[202]

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13393-2022 (O&M)
Date of Decision :01.12.2023

Bachan Ram …Petitioner

versus

State of Punjab and others ….Respondents

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

Present : Mr. R.K. Arora, Advocate for the petitioner.
Ms. Shivani Sharma, DAG, Punjab.

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SANJEEV PRAKASH SHARMA, J. (ORAL)

1. The petitioner has expired during the pendency of this writ petition. His LRs having brought on record.

2. Brief facts which need to be adverted to are that the petitioner had retired on 30.06.1994 while working on the post of Agriculture Development Officer. The petitioner after retirement was granted benefit of the revised pay scales of ₹3700-₹5300/- w.e.f. 01.01.1991, after having completed 18 years of service and his pension was also accordingly revised. The State further revised the pay scales w.e.f. 01.01.2006 and fixed the petitioner's and the persons, who had completed 09 years of regular service after 01.01.2006 would receive the pay scale of ₹37400-₹67000. Thus, the petitioner was treated to be admissible to receive pay scale of 37400-67000 and his initial pay was presumed as ₹46000/- and accordingly his pension was refixed at ₹23000/-. After getting the pension fixed at ₹23000/-, the respondents again re-examined the

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petitioner's pension and revised it and reduced it vide order dated 24.05.2022, holding that the petitioner would be entitled to basic pay of ₹31520/- instead of ₹46000/- and accordingly his pension would have to be fixed at ₹15,760/- instead of ₹23000/- which he was getting. The order dated 24.05.2022 sent to the Accountant General, was challenged by the petitioner before this Court and this Court had stayed the operation of the order vide order dated 10.06.2022. The reply has been filed by the respondents and it has been stated as per instructions issued by the State Government dated 22.02.2010, it was clarified that an employee, who was getting the pay scale of ₹3700-₹5300/- before 01.01.1996 was to be revised in the pay scale of ₹12000-₹16350 on 01.01.1996 and ₹15600-₹39100 plus grade pay 7800 as on 01.01.2006. Accordingly, the notional pay of the petitioner comes to ₹31520/- and therefore 50% pension would come to ₹15760/-. It is further stated that the fixation of petitioner's pension as ₹23000/- was on wrongful interpretation of the instructions and the pension of ₹23000/- could only be fixed to those employees, who were granted dynamic ACP scale w.e.f. 01.01.1996. As the petitioner retired on 30.06.1994, the ACP scale benefit available w.e.f. 01.01.1996 could not be given to him.

3. Learned counsel for the petitioner submits that as the petitioner had been given benefit of 18 years of service and fixed in the pay scale of ₹3700-₹5300 w.e.f. 01.01.1991, he should be treated to have completed the 9 years of regular service in the corresponding pay scale of ₹15600-₹39100 and after 09 years his pay should be treated in the pay

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scale of ₹37400-₹67000 with grade pay of ₹8600/- and therefore his initial pay would come to ₹46000/-. The respondents had taken notice of the circular issued by the Finance Department dated 21.12.2011 while re-fixing the pension and the petitioner had been rightly fixed pension of ₹23000/-, treating the salary of the petitioner to be ₹46000/-. Thus, the reduction of pension to ₹15760/- is erroneous.

4. Learned counsel for the respondents has invited the attention to the fact that the petitioner retired on 30.06.1994. The benefit of ACP of 09 years of regular service in the entry scale although became available, but the same was made payable only w.e.f. 01.01.1996 to the existing employees working on the said date. Since, the petitioner stood already retired on 30.06.1994, the said benefit would not be admissible to him. Therefore, the pension revised to ₹23000/- was erroneous and accordingly the pension of the petitioner was fixed at ₹15760/- w.e.f. 01.01.2006 as the higher pay scale could not be admissible to him which was made effective only from 01.01.2006.

5. I have considered the submissions of learned counsel for the parties.

6. The pay scale of the petitioner was revised to ₹3700-₹5300/- w.e.f. 01.01.1991, but the same was revised to ₹12000-₹16350/- and the equivalent pay scale under the Revised Rules, 2006 was ₹15600-₹39100/- with grade pay of ₹7800/-. The same was made payable from 01.01.2006. If a person has put in 9 years of regular service after 01.01.2006, he would be granted the benefit of ACP which was introduced and made effective to

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the employees who were in service as on 01.01.1996.

7. In the aforesaid background, while the petitioner, who retired on 30.06.1994, was given benefit of the revision of pay scales and was placed in the equivalent pay scale of ₹15600-₹39100 with grade pay of ₹7800/- and his pay was notionally assessed as ₹31520/-, the respondents granted him further benefit of 9 years regular service after 01.01.1996 i.e. benefit of ACP and fixed his pay in the pay scale of ₹37400-₹67000 with grade pay of ₹8600/-. Resultantly, his pay notionally was enhanced to ₹46000/- instead of ₹31520/- and accordingly his pension was also enhanced to ₹23000/-

8. However, this Court finds that the benefit of ACP of 9 years of regular service could not be given to the petitioner as the same was to be granted only to those employees who were in service as on 01.01.1996, but the petitioner was not in service as on 01.01.1996 having been retired on 30.06.1994. Thus, he would continue to remain in the pay scale of ₹15600-₹39100 with grade pay of ₹7800/- and accordingly his notional pay would come to ₹31520/- and pension would come to ₹15760/-.

9. The error of granting higher pension treating his pay as ₹46000/- instead of ₹31520/-, therefore, has been rightly corrected and no interference is warranted.

10. At the same time, this Court notices that the error of releasing higher pension cannot be said to be on account of any ill action of the deceased-petitioner and therefore if the higher pension has already been paid to the petitioner, the same does not required to be recovered. As the

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petitioner has already expired, the respondents are now required to fix the family pension of the wife accordingly and also release the same expeditiously.

[8] Writ petition stands *disposed of* accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

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Ess Kay

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No

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