251 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

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CWP-12440-2021 (O&M)
Date of Decision: 23.10.2023

Dr. Devinder Kumar Dhawan and others

..... Petitioners

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Gurminder Singh, Senior Advocate assisted by
Ms. Simurita Singh, Advocate and
Mr. Gurnoor S.Sandhu, Advocate
for the petitioners.

Mr. Arun Gosain, Senior Government Counsel assisted by
Ms. Swati Arora, Advocate
for respondent No.1.

Mr. Arun K.Bakshi, Advocate
for respondents No.2 to 5.

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<u>HARSH BUNGER J.</u>

Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus*, directing respondent No.2-Panjab University to re-fix and release the revised pension to them as per Regulation 4.3 of the Panjab University Employees (Pension) Regulations, 1991, which has been amended vide notification dated 08.02.2021 (Annexure P-11) by calculating the pension of an employee who has rendered 10 years (20 half years) or more of qualifying service as per the Pension Rules of the Government of Punjab as contained in Punjab Civil Service Rules Vol. II, as amended from time to time. A further prayer has been made for directing respondent No.2 to release the arrears of pension which the petitioners would be entitled upon such re-fixation of the pension along with interest @ 18% per annum.

2. The petitioners stated that they were appointed in the respondent/University through proper channel on regular basis on their respective posts and they got retired from the respondent/University after attaining 65 years of age, in pursuance of interim relief granted to them by this Court in a matter wherein they had sought enhancement in the age of retirement from 60 years to 65 years, which issue is stated to be pending in L.P.A. No.1505 of 2016 along with other connected matters.

As per petitioners, so far as the pay scales of the employees of respondent/University is concerned, the University has been following pay scales given to their counterparts working in the Government of Punjab, and accordingly the pay scales have been revised from time to time to bring them at par with the pay scales of the employees working in the Punjab Government. It is claimed that the pay of the employees of respondent/University is fixed in accordance with the Punjab Civil Services (Revised Pay) Rules, 2009. It is further claimed that with regard to any amendment in the Rules pertaining to pay and pension, being followed by the Government of Punjab, the respondent/University has also been making corresponding amendments to incorporate the said changes in their regulations. It is submitted that consequent to the implementation of the Fifth Pay Commission Report, the Government of Punjab had revised the pay scales and pension for their employees vide order dated 17.08.2009 (Annexure P-3). Subsequently, vide clarificatory order 15.12.2011 (Annexure P-4), it was clarified by the Government of Punjab that linkage of full pension with qualifying service of 33 years shall be done away with and once a Government employee has rendered minimum qualifying service of 25 years, pension shall be admissible equal to 50% of emoluments or average emoluments received during the last 10 months, whichever is beneficial to the employee. It is the case of petitioners that in order to incorporate the consequential amendments in the Panjab University Employees (Pension) Regulations, 1991, the Syndicate and the Senate of Panjab University had recommended amendment of Regulation 4.3 as per the newly amended Pension Rules of the Government of Punjab and the Circular dated 15.12.2011 (Annexure P-4). According to petitioners, the aforesaid amendment in Regulation 4.3 was recommended vide Resolution dated 08.10.2016 (Annexure P-5) and resolution dated 17.12.2016 (Annexure P-6) passed by the Syndicate and the Senate of Panjab University, respectively, whereupon the aforesaid recommended amendment was sent to the Ministry of Human Resource Development (M.H.R.D.), Government of India for approval and notification in the Official Gazette of India. It appears that the aforesaid proposed amendment was approved by the Ministry and the same was eventually notified vide notification dated 08.02.2021 (Annexure P-11), which reads as under :-

> "**NOTIFICATION**
>
> Chandigarh, the 8th February, 2021
>
> **No. F.2-6/2015-U.11 dated 08.01.2021.-** In exercise of powers conferred by section 31 of the Panjab University Act, 1947 (7 of 1947) the Senate with the sanction of the Government hereby makes the following regulations further to amend the Panjab University Employees (Pension) Regulations, 1991, namely :-
>
> **1. Short title and Commencement.-**(1) These regulations may be called the Panjab University Employees (Pension) Amendment Regulations, 2021.
>
> (2) They shall come into force from the date of

their publication in the Official Gazette.

2. In the Panjab University Employees (Pension) Regulations, 1991, for regulation 4.3, the following regulation shall be substituted, namely :-

"*4.3. In case an employee who has rendered ten years (twenty half years) or more of the qualifying service, the pension payable shall be calculated as per the pension rules of the Punjab Government as contained in the Punjab Civil Services Rules Volume II, as amended from time to time.*"

3. The petitioners claim that prior to the issuance of the aforesaid notification dated 08.02.2021 (Annexure P-11), they had approached this Court vide CWP No.19749 of 2020, seeking the directions to the respondents to release full pensionary benefits to them as per Regulation 4.3, which has been amended as per Punjab Government Letter dated 15.12.2011, which came to be disposed of vide order dated 23.11.2020 (Annexure P-9). It appears that thereafter the respondent/University passed an order dated 16.01.2021 (Annexure P-10) qua the claim of the petitioners regarding release of pensionary benefits as per the amended Regulation 4.3 of the Panjab University Pension Regulations. Relevant extract thereof reads as under:-

"*In the recent past, there had been some amendments in the Pension Rules of Government of Punjab consequent to the implementation of 5th Punjab Pay Commission Report. The Punjab Government vide letter dated 15.12.2011 has reduced the requirement of total no. of years from 33 years to 25 years for grant of full pension. In order to incorporate consequential amendment in Panjab University Pension Regulation, the Syndicate and Senate of Panjab University had recommended following amendment in Pension*

Regulation 4.3 vide their decision 08.10.2016 and 17.12.2016 respectively.

Present Regulation 4.3	*Proposed Regulation 4.3*
In the case of an employee who has rendered 10 years (20 half years), or more of qualifying service, the pension payable shall be calculated at the rate of 50% of average emoluments, if the qualifying service rendered is not less than 33 years (Sixty six half years), the pension admissible shall first be calculated at 50% of average emoluments and then reduced proportionately, to completed half years service actually rendered provided that pension shall, in no case, be less than Rs.375 per month.	*In case an employee who has rendered 10 years (20 half years) or more of qualifying service, the pension payable shall be calculated as per the pension rules of Punjab Govt. as contained in Punjab Civil Service Rules Vol-1 as amended from time to time.*

The recommended amendment as above was sent to the Ministry of Human Resource Development (MHRD), Government of India for approval and notification in the official Gazette of Government of India. The MHRD vide letter No. F.2-6/2015-U.II, dated 12.12.2019 informed that the proposed amendment has been approved but the publication of the same in official gazette of Govt. of India is awaited, which is necessary under Section 35 of Panjab University Act, 1947 to give effect to any amendment in regulation.

Panjab University has already released the due pension to the petitioners as per the existing provision of Pension Regulation 4.3. The request of the petitioners for revised pension, in view of the Panjab Government letter dated 15.12.2011, can be considered only after the publication of the revised regulation 4.3 in the official Gazette of

Government of India, which is mandatory required under Section 35 of the Panjab University Act, 1947."

4. In the aforementioned circumstances, petitioners have filed the instant writ petition by submitting that despite the issuance of notification dated 08.02.2021 (Annexure P-11), considerable time has lapsed, however, the request of petitioners for grant of revised pension has not been considered. Accordingly, a direction is being sought directing release of the revised pension along with arrears as per amended Regulation 4.3 of the Panjab University Employees (Pension) Regulations, 1991.

5. Learned senior counsel representing the petitioners, while referring to notification dated 08.02.2021 (Annexure P-11), submits that said notification shall have retrospective operation in view of the fact that as per Clause 2 of the Panjab University Employees (Pension) Amendment Regulation, 2021; the earlier Regulation 4.3 stands substituted by a new one, thus the same shall have effect from the date of enforcement of the Panjab University Employees (Pension) Regulations, 1991 and not from the date of publication of the amended Regulation on 08.02.2021.

6. On the other hand, it is the stand of respondent/University that the amended Regulation 4.3 has been notified in the Official Gazette of India on 08.02.2021 wherein sub clause (2) specifically mentions that these amendments shall come into force from the date of their publication in the official Gazette. Learned counsel for the respondent-University submits that the University has to implement the amended Regulation (as notified) as it is, i.e. prospectively, as the University is bound to follow the instructions of the Government of India and thus, the petitioners, who stood retired prior to the date of amended Regulation are not entitled to relief claimed, that is to re-fix their pension as well as the consequential reliefs. Accordingly,

dismissal of the instant writ petition has been prayed for.

7. I have heard learned counsel for the parties and gone through the paper-book with their able assistance.

8. The issue in hand involves the applicability of amended Regulation 4.3 (as notified in the official gazette vide notification dated 08.02.2021) on the pensioners who have retired prior to the said date i.e. 08.02.2021.

9. In a similar situation, a Constitution Bench of Hon'ble Supreme Court in ***D.S. Nakara & Others v. Union of India (1983) 1 SCC 305*** observed as under:

> "*35. With this background let us now turn to the challenge posed in these petitions. The challenge is not to the validity of the pension liberalisation scheme. The scheme is wholly acceptable to the petitioners, nay they are ardent supporters of it, nay further they seek the benefit of it. The petitioners challenge only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all pensioners for the purpose of computation of pension irrespective of the date when the Government servant retired subject to the only condition that he was governed by the 1972 Rules. No doubt the benefit of the scheme will be available from the specified date, irrespective of the fact when the concerned Government servant actually retired from service.*
>
> *36. Having set out clearly the society which we propose to set up the direction in which the State action must move the welfare State which we propose to build up the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy*

especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned that pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.

37. If such be the goals of pension, if such be the welfare State which we propose to set up, if such be the goals of socialism and conceding that any welfare measure may consistent with economic capacity of the State be progressively augmented with wider width and a longer canvass yet when the economic means permit the augmentation, should some be left out for the sole reason that while in the formative years of the nascent State they contributed their might but when the fruits of their labour led to the flowering of economic development and higher gross national produce bringing in larger revenue and therefore larger cake is available, they would be denied any share of it ? Indisputably, viewed from any angle pensioners for payment of pension form a class. Unquestionably pension is linked to length of service and the last pay drawn but the last pay does not imply the pay on the last day of retirement but average emoluments as defined in the scheme. Earlier average emoluments of 36 months' service provided the measure of pension because the pension was related to the average emoluments during 36 months just preceding retirement. By the liberalised scheme it is now reduced to average emoluments of 10 months preceding the date. Any one in Government service would appreciate at a glance that with an *average of 10 months it would be on the higher side on account of the two fortuitous circumstances that the pay-scales, if one has not reached the maximum, permit annual increments and there are promotions in the last one or two years. With a view to giving higher average the scheme was liberalised to provide for average emoluments with reference to last 10 months' service. Coupled with it, a slab system for computation is introduced and the ceiling is raised. This is liberalisation. Now, if the pensioners who retired prior to the specified date and had to earn pension on the average emoluments of 36 months' salary just preceding the date of retirement, naturally the average would be lower and they will be doubly hit because the slab system as now introduced was not available and the ceiling was at a lower level. Thus they suffer triple jeopardy, viz., lower average emoluments, absence of slab system and lower ceiling.*

38. What then is the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date ? That poses the further question, why was the pension scheme liberalised ? what necessitiaed liberalisation of the pension scheme ?

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42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle ? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the *payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to Government servants then those who retired earlier cannot be worse off then those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension. One retiring a day earlier will have to be subject to ceiling of Rs. 8,100/-.p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs. 12,000/-.p.a. and average emolument will be computed on the basis of last ten months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified* *date the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore the classification does not stand the test of Article 14.*

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46. By our approach, are we making the Scheme retroactive ? The answer is emphatically in the negative. Take a Government servant who retired on April 1, 1979. He would be governed by the liberalised pension scheme. By that time he had put in qualifying service of 35 years. His length of service is a relevant factor for computation of pension. Has the Government made it retroactive, 35 years backward compared to the case of a Government servant who retired on 30th March, 1979 ? Concept of qualifying service takes note of length of service, and pension quantum is correlated to qualifying service. Is it retroactive for 35 years for one and not retroactive for a person who retired two days earlier. It must be remembered that pension is relatable to qualifying service. It has correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing. (See Craies on Statute Law, 6th Edn., p. 387). Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme. Undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalized *pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into consideration. Recall at this stage the method adopted when pay-scales are revised. Revised pay-scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the Court by its approach would be making the scheme retroactive, became it is implicit in* *theory of wages.*

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49. But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date their pension would be computed afresh and would be payable in future commencing from the specified date. <u>No arrears would be payable</u>. And that would take care of the grievance of retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubar Dayal Commission). If the emoluments remain the same the computation of average emoluments under amended Rule 34 may raise the average emoluments the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on 31st March, 1979 and retiring from service on or after that date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance can be served without impairing the *formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed.*

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62. The financial implication in such matters have some relevance. However in this connection, we want to steer clear of a misconception. There is no pension fund as it is found either in contributory pension schemes administered in foreign countries or as in Insurance-linked pensions. Non-contributory pensions under 1972 Rules is a State obligation. It is an item of expenditure voted year to year depending upon the number of pensioners and the estimated expenditure. Now when the liberalised pension scheme was introduced, we would justifiably assume that the Government servants would retire from the next day of the coming into operation of the scheme and the burden will have to be computed as imposed by the liberalised scheme Further Government has been granting since nearly a decade temporary increases from time to time to pensioners. Therefore the difference will be marginal. Further, let it not be forgotten that the old pensioners are on the way out and their number is fast decreasing. While examining the financial implication this Court is only concerned with the additional liability that may be imposed by bringing in pensioners who retired prior to April 1, 1979 within the fold of liberalised pension scheme but effective subsequent to the specified date. That is a dwindling number is indisputable. And again the large bulk comprises pensioners from lower echelons of service such as Peons, L.D.C., U.D.C., Assistant etc. In a chart submitted to us the Union of India has worked out the pension to the pensioners who have retired prior to the specified date and the comparative advantage, it they are brought within the purview of the liberalised pension *scheme. The difference up to the level of Assistant or even Section Officer is marginal keeping in view that the old pensioners are getting temporary increases. Amongst the higher officers, there will be some difference because the ceiling is raised and that would introduce the difference is however necessary to refer to one figure relied upon by respondent. It was said that if pensioners who retired prior to 31st Mar.,1979 are brought within the purview of the liberalised pension scheme, Rs. 233 crores would be required for fresh commutation, The apparent fallacy in the submission is that if the benefit of commutation is already availed of, it cannot and need not be reopened. And availability of other benefits is hardly a relevant factor because pension is admissible to all retirees. The figures submitted are thus neither frightening nor the liability is supposed to be staggering which would deflect us from going to the logical and of constitutional mandate. Even according to the most liberal estimate the average yearly increase is worked out to be Rs. 51 crores but that assumes that every pensioner has survived till date and will continue to survive. Therefore, we are satisfied that the increased liability consequent upon this judgment is not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the scheme.*

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64. That is the end of the journey. With the expanding horizons of socio-economic justice the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary *eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring sub-sequent to that date' in impugned memoranda, Exhibits P-1 and P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under : In other words, in Ext. P-1 the words :*

> *"that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date"*

and in Exhibit P-2 the words :

> *"the new rates of pension are effective from 1st April, 1979 and will be applicable to all service officers who became/become non-effective on or after that date."*

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that *effect be issued…"*

10. When the case in hand is seen in the light of the legal position indicated above, it is observed that the pensioner form a homogeneous class in itself and the respondents have failed to put forth any circumstance to justify the classification sought to be carved out by them i.e. to say that the petitioners who stood retired prior to date of notification of amended Regulation 4.3 i.e. 08.02.2021 are not entitled to re-fixation of their pension.

11. In my considered view, the artificial distinction based on the cut-off date, as sought to be argued on behalf of the respondents, is neither based on any rationale nor is a reasonable classification to carve out a class within a class of the pensioners who retired prior to 08.02.2021 and thus render them as not entitled to the benefits of the amended provision of Regulation 4.3 (as notified in the official Gazette on 08.02.2021). Such a classification would be in the teeth of the judgment rendered in the case of ***D S Nakara (supra)*** and would be impermissible in law. Therefore, the petitioners who are pre – 08.02.2021 retirees are entitled to the benefit of re-fixation of their pension(s) based on amended Regulation 4.3 (as notified on 08.02.2021), however the arrears of pension (as per fresh computation) prior to 08.02.2021 are not admissible. The arrears of pension (as per fresh computation) shall be admissible and payable only with effect from 08.02.2021 onwards.

12. The respondents are directed to carry out necessary re-fixation of pension of the petitioners and release the same alongwith arrears in terms of the observations made above within a period of three months from the

date of receipt/presentation of the certified copy of this order.

13. The writ petition is accordingly disposed of in aforestated terms.

October 23, 2023 **(HARSH BUNGER)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No