

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16655-2021

Reserved on 22.08.2023

Decided on 24.11.2023

Satpal Puri & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Raman B Garg, Advocate and
Mr. Mayank Garg, Advocate and
Mr. Chirag Mahajan, Advocate for the petitioners

Ms. Dimple Jain, DAG Haryana

Mr. Brijesh, Advocate for
Mr. Rajesh Gaur, Advocate for respondents No.1, 3 & 5

Sandeep Moudgil, J.

(1). The petitioners have filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of mandamus directing the respondents to revise the pension of the petitioners in accordance with the letter dated 27.05.2019 (Annexure P2) which provides notional fixation of pay in the ACP scales/ACP pay band etc. w.e.f. 01.01.2016 before revision of pension.

(2). The petitioners have retired as Clerk, Assistant and Junior Engineers of Municipal Corporation, Yamuna Nagar-Jagadhari and were drawing pay in the ACP scales/ACP Pay Band + Grade Pay at the time of their retirement. State of Haryana revised the pension of its existing pensioners (pre-2016 pensioners) by notifying Haryana Civil Services (Revised Pension) Part-I Rules, 2017 w.e.f. 01.01.2016 and as such, the State Government decided to initially revise the pay of the existing pensioners as

per the pay revision Rules, 2016 notionally and thereafter the pension of the existing pensioners is to be revised on the basis of such notional revised pay.

(3). Thereafter, the State of Haryana issued another letter dated 27.5.2019 and thereby decided to revise pay of the pre-2016 pensioners drawing pay in the ACP scale/pay band + grade pay in the ACP table/structure also w.e.f. 1.1.2016 notionally. Since the ACP table/structure as on 1.1.2016 is governed under the ACP Rules titled as the Haryana Civil Services (Assured Career Progression) Rules, 2016; therefore, the pay of the petitioners, who were in receipt of ACP scales/ACP Pay Band + Grade pay at the time of their retirement, is required to be fixed under these rules.

(4). The petitioners along with other retired officials filed CWP-8345-2020 seeking revision of their pension/family pension w.e.f. 1.1.2016 in view of memorandum dated 10.01.2018 (Annexure P1) and letter dated 27.05.2019 (Annexure P2) which was disposed of by this Court vide order dated 29.7.2020 with directions to decide legal notice dated 8.1.2020 within a period of six weeks from the date of order either by disbursing payments in case the petitioners are entitled for the amounts or by passing a speaking order in case the petitioners are not found to be entitled. Since no action was taken by the respondents, the petitioners filed COCP No. 2076 of 2020 and in pursuance thereto, the respondent No.2 filed an affidavit dated 4.1.2021 along with a copy of speaking order dated 1.1.2021 stating that the above-said policy decisions (Annexures P-1 and P-2) were meant for the State Government employees and *ipso facto* are applicable to the Municipal Corporation employees being autonomous bodies and the expenditures is to be borne by the concerned Municipalities from their own financial resources

and not from the State exchequer and the same shall be granted after approval from the State Government. Respondent No.1 on 19.02.2021 (Annexure P5) issued necessary approval and directed all the municipalities to revise the pension as per memorandum (Annexure P1). In pursuance thereto, the petitioners and other 31 officials were granted their respective amounts on 24.02.2021 after revising their pension w.e.f. 01.01.2016 but they have not been given the calculations and pension fixation documents.

(5). Learned counsel for the petitioners submitted that the pension of the petitioners was revised w.e.f. 01.01.2016 after notionally fixing their pay in the revised pay scales as per the 7th pay Commission in terms of the Haryana Civil Services (Revised Pay) Rules, 2016 as per the Memorandum dated 10.1.2018 (Annexure P-1) whereas pension of other 31 co-petitioners was revised after fixing their pay in the revised ACP scales as per the 7th pay Commission in terms of the Haryana Civil Services (Assured Career Progression) Rules, 2016 as per the letter dated 27.5.2019 (Annexure P-2). It is urged that the respondents cannot apply two different standards in the case of similarly-situated retired employees.

(6). Notice of motion as issued on 27.08.2021 and pursuant thereto, the replies have been filed on behalf of respondents No.1 to 3 & 5 and by respondent No.4, respectively.

(7). As per the written statement filed by Ashok Kumar, Deputy Municipal Commissioner, Municipal Corporation, Yamuna Nagar, the petitioner No.1 had retired from the post of Assistant on 31.05.2008 and at the time of promotion, he was getting the 3rd ACP grade Rs.3300/- i.e. higher than the functional scale of Assistant post, under Rule 13 of ACP

Rules 2008. At the time of fixation of notional pay w.e.f. 01.01.2016 the functional level of Assistant has been upgraded as Functional Pay Level-6 (FPL-6) i.e. 35400-109100 which is higher than 3rd ACP corresponding ACP Level 7 (33200-102600). The notional pay of the petitioner No.1 has been fixed w.e.f. 01.01.2016 in FPL-6 i.e. the Functional Pay Level-6 which is higher than the corresponding ACP Level-7 i.e. 3rd ACP. A clarification regarding pay fixation on promotion from ACPL to FPL has been issued vide F.D. Hr. Memo no. 1/20/2016-5PR(FD) dated 07/17.03.2017. As regards other petitioners, notification vide letters dated 10.01.2018 and 27.05.2019 has been duly considered and applied and their claim decided. He further submitted that the benefits of revising the notional pay scale, as claimed by the petitioners has already been decided and paid in consideration of the letter dated 27.05.2019, by the competent authority.

(8). On 22.06.2022, short reply has been filed by Sat Narayan, Deputy Director, Municipal Corporation, Yamuna Nagar on behalf of respondent No.4, para 4 & 5 thereof are reproduced as under:-

“4. That the department of the answering respondent has examined the case of the petitioners and found the claim of the petitioners admissible and covered under the government letter/instructions dated 27.05.2019 (P-2). Resultantly, the department of answering respondent (Deputy Director Audit, Municipal Corporation, Yamuna Nagar) has written a letter Memo No. MCY/Audit/2022/II/177 dated 13.04.2022 (Annexure R-4/1) to the Commissioner, Municipal Corporation, Yamuna Nagar-respondent no. 3 stating therein that the government letter dated 27.05.2019 (P-2) is applicable to the retirees of the Corporation who retired prior to 01.01.2016 and it was further

requested to revise the pension/family pension of the concerned pensioners as claimed by the petitioners herein.

5. That the department of answering respondent, being entrusted with the work of audit, has, as stated above, already advised respondent no.3-Corporation to revise the pension of the petitioners as claimed by them in the present writ petition and hence, the petitioners has now no cause of action against the answering respondent.”

(9). Heard learned counsel for the parties and gone through the record.

(10). The grievance of the petitioners is that the respondents have denied them revised pension in accordance with the letter dated 27.05.2019 (Annexure P2) which provides notional fixation of pay in the ACP scales/ACP Pay Band etc. w.e.f. 1.1.2016 before revision of pension.

(11). The said petition is not maintainable, the applicable pay scale and consensual pensionary benefits are already released to the petitioners, hence the present writ petition is not maintainable.

(12). It is matter of record that at the time of fixation of notional pay w.e.f. 01.01.2016, the functional level of Assistant was upgraded as Functional Pay Level-6 (FPL-6) i.e. 35400-109100 which is higher than 3rd ACP corresponding ACP Level 7 (33200-102600). It has been categorically averred by the respondents that as regards petitioner No.1, his pay has been fixed notionally w.e.f. 01.01.2016 in FPL-6 i.e. the Functional Pay Level-6 which is higher than the corresponding ACP Level-7 i.e. 3rd ACP in terms of the clarification regarding pay fixation on promotion from ACPL to FPL issued vide F.D.Hr.Memo No.1/20/2016-5PR(FD) dated 07/17.03.2017. In so far as the other petitioners are concerned, their claim has been considered and

decided in terms of the notifications dated 10.01.2018 and 27.05.2019. Meaning thereby that the benefits of revising the notional pay that may be granted to the petitioners has already been decided and paid by the respondents as per letter dated 27.05.2019.

(13). As regards the contention of the petitioners that pension of 31 other co-petitioners was revised after fixing their pay in the revised ACP scales as per 7th Pay Commission, it cannot be denied that the respondents applied the applicable Rules applicable to respective retirees applying the pay fixation rules i.e. para No.(iv) of the notification dated 10.01.2018 and the same reads as under:-

These concordance tables have been prepared to facilitate revision of pension of pre-2016 pensioners/family pensioners by the concerned Pension Sanctioning Authorities. Due care has been taken to prepare these concordance tables based on the fitment tables for fixation of pay from 4th to 5th, 5th to 6th and 6th to 7th Pay Commission by the Pay Revision Branch (Finance Department). In case of any inconsistency in the concordance tables vis-à-vis the relevant rules/instructions, the notional pay and pension/family pension of pre-2016 the pensioners/family pensioners may be fixed in accordance with the rules/instructions applicable for fixation of pay in the intervening Pay Commission periods."

(14). Further, it is evident from the reply filed by respondent No.4 that the claim of the petitioners was examined and found to be covered under the government letter/instructions dated 27.05.2019 (Annexure P2) as such, respondent No.4 - Deputy Director Audit, Municipal Corporation, Yamuna Nagar) has written a letter Memo No. MCY/Audit/2022/11/177 dated

13.04.2022 (Annexure R-4/1) to the Commissioner, Municipal Corporation, Yamuna Nagar-respondent No. 3 stating therein that the government letter dated 27.05.2019 (P-2) is applicable to the retirees of the Corporation who retired prior to 01.01.2016 and it was further requested to revise the pension/family pension of the concerned pensioners as claimed by the petitioners herein. The letter dated 13.04.2022 (Annexure R4/1) is extracted hereunder:-

*“To
The Commissioner,
Municipal Corporation,
Yamuna Nagar-Jagadhari*

Memo No.MCY/Audit/2022/II/177 dated 13.04.2022

Subject: Revision of Pension/family pension of pre-1.1.2016 pensioners/family pensions vide Govt. clarification dated 27.05.2019.

Vide memo No.2/23/2016-I Pension (FD) dt. Chandigarh the 27.5.2019 Govt. of Haryana clarified that:-

- 1. the revisions of pension/family pension, on the basis of notional pay of the pre-2016 govt. employee, drawing pay in the ACP scale/Pay band + grade pay, at the time of retirement/death, may also be revised, w.e.f. 01.01.2016 in the ACP table/structure as prescribed by the State Government from time to time.*
- 2. the revisions of pension/family pension, on the basis of notional pay of the pre-2016 govt. employee, where pay scales have been upgraded/modified by the State Government from time to time, may also be revised w.e.f. 1.1.2016 in the modified/upgraded pay scale instead of corresponding pay scale.*

Whereas the said clarification was not applied on some Corporation retiree of pre-1.1.2016. Hence you are requested to direct the accounts branch to revise the pension/family

*pension of concerned pensioners according to the clarification
ibid on prescribed performa issued by Govt. on 24.07.2020 at
the earliest and put the case to audit for verification please...”*

(15). As is clear from the above, respondent No.4, being entrusted with the work of audit has already advised respondent No.3-Corporation to revise the pension of the petitioners as claimed by them in the present writ petition and pursuant thereto, the benefits of revising the notional pay scale, as claimed by the petitioners has already been decided and paid in consideration of the letter dated 27.05.2019, by the competent authority.

(16). In this view of the matter, no further order is required to be passed in this writ petition.

(17). With above observations and directions, the writ petition stands dismissed.

24.11.2023

V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No