

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14394 of 2000(O&M)
and other connected cases
Reserved on: 10.04.2023
Date of decision:20.04.2023

Sukhwinder Kaur

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Kumar Jindal, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Sr. DAG, Punjab

ANIL KSHETARPAL, J(Oral)

1. A batch of 15 connected writ petitions involving same issue and having a common counsel for the parties has come up for final disposal. With the consent of the learned counsels representing the parties, the facts are being noticed from Civil Writ Petition No. 14394 of 2020:

The petitioner joined Government of India as Physical Training Instructor (NDS) (National Fitness Corps) for short 'PTI (NFC)' on 01.02.1962. Thereafter, on 02.11.1968 the Graduates NDS Instructors who have received training under the National Discipline Scheme were treated equivalent to the Post Graduate Diploma Holders in Physical Education for the purpose of their appointment as Teachers. The petitioner has a bachelor's degree in Arts. Hence, he claims scale of pay equivalent to Post Graduate Diploma Holder in Physical Education. As per the circular dated 28.07.1976, the services of the petitioners were absorbed with effect from

01.07.1976 in the State of Punjab. The cadre of NDS Instructors was kept separate and diminishing cadre in the Government of Punjab. Condition No.6 of the Circular reads as under:-

“There will be no point to point fixation of pay. Their pay will be fixed at the stage at which the instructor(s) concerned was/were drawing immediately before absorption and if there is no such stage in the grade, it will be fixed at the lower stage, the difference being treated as personal pay to be absorbed in future increment(s).”

2. Civil Writ Petition No.5223 of 1997 and other connected cases filed by the NDS Instructors, who were absorbed in the State of Punjab , were allowed by the Division Bench on 05.11.1997 with the following order:-

“After hearing learned counsel for the parties, we are of the view that apart from the fact that the Central Government have issued a letter in favour of Ram Pratap Yadav in the year 1991 which was placed before the Apex Court to which reference has been made by the Apex Court in tis order dated 16.08.1991, in 1968 letter (Annexure P-1) to which reference has already been made, it has been specifically provided that Graduates with NDS Training would be considered equivalent to Diploma holders in Physical Education and all the NDS Instructors who are graduates and have received NDS training followed by the re-orientation training prescribed for the purpose under the National Fitness Corps Programme by the Central Government, would be treated equivalent to the Post Graduate Diploma holders in Physical Education. Letter dated 26.04.1976 cannot

be said to be a clarificatory letter, rather it runs counter to the decision of 1968 which was interpreted by the Central Government its in the year, 1991, which interpretation was placed before the Apex Court in Ram Pratap Yadav's case (supra).

For the forgoing reasons, we allow this writ petition in the same terms as Civil Writ Petition No.16205 of 1994 decided on July 13, 1995.”

3. Thereafter, once again Civil Writ Petition 16205 of 1994 was disposed of with the following order:-

“The Supreme Court in Ram Partap Yadav vs. Union of India, Civil Writ Petition No.1198 of 1987, while allowing the writ petition observed that the matter is squarely covered by the Government regulations issued in 1968. From the extract of the letter dated June 21, 1991, issued by the Ministry of Human Resources Development, we find that the case of the petitioners is squarely covered by the Government guidelines which was the subject matter of Ram Partap Yadav's case (supra). In this view of the matter, we allow the writ petition and direct the respondents to give benefits to the petitioners contained in the said letter by fixing their salary within four months from the date of receipt of copy of this order.”

4. In compliance thereto, the Director, Public Instructions (Schools) has fixed the pay of the petitioner by passing a speaking order which is the subject matter of challenge in the present writ petition.

5. The learned counsels representing the parties have filed synopsis along with the gist of their arguments.

6. The learned counsel representing the petitioner has contended

as under:-

- “a. Before her absorption in State of Punjab Le on 30.06.1976, petitioner was drawing her basic pay of Rs. 625. The said basic pay as per Condition No. 6 could not be reduced in any circumstances. Thus after absorption in State Service on 01.07.1976, petitioner was entitled to draw a minimum of Rs. 625 as her basic pay in the scale of Rs. 220-500. After applying Condition No. 6 of the policy (Annexure P-2). the pay deserves to be fixed as Rs. 500+ Rs. 125 (personal pay to be absorbed in future increments).*
- b. Petitioner was drawing Rs. 625 as her basic pay in the scale of Rs. 440-750 while working under Govt. of India on 30.06.1976. The petitioner became entitled to fixation of her pay in the new scale of Rs. 220-500 (220-12-340/15-400/20-500). As there is no such stage of Rs. 625 in the scale of Rs. 220-500, then in this eventuality, the pay has to be fixed at Rs. 500 i.e. maximum of the pay scale and the difference of Rs. 125 has to be treated as personal pay (PP) to be absorbed in future increments.*
- c. Petitioner was absorbed in Punjab Govt. in the scale of 220-500 and the only method for absorption of the petitioner with Rs. 625 as basic pay as per Condition No. 6 of Annexure P-2 is to fix the pay of the petitioner at Rs. 500 (basic pay) + Rs. 125 (personal pay) to be absorbed in future increments.*
- d. In the written statement, reliance has been placed upon the letter dated 07.06.1990, copy Annexure R-1. The said letter provide that the emoluments be protected while absorbing in the State Service.*

This letter cannot be interpreted to mean that the due pay which deserves to be fixed as per Condition No. 6 of Annexure P-2 cannot be extended/fixed. The Condition No. 6 in Annexure P-2 categorically provide that the pay will be fixed at the stage at which the instructors concerned were drawing immediately before absorption, that is Rs. 625. Now Rs. 625 in scale of 220-500 can be granted by allowing maximum pay of time scale and thereafter granting personal pay i.e. Rs. 500 as maximum in the pay scale and Rs. 125 as personal pay.. The letter dated 07.06.1990 copy Annexure R-1 additionally protects total emoluments which were drawn prior to absorption in the Punjab State Service. This letter does not affect the petitioner at all.”

7. On the other hand, the learned State counsel has filed written arguments which read as under:-

“The petitioners were earlier engaged as Instructor in NFC (National Fitness Corps)NDS (National Discipline Scheme), which was Central Sponsored Scheme. Thereafter as per conscious decision taken by the competent authority the said Instructors were required to be absorbed in the State Services. As per letter dated 04.08.1988 (Annexure R-1) issued by the Ministry of Human Resource and Development, Department of Youth Affairs and Sports, Govt. of India, the benefit of enhanced pay scales was to be granted to the aforesaid Instructors till the date of their absorption in the State UT Service and after the absorption, their pay was required to be fixed in the State/ UT pay scales.

As per letter dated 07.06.1990 issued by the Government of Punjab, Department of Education (Education-II Branch) (Annexure R-II), sanction was accorded to refix the pay of NFC Instructors in the State scales of pay w.e.f. 07.07.1976 by protecting the emoluments being drawn in the Central Scales prior to their absorption in the State Services. For illustration the following table is given:-

Pay as on 30.06.76 under Centre Govt.	Pay as on 1.7.76 fixed under Pb. Govt.
Basic Pay 425.00	Basic Pay 270+0.90(PP)
Dearness Allowance 114.00	Dearness 146.00 Allowance
Additional Dearness Allowance 53.90	Additional Dearness Interim Relief 50.00
592.90	592.90

It can be seen that Basic Pay in the Central Government Pay Sales was higher than the Basic Pay in the pay scales given under the Punjab Government, However, the allowances given under the Punjab Government were higher than the allowances given under the Central Government. The Punjab Government equated the Basic pay allowances (ie. total emoluments) with Basic Pay+ allowances (ie. total emoluments) which are granted under the Central Government). The difference was made good by adding the component in basic pay and it was kept as personal pay by the Punjab Government. Hence the total emoluments under the Central Government were protected under the Punjab Government as well.

The petitioner is seeking intervention of this Hon'ble Court to take Basic Pay component of the Central Government and the allowances of the Punjab

Government (that too calculated on such higher Basic Pay) which is wholly unjustified.”

8. This court has considered the submissions of the learned counsels representing the parties.

9. Before proceeding further, it will be appropriate to notice that in CWP No.14394 of 2000, 1502, 6612, 6616, 6621, 6623 of 2001, the petitioners were drawing Rs.625/- as their basic pay before absorption. In CWP No.1505, 6613, 6614 and 6622 of 2001, the petitioners were drawing Rs.600/- as basic salary before absorption. In CWP No.O.6617 and 117 of 2001, the petitioners were drawing Rs.480/- as their basic pay. In CWP No.17745 of 2000 and 6615 of 2001, the petitioners were drawing Rs.460/- as their basic pay. In CWP-6624 of 2001, the petitioner was drawing Rs.500/- as his basic pay.

10. The question which require adjudication is “what is the true and correct import of condition No.6 of Circular dated 28.07.1976?” In essence, the question is “Whether the petitioners are entitled to the same basic pay or their total emoluments are required to be protected?”

11. The learned counsels representing the petitioners contend that basic pay is required to be equated at the time of absorption irrespective of fact whether the total emoluments become more than what they were drawing in the Centre Government. While relying upon Rule 4.4 of Punjab Civil Service Rules, the learned counsels contend that it has to be basic pay and not total emoluments.

12. On the other hand, the learned State counsel has contended that as per the circular dated 07.06.1990, the pay of NDS Instructors has been

protected in the pay scale payable in the State of Punjab w.e.f. 07.07.1976 by protecting the emoluments being drawn in the Central Scale prior to their absorption in the State Service. It is contended that the basic pay in the pay scale payable in the Central Government was higher than the basic pay in the pay scales given under the Punjab Government. However, the allowances given under the Punjab Government were higher than the allowances given under the Central Government. Hence, the State of Punjab equated the total amoluments and the difference was made good by adding the component in the basic pay and it was kept as personal pay by the State of Punjab.

13. This court has considered the submissions of the learned counsel representing the parties. It is evident that the arguments advanced by the learned counsels representing the petitioners in all the petitions are based on technical interpretation of the rules. It is evident that condition no.6 of circular dated 28.07.1986 does not make distinction between basic pay and total emoluments. While absorbing the petitioners in the State service, their pay has been protected. This was the sole objective of Clause 6. It was to ensure that they do not suffer any financial loss. As is evident from the written argument submitted by the State counsel, the State has ensured that the petitioners do not suffer any financial loss.

14. While interpreting a provision, the Court has to examine the intent behind such provision. The interpretation of a statute cannot be made in a manner which divorces from its intent behind such provision. Admittedly, the petitioners were initially working under Government of India. They were absorbed in the State service in the year 1976. They were directed to be kept as a separate and diminishing cadre in the Punjab

Government. Their total emoluments have been protected. In such circumstances, this court does not find it appropriate to issue the writ as prayed for.

15. Keeping in view the aforesaid discussion, the conclusion is inevitable.

16. Finding no merit, the writ petitions are dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

20th April, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No