

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21459-2015

Reserved on 21.07.2023

Pronounced on 14.09.2023

MK Mittal

... Petitioner

VS.

HVPN

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. DR Bansal, Advocate for the petitioner

Mr. Gaurav Jindal, Addl. AG Haryana

Mr. Pardeep Rajput, Advocate for respondent No.1

Sandeep Moudgil, J.

(1). The petitioner seeks a writ of certiorari to quash the impugned order dated 11.10.2007 (Annexure P4) and the order dated 12.09.2008 (Annexure P9) vide which the respondent-Nigam has not restored the pension of the petitioner when the commuted value of the pension stands recovered by way of non-payment of pension and other allowances. He also seeks a direction to the respondents to grant pensionary benefits to the petitioner as per the pension papers submitted by him or alternatively, to restore the commuted pension from the date when its full value has been recovered including notional interest, along with arrears of the amount due along with 12% interest.

(2). Brief facts of the case are that the petitioner joined the erstwhile Haryana State Electricity Board as Accounts Officer on 10.11.1989 and was promoted as Sr.Accounts Officer on 10.11.1995. Thereafter, the petitioner was given additional charge of Company Secretary on 30.11.1998 who earned another promotion as Chief Accounts Officer on 06.07.2000.

(3). In the year 2005, the petitioner applied, through proper channel, and was selected for the post of Chief (Finance and Accounts) in Rural Electrification Corporation Limited (REC), a Government of India Enterprise. On 07.12.2005, he represented the respondent No.1 to conform regarding grant of pensionary benefits etc. as per provisions of CSR (Annexure P-33) followed by representations dated 19.12.2005 (Annexure P-34) and dated 27.12.2005 (Annexure P-35). The respondent-corporation vide letter dated 14.01.2006 (Annexure P1) confirmed the payment of pensionary benefits and as such, the petitioner submitted his resignation under Rule 4.19(b) of Punjab Civil Services Rules Vol.II on 14.01.2006 to join Rural Electrification Corporation Ltd. (Annexure P-36). The petitioner was confirmed in REC vide letter dated 16.03.2007 (Annexure P-2). However, the respondent-corporation vide order dated 11.10.2007 (Annexure P9), decided to pay the pensionary benefits in lumpsum whereas the petitioner submitted pension papers for payment of monthly pension (Annexure P-4). The petitioner submitted representation on 18.02.2008 (Annexure P-5) for payment of monthly pension instead of pension in lump-sum and for restoration of commuted pension (Annexures P-6 to P-8) but the same were rejected vide impugned letter dated 12.09.2008 (Annexure P-9).

(4). The petitioner filed CWP No.17401 of 2008 for restoration of pension, which was decided on 13.09.2010 (Annexure P-19) in terms of decision of this Court dated 12.08.2010 passed in **SP Wadhawan vs. HVPN & Ors. (CWP No.16697 of 1998)** and other connected cases (Annexure P-18) directing the respondents to decide the issue within 6 months. Even thereafter the petitioner has been representing for restoration of commuted pension

(Annexures P-21 & P-22) but till date no steps have been taken by the respondents. Hence, this writ petition.

(5). Learned counsel for the petitioner contended that the Haryana Govt. vide letter dated 02.06.1989 (Annexure P13) had allowed restoration of commuted portion of pension even to those who sought premature retirement or were retired compulsorily before the age of superannuation, after full value of commutation, and also notional interest stands recovered. He further highlighted that the Government of India, Ministry of Personnel, vide memo dated 30.09.1996 (Annexure P15), in compliance with the directions of the Supreme Court in Writ Petition (C) No.11855/1985 “Welfare Association of Absorbed Central Govt. Employees in Public Sector Enterprises and others vs. Union of India, AIR 1996 SC 1201”, decided that the benefit of restoration of commuted pension shall be admissible to all those Government employees who had been absorbed in Public Sector Undertaking/autonomous/statutory bodies notwithstanding the fact that having commuted the full pension, they were not in receipt of any monthly pension. It was further averred that the lump-sum amount paid gets adjusted by about 10 or 12 years and therefore, the Government must restore the commuted portion of one-third pension since the commuted portion out of the pension is ordinarily recovered within about 12 years.

(6). Learned counsel also submitted that the State of Haryana implemented the judgment of the Permanent Lok Adalat dated 03.05.2000 and is paying the benefit of the same to the petitioners in those writ petitions without challenging the decision of the Lok Adalat, thus that decision became final,

however, in the case of other employees, the decision is not being implemented arbitrarily and discriminatorily.

(7). It is further the contention raised on behalf of the petitioner that he submitted his pension papers on 26.12.2006 claiming monthly pension, family pension, gratuity and commutation of 40% pension because at that time commutation, 40% pension was admissible instead of 1/3rd pension and concluded stating that the respondent-Corporation cannot arbitrarily pass an order dated 11.10.2007 (Annexure P-4) denying these benefits to the petitioners and ordering 100% commutation of pension, at their own, which the petitioner never opted.

(8). Reliance has been placed on the decision of this Court in **CWP No.9059 of 1993 decided on 23.02.1994 (Ganga Bishan vs. State of Haryana)** and **State of Haryana VS Madan Lal Ahlwawat, 2002(5) SLR 590**, wherein it was held that the employee who has rendered 10 years of qualifying service is entitled to grant of pension.

(9). Reply dated nil has been filed by Mukesh Kumar Minglani, Under Secretary/HR-II, HVPN, Panchkula, wherein it has been averred that one time lumpsum amount in lieu of pension worked out with reference to commutation table applicable as the date from which pension will be admissible/payable i.e. the date of his quitting the service from the respondent-Nigam would be extended to petitioner thus there is no question of commuted value.

(10). Mr. Pardeep Rajput, Advocate for respondent-Nigam further averred that the petitioner is not a pensioner, and as such is not entitled to any retiral benefits as he has already received lumpsum amount towards retiral benefit. It is also argued by him that the petitioner neither got premature

retirement nor was he retired compulsorily albeit he resigned himself from the Nigam service to take up another appointment.

(11). In reply, the respondent-Nigam further brought to the notice of this Court that though instructions issued by Haryana Government are followed by the it *mutatis mutandis* and since Haryana Government itself has not adopted the Government of India letter dated 30.09.1996, as such no benefit can be derived to the petitioner in this regard.

(12). On the question of parity, it is pleaded that OP Katyal never resigned from the job rather was absorbed in the corporation whereas the petitioner is not a pensioner as such not entitled to any retiral benefits as he has received lumpsum amount and accordingly, the benefit of 1/3rd commuted portion of pension/commuted full pension as the case may be was granted to OP Katyal on the basis of existing rules and law.

(13). Counter to the stand of the respondent-Nigam, the petitioner has filed replication dated 01.08.2017 asserting that the case of the petitioner was treated at par with the employees who were absorbed in the other Govt. organization as per memorandum dated 14.01.2006. Had the memorandum dated 14.01.2006 been not passed before relieving the petitioner from the respondent-Corporation, he may not have joined the new organization. It is also urged on behalf of the petitioner that now the respondents are stopped from denying the benefit of memorandum dated 14.01.2006 to the petitioner and as such he is very much entitled to pension as per memorandum dated 14.01.2006 since the papers were submitted by him for payment of monthly pension.

(14). In reply to CM-1445-2019, the respondents have filed CM-1475-2019 wherein it has been stated that the respondents have paid 100% lumpsum

pensionary benefit to the petitioner in lieu of pension amounting to Rs.11,31,379-00 and Gratuity amounting to Rs.2,70,816-00. Further, the petitioner had filed Civil Suit seeking interest from 26.03.2007 to 08.11.2007 for delayed payment of pensionary benefits to the petitioner and vide judgment and decree dated 28.04.2011, the suit was decreed in favour of the petitioner. Appeal preferred by the respondents was dismissed with modification excluding the period of interest payable i.e. from 26.03.2006 to 08.11.2007 to 26.03.2006 to 26.06.2007. Accordingly, interest amounting to Rs.1,04,646/- was disbursed to the petitioner.

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

(16). Issues concerning the pension of Government employees absorbed in public sector undertakings (absorbees) have been examined by Supreme Court from time to time. It all started with the decision of Hon'ble Supreme Court in [Common Cause v. Union of India, \(1987\) 1 SCC 142](#) which was a petition under [Article 32](#) of the Constitution filed by Common Cause, a registered society and three retired government servants praying to strike down certain provisions of the Central Civil Services (Commutation of Pension) Rules, 1981. As per the Rules then prevalent when a pensioner commuted any part of his pension up to the authorised limit (which in the case of civilians was upto one-third while in the case of defence personnel, it was up to 43 per cent in the case of officers and up to 45 per cent in respect of other ranks) his pension was reduced for the remaining part of his life by deducting the commuted portion from the monthly pension. The contention of the petitioners was that the lump sum amount paid at the time of commutation gets adjusted by about 10 or 12 years and therefore, the Government must be directed to restore the commuted

portion of one-third pension. It was also observed that there had been a substantial improvement in the life expectancy of the people in India, hence there was no justification for denying the restoration of the commuted one-third portion of pension after its adjustment in a period of 10 or 12 years. During the pendency of the case the Union of India agreed to restore the commuted portion of the pension in regard to all civilian employees at the age of 70 years or after 15 years, whichever is later, and agreed to make this effective from 1-4-1986. The Apex Court had directed that it is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It would be sufficient that on the expiry of fifteen years from the period of retirement such restoration would take place. It was directed to be made effective from 1-4-1985.

(17). The Union of India while giving effect to the above judgment denied the same benefit to the absorbees by inserting para 4 in the OM dated 5-3-1987 which read as follows:-

"Central Government employees who got themselves absorbed under Central Public Sector Undertakings/autonomous bodies and have received/or opted to receive commuted value for 1/3rd of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension are not entitled to any benefit under these orders as they have ceased to be Central Government pensioners."

(18). In **Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India, (1996) 2 SCC 187**, the association of absorbed Central Government employees sought quashing of the above-reproduced para-4. The Apex Court in its decision considered the scope of Rule 37-A of the CCS (Pension) Rules, 1972 and held that in so far as commutation of one-third of the pension is concerned, the absorbees as well as petitioners in **Common Cause's**

case (supra) stood on similar footing with no difference. So far as the balance of two-third pension is concerned, the absorbees had received the commuted value (terminal benefits) on condition of their surrendering of their right of drawing two-thirds of their pension which was not the case with the petitioners in **Common Cause's** case (supra). Thus the denial of benefit given to petitioners in **Common Cause's** case (supra) to the absorbees violated Articles 14 and 16 of the Constitution. It was held that the reasoning for restoring one-third commuted pension in the case of **Common Cause's** case (supra) equally applies to the restoration of one-third commuted pension in the case of the absorbees. The impugned para 4 in OM dated 5-3-1987 was quashed.

(19). The Supreme Court also noticed that the Government of India had vide Office Memorandum dated 31.3.1995 withdrawn the scheme of permitting commutation of full pension. It was observed as under:-

"13. If after the expiry of 15 years, the pensioners who have opted for one-third commutation, become entitled to restoration of pension on the ground that the lump sum amount paid had got adjusted before the said period as held in "Common Cause" case, there is no good reason for not applying the same to the petitioners who have commuted their 10 of 11 C.W.P. No.16071 of 2016 [11] one-third portion of the pension under Rule 37-A of the CCS (Pension) Rules, 1972 without any commitment for this portion of commutation. Presumably the respondents realising the fallacy have withdrawn the scheme of permitting commutation of full pension by OM No. 4/42/91-P&PW (D) dated 31-3- 1995. Para 3 of the Office Memorandum reads as follows:

"3. The proposal to review the existing terms and conditions of absorption had been under consideration of the Government for quite some time past. The President is now pleased to ... (sic) that the existing terms and conditions of

absorption shall stand partially modified to the extent indicated below:

(a) The existing facility of receiving capitalisation value equivalent to 100% commutation of pension on absorption shall stand withdrawn;

(b) The existing facility to draw pro rata monthly pension from the date of absorption (with option to commute 1/3rd pension wherever admissible shall continue to exist)."

(20). The Madras High Court in **K. Ganesan Versus Registrar Central Administrative Tribunal Chennai 2007(17) S.C.T. 810** considered the claim of an absorbee, who after his resignation as Deputy Controller General of Accounts (Central Government Service) had joined Bharat Heavy Electricals Limited (a public sector undertaking) based on the Government of India O.M.No.28016/5/85-Estt.(c) dated 31.01.1986. He had submitted his option on 12.05.1986 for receipt of pensionary benefits as per paragraph-4(i)(b) of that O.M. which provided for a particular manner of commutation of pension and of 1/3rd and 2/3rd apart from pro-rata gratuity as prescribed under Rule 37-A of the CCS Pension Rules. As per his option his entire pension was commuted and paid to him in July, 1986. About eleven years later he submitted representation on 25.05.1997 contending that surrendering of his own right for drawing 2/3rd of his pension by opting under paragraph-4(ii)(b) of O.M dated 31.01.1986, read along with Rule 37-A of the CCS Pension Rules, was prohibited by Section 12 of the Pension Act 1871. Hence, he was entitled for the restoration of his 2/3rd pension also after the period of commutation. The claim was rejected. He challenged the action before the Central Administrative Tribunal seeking a declaration that Rule 37-A (b) of the CCS Pension Rule, 1972 read with Clause(b) in O.M dated

31.01.1986 was illegal and in violation of Section 12 of the Pension Act. He prayed for directions to the respondents to pay him pension on the $\frac{2}{3}$ rd commuted pension from the date of commutation after adjusting the amount already paid with interest. (The claim of the petitioner herein is similar). The OA was dismissed. The question before the Madras High Court thus was whether the commutation of whole of the pension in so far as it related to $\frac{1}{3}$ rd and $\frac{2}{3}$ rd of it based on paragraph-4(ii)(a)(b) of O.M., dated 31.01.1986 read along with Rule 37-A could be held to have disabled him from seeking for restoration of pension.

(21). The High Court held that surrendering of the right for withdrawal of $\frac{2}{3}$ rd of Pension after its commutation as provided under Rule 37-A (b) was repugnant to Section 12 of the Pensions Act. Consequently any action based on Rule 37-A(b) is wholly illegal and therefore the surrendering of rights of the petitioner for drawing $\frac{2}{3}$ rd of his pension at the time of its commutation to that extent can not operate against his interest. Section 12 of the Pensions Act, 1871 was referred which provided that all assignments, agreements, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section 11 in respect of any money not payable at or before the making thereof on account of such pension, pay or allowance or for giving or assigning any future interest therein are null and void. The High Court thus observed that:-

13. Under Section 10 as stated by us earlier, while commutation of pension for the whole or any part of it can be opted by a pensioner based on such terms fixed under the Rules, it will have to be stated that such enabling provision providing for commutation for either part or whole of the pension can only for commutation purposes and that under the guise of commutation, it will not be open for the Government to once and for all wipe of the very right to restoration

of such pension after the expiry of the period of commutation. In fact, Rule 37-A clause (b) though uses the expression the commutation of balance amount of pension namely the $\frac{2}{3}$ rd of pension, the stipulations contained therein providing for such commutation of $\frac{2}{3}$ rd pension would be subject to surrendering of the right of Government servant, for drawing the $\frac{2}{3}$ rd pension would run counter to the very concept of commutation which will not be in consonance with Section 10 providing for commutation of pension alone and not the right to claim pension after the period of commutation.

14. That apart, even if the petitioner was obliged to surrender such a right for the drawal of $\frac{2}{3}$ rd of his pension by agreeing for the terms contained in Rule 37-A of Pension Rules in as much as such a wholesale surrender of the right to pension as contained in the said Rule conflicts Section 12 of the Pensions Act, it will have to be held that the Rules providing for such surrendering of right in opposition to Section 12 of the Act cannot be permitted to operate. When under Section 12 of the Act, there is a prohibition imposed on the pensioner himself to barter away his right under very many circumstances except as provided under Section 12A of the Pensions Act, we are convinced that surrendering of the right for drawal of $\frac{2}{3}$ rd of Pension after its commutation as provided under Rule 37-A (b) is repugnant to Section 12 and is straight away hit by the prohibition imposed under Section 12. Consequently any action based on Rule 37-A(b) is wholly illegal and therefore the surrendering of rights of the petitioner for drawing $\frac{2}{3}$ rd of his pension at the time of its commutation to that extent can not operate against his interest. We therefore declare that such surrendering rights by the petitioner at the time of his absorption in the year 1986 while commuting $\frac{2}{3}$ rd of his pension, was invalid and consequently the petitioner was lawfully entitled for the restoration of his pension after the expiry of the period of commutation of $\frac{2}{3}$ rd pension.”

(22). Civil Appeal No.6048 of 2010 **Union of India and others vs. K.Ganeshan (by LR)** was dismissed by Hon'ble Supreme Court on 01.09.2016. Even Review Petitions filed were dismissed. Consequent thereto, Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare issued Office Memorandum dated 23.06.2017 with the subject:-

“Restoration of full pension of absorbee pensioners in view of order dated 01.09. 2016 of Hon'ble Supreme Court in Civil Appeal No. 5048/2010 and Civil Appeal No. 6371/010.”

(23). Paragraph 8 thereof is relevant and is reproduced below:-

“8. The matter has been examined in consultation with the Department of Legal Affairs and the Ministry of Finance (Department of Expenditure). It has been decided to extend the benefit of order dated 02.08.2007 of the Hon'ble Madras High Court and the Order dated 01.09.2016 of the Hon'ble Supreme Court to all similarly placed absorbee pensioners. Accordingly, all such absorbee petitioners who had taken 100% lump-sum amount in lieu of pension on absorption in PSUs/Autonomous Bodies in accordance with the then existing Rule 37-A and in whose case 1/3 pension had been restored after 15 years, may be allowed restoration of full pension after expiry of commutation period of 15 years from the date of payment of 100% lump-sum amount.

9. The absorbee pensioners whose full pension is restored in terms of the above instructions would also be entitled to revision of their pension in accordance with the instructions issued from time to time in implementation of the recommendations of the Pay Commissions, including the 7th Central Pay Commission.”

(24). Coming back to the case in hand, on the application moved by the petitioner in the year 2005, the respondents vide letter dated 14.01.2006 informed the petitioner that pensionary benefits in respect of services rendered

with the respondent-Corporation/Nigam will be payable to the new organization in case the post in the new organization is pensionable otherwise, the same are payable to the petitioner subject to the absorption in R.E.C. by way of confirmation. The petitioner was relieved from the services of the Nigam w.e.f. 15.01.2006 and a lien for a period of two years was also retained with the HVPN. Upon confirmation of services of the petitioner with REC, the petitioner on 26.03.2007 applied for sanction wherein he also requested for the release of pensionary benefits “as per pension papers”.

(25). Vide impugned order dated 11.10.2007, the petitioner was intimated that since service in Rural Electrification Corporation Ltd. is not pensionable, therefore, the petitioner was paid lumpsum amount of pension i.e. 100% commutation of pension referene to the commutation table applicable on the date from which pension will be admissible/payable i.e. date of his quitting the service from HVPNL.

(26). The respondents are harping upon their stand that the petitioner is not a pensioner and as such not entitled for any retiral benefits since he had resigned from the Nigam service to take up another appointment. At this stage, it would be relevant to reproduce the contents of the impugned order dated 11.10.2007 which itself is self-speaking:-

“Sh. M.K. Mittal, Chief Accounts Officer and Company Secretary joined the erstwhile HSEB (now HVPNL) on 10th November, 1989. He had applied for the post of Chief (F&A) in Rural Electrification Corporation Ltd. through proper channel. On his appointment in Rural Electrification Corporation Ltd. he was relieved from the services of HVPNL w.e.f. 15.1.2006 vide this memo No.CH-133/EBG-2458/Vol.II dated 14.1.2006 for joining his new assignment in Rural Electrification Corporation Ltd. It was also

*conveyed in the ibid memo that as per the instructions issued vide Memo No.CH-35/NGE-153/L-82 dated 11.9.1990, the pensionary benefits in respect of services rendered by him in the Nigam are payable to the new organization in case the service in the new organization is pensionable and are payable to him subject to his absorption in Rural Electrification Corporation Ltd. by way of confirmation. Further it was also conveyed that **he will retain lien in HVPNL for two years** as requested by him or till he is confirmed in the new organization, whichever is earlier.”*

(27). A perusal of the above would show that undisputedly, the petitioner was a regular employee working since November, 1989 and by the time, he applied in Rural Electrification Corporation Ltd. and was relieved on 15.01.2006, the petitioner had completed 16 years of service. Also, petitioner's application for a new assignment in REC was very much in the knowledge of the respondent, as is evident from the fact that petitioner submitted his application for the post of Chief (F&A) in REC “*through proper channel*”. It is itself the assertion in the impugned order that “*the pensionary benefits in respect of services rendered by the petitioner in the Nigam are payable...*” Meaning thereby that the services of the petitioner were pensionable and by reason of his having rendered the services with the Nigam, he was duly eligible and entitled for pension.

(28). That apart, the stand taken by the respondents that the petitioner is not entitled for any retiral benefits since he had resigned from the Nigam service to take up another appointment is also misplaced and misleading and deserves to be denigrate. The fact that the respondents retained the lien of the petitioner in Nigam after being appointed in REC requires no special interpretation but to say that the ‘resignation’ got tendered from the petitioner was not the resignation for

the purposes of clause (vi) of the Circular No.6226-2FR-68/25061 dated 07.10.1968 (Annexure P10) where competent authority has not allowed the Government servant to forward the application through proper channel and as such the benefit of past service will not be admissible.

(29). As per the Ministry of Finance OM No. 3379-E.III (B)/65 dated the 17th June, 1965, the resignation is treated as a technical formality where a Government servant has applied through proper channel for a post in the same or some other Department, and is on selection, required to resign the previous post for administrative reasons. The resignation will be treated as technical resignation, if these conditions are met, even if the Government servant has not mentioned the word “Technical” while submitting his resignation. The benefit of past service, if otherwise admissible under rules, may be given in such cases.

(30). As such, it is wholly a misconception on the part of the respondent-Nigam to say that the petitioner is not a pensioner declaring him to be not entitled for any retiral benefits. The resignation tendered by the petitioner was only a ‘technical resignation’ and would entail counting of previous service for the purpose of promotion, pension and other retiral benefits. The filing of civil suit by the petitioner does not have any bearing on the merits of the present case as the civil suit filed by the petitioner, which was ultimately decreed, was for interest on the delayed payment by the respondents whereas the present case pertains to restoration of pension which are totally two distinct reliefs with separate cause of action.

(31). For the reasons discussed above and in the light of the judgment rendered by the Supreme Court in **Common Cause’s** case (supra) and **Welfare**

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and others and also in view of the Instructions issued by the Central Government, it is incumbent upon the State of Haryana to consider the case of the petitioner for restoration of pension to the petitioner.

(32). Accordingly, this writ petition is allowed and the orders dated 11.10.2007 (Annexure P4) and dated 12.09.2008 (Annexure P9) to the extent it provides that no restoration of commuted value of pension on any account is admissible to the petitioner, are hereby quashed and the respondent-Nigam is directed to restore to the petitioner full monthly pension, from the date of expiry of 15 years of petitioner's superannuation and pay all the arrears payable to him along with interest @ 6% p.a. and continue to pay the same for the future period.

(33). Let the needful be done within two months from the date of receipt of a certified copy of this order failing which the amount of pension and arrears of pension shall be payable @ 12% p.a.

(34). Ordered accordingly.

14.09.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

- Yes/No
Yes/No