

345

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-12835-1996 (O&M)  
Date of Decision:27.07.2023

***SURINDER KAUR***

*.....Petitioner*

V/s.

***STATE OF PUNJAB AND OTHERS***

*.....Respondents*

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present: None 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 quashing of Annexures P-4, P-8 and P-10 whereby the benefit of proficiency step-up and incentive of family planning scheme has been withdrawn from the petitioner by the respondents.

2. The petitioner is aggrieved by the orders passed by the respondents whereby the increment granted to her on account of undergoing sterilization operation has been withdrawn.

3. The petitioner has submitted in this Writ Petition that the circular, issued by the Government of Punjab for granting the benefit of sterilization to only those families which have one or two living children and not to those families which have more than two children, could not be applied on the petitioner as the petitioner had undergone operation on 04.05.1994. The notification issued on 19.07.1994 has been wrongly made retrospective from 20.04.1994.

4. It is stated that notification could not have been made retrospective and the benefit already given before issuance of the notification could not have been taken away from the petitioner.

5. Learned State counsel has submitted that while in ordinary course, the State authorities have to issue orders which are prospective in nature but a particular order can always be made retrospective too. The validity of a circular, being made retrospective from a particular date, cannot be questioned merely because someone has been already granted the benefit. The State always has the authority to issue orders with retrospective effect.

6. I have considered the submissions of learned State counsel as well as the perused the case file and available record.

7. What orders can be passed retrospectively and prospectively has been held so by the Constitution Bench in the case of **Chairman, Railway Board** Vs. **C.R. Rangdharmaiha**; 1997 (3) Suppl. SCR 63 wherein it is held as under:-

*“In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the*

*decisions in Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni & Ors., (supra). ”*

8. Thus, if a vested right flowing from any particular statute or circular has to be taken away the same can be only prospective while the benefit to be advanced or qualification for a particular post can always be retrospective.

9. Keeping in view all the aforesaid principle, this Court holds the action of the State Government in withdrawing the benefit already given to an employee which is of dubious nature is justified. However, no recovery shall be made for the period advanced increments have been given. The said increment would not be denied after the date of circular i.e. 19.07.0994 had been issued.

10. The Writ Petition stands disposed of in the aforesaid terms.

11. 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> |