it was pointed out that the authorities in the State of Punjab are not carrying out the directions only on the ground that a specific preference has been made to the letter dt.25.10.1983. This Court observed as under:-

“X XXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX

As a result, the stipulation contained in paragraph (v) by which the benefit of special increment was restricted to those Government employees who undergo sterilization operation on or after July 20,1981 is declared unconstitutional. Accordingly, the respondents are directed to re-fix the petitioners' pay by treating them as entitled to the grant of special increment. However, the payment of arrears of salary shall be confined to a period of 38 months proceeding the date of the filing of the petition. In the circumstances of the case, there will be no order as to costs.”

7. Learned counsel for the petitioner submits that in terms of the observations made by the Court, the petitioner was entitled to receive one increment further.

8. *Per contra*, learned State counsel pointed out that the circular issued by the Haryana Government essentially was on the basis that no person who has more than two children and has not got himself/herself or his

or her spouse sterilized, shall have to give an undertaking and would be liable to be removal from service.

9. Resultantly, the employees underwent sterilization/family planning operation while the Punjab Government did not issue any such notification restraining its employees with a threat to remove them from service if they are having more than two children.

10. Learned counsel for the petitioner has thus submitted that the circular issued by the Punjab Government dt.25.10.1983 has to be understood in the said circumstances.

11. Further the petitioner is stated to have taken premature retirement on 01.03.1991.

12. I have considered the submissions of the learned counsel for both the parties and finds that the incentives to the employees of the State Government for promoting family norms as issued by the Government of Punjab dt.25.10.1983 has been found by this Court in earlier proceedings to be similar to that issued by the Government of Haryana and clarification was also issued by this Court on 27.07.1994 in the same terms. In spite thereto, the petitioner has been denied the rightful claim. This Court is of the opinion too that circular dt.25.10.1983 issued by the Government of Punjab may have been issued for certain other reasons but essentially the benefit is same as given by the Government of Haryana.

13. The judgment passed by the Court relating to the circular dt.20.07.1981 issued by the Government of Haryana reflects that the Court has found the cut-off date mentioned for grant of increments as discriminatory and having no relation or nexus with the object sought to be

achieved. The basis for quashing the restriction to the Government employees, who underwent sterilization operation on or after 20.07.1981, has been held to be an artificial classification.

14. In view of the above, this Court does not find any difficulty in holding that the circular issued by the Punjab Government will also have the same application as that issued by the Haryana Government and there can be no artificial classification with the Government employees who underwent sterilization operation before the date of issuance of the circular dt.25.10.1983 and the benefit of special increment must be advanced to the petitioner.

15. The objection raised by the respondents regarding the petitioner having already taken voluntary retirement has no basis.

16. As far as the said increment is concerned, the same has to be advanced/granted to the petitioner for the year 1983 onwards and the pay fixation would, therefore, have to be done w.e.f. 1983 which would result in the consequential retiral benefits.

17. It is made clear that the benefit now be granted would be notional for the service period but shall be counted for the purpose of enhancement of pension and other retiral benefits. The arrears so calculated shall be released to the petitioner within three months.

18. The Writ Petition stands allowed accordingly.

19. Pending application(s), if any, stands disposed of accordingly.

July 27, 2023

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>