**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on 25.04.2023

**CWP No.26015 of 2013(O&M)
Date of Decision: 16.05.2023**

K.L. Vasudeva and others
......Petitioners
Vs

State of Haryana and another
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Digvijay Singh, Advocate
for the petitioners.

Mr. Neeraj Goel, Advocate
for petitioner No.13.

Mr. Naveen Singh Panwar, DAG, Haryana.

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RAJ MOHAN SINGH, J.

[1]. The petitioners have preferred this writ petition under Article 226 of the Constitution of India for the issuance of an appropriate writ, order or direction, especially in the nature of

certiorari for quashing the order dated 07.11.2013 passed by the respondent No.1, dismissing the claim of the petitioners for grant of revised pension as per pay structure. Further writ in the nature of mandamus is prayed for directing the respondent No.1 to fix the pension of the petitioners in corresponding scale of Rs.37400-67000+Rs.8700/- G.P w.e.f. 18.10.2011. The petitioners be also granted consequential benefits.

[2]. The Haryana Government has revised the pay scales of various posts of Technical Education Department vide letter dated 18.10.2011. The pay scales of Lecturers, Senior Lecturers, Head of Department, Principals etc were to be revised notionally w.e.f. 01.04.2010 and actual benefits were granted w.e.f. 18.10.2011. In pursuance of said decision, all the Lecturers who have completed 20 years of regular satisfactory service and fall under 15% of the cadre strength were entitled for pay scale of Rs.37400-67000/-+Rs.8700/- G.P. Similarly all Heads of the Departments who have rendered 7 years of regular satisfactory service as Head of the Department/Joint Director/Training & Placement Officers were entitled for pay scale of Rs.37400-67000/-+Rs.8700/- G.P.

[3]. Undisputedly, the petitioners No.1 to 4 have rendered more than 7 years of regular satisfactory service as HODs/JDs/TPOs before their retirement.

[4]. Haryana Government has issued a notification dated 17.04.2009 called "The Haryana Civil Services (Revised Pension) Part-I Rules 2009. Rules 6 (1), (2) and (3) are reproduced hereasunder:-

> *"6(1) The fixation of revised entitlement of pension shall be subject to the provision that the revised entitlement of pension so worked out shall, in no case, be lower than fifty percent of the minimum of the pay in the pay band+grade pay in corresponding revised scale in terms of Haryana Civil Services (Revised Pay) Rules, 2008, or as the case may be, Haryana Civil Services (Assured Career Progression) Rules, 2008, to the pre-revised pay scale from which the pensioner had retired.*
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> *(2) The entitlement of pension calculated at 50 percent of the minimum of pay in the pay band plus grade pay would be at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37400-67000 and the corresponding grade pay being Rs.10,000/- per month his minimum guaranteed pension would be 50 percent of Rs.37,400+Rs.10,000/- that is Rs.23,700/-.*
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> *(3) The entitlement to pension as worked out in terms of sub rule (1) and (2) above shall further be reduced pro-data in all cases where the pensioner had less than the minimum service required for full pension as per rules as applicable on 1st January, 2006, and in no*

case it will be less than Rs.3500/- per month."

[5]. Perusal of Rule 6.1 of the aforesaid Rules would show that the fixation of revised entitlement of pension shall be subject to the provision that the revised entitlement of pension so worked out shall, in no case, be lower than 50% of the minimum of the pay band+grade pay in corresponding revised scale in terms of Haryana Civil Services (Revised Pay) Rules, 2008 to the pre-revised pay scale from which the petitioner had retired.

[6]. The petitioners No.1 to 4 have completed 7 years of regular satisfactory service as Head of Department/JD/TPO, therefore, as per instructions/order dated 18.10.2011, their pension has to be fixed in the corresponding scale of Rs.37400-67000/-+Rs.8700/- G.P. Similarly, the petitioners No.5 to 20 have completed more than 20 years of regular satisfactory service as Lecturers, Senior Lecturers, HODs, JDs and TPOs and they are within 15% of the total sanctioned posts, therefore, they are entitled to fix their pension in the corresponding scale of Rs.37400-67000/-+Rs.8700/- G.P.

[7]. Perusal of para No.3 (1) of the aforesaid letter/order dated 18.10.2011 would show that as per tabulated information, for the post of Principal, the pre-revised scale of Rs.13500-17250-200 S.P was revised w.e.f. 01.01.2006 as PB-3 15600-

39100+8000/- G.P and the revised pay scale of the same notionally w.e.f. 01.04.2010 and actual benefits were granted with effect from passing of the aforesaid instructions dated 18.10.2011 was PB-4 37400-67000+8700/- GP at entry level without ACP and special pay.

[8]. For ACP Pay Structure for Lecturer (Group-B)/Programmer (Academic), Workshop Superintendent (Group-A), Sr. Lecturer and HOD/JD (Academic)/TPO (Technical Education Department) (Government/Aided Technical Institution/Polytechnics), entry level pay structure for Lecturer (Group-B)/Programmer(Academic) after 20 years of regular satisfactory service as Lecturer/Programmer would be PB-4 37400-67000+8700/- G.P.

[9]. The petitioners earlier filed representations to fix their pension in the corresponding scale as admissible to them as per instructions/order dated 18.10.2011, but representations of some of the petitioners were rejected on 28.03.2012.

[10]. The petitioners filed CWP No.18667 of 2013, which was disposed of vide order dated 26.08.2013. The orders vide which representations were rejected were quashed and the respondents were directed to pass a speaking order within a period of two months from the date of receipt of certified copy of that order. Thereafter, the claim of the petitioners were rejected

vide the impugned order dated 07.11.2013.

[11]. Learned Senior Counsel for the petitioners by referring to Rules 6 (1), (2) and (3) of the Haryana Civil Services (Revised Pension) Part-I Rules 2009 submitted that the petitioners are entitled for the pension in the corresponding scale admissible to them. It is not the case of the respondent-Department that the petitioners were not entitled to be fixed in the corresponding scale of Rs.37400-67000/-+Rs.8700/- G.P. The Haryana Government has revised the pay scales vide order/instructions dated 18.10.2011 and all the Lectures who have rendered 20 years of regular satisfactory service and fall under 15% of the total sanctioned posts are entitled for the scale of Rs.37400-67000/-+Rs.8700/- G.P. Similarly, all Heads of Department who have rendered 7 years of regular satisfactory service as HOD/JD/TPO are also entitled for the scale of Rs.37400-67000/-+Rs.8700/- G.P.

[12]. Undisputedly, the petitioners No.1 to 4 have completed more than 7 years of regular satisfactory service as HODs/JDs/TPOs before their retirement, therefore, their pension has to be fixed in the corresponding scale of Rs.37400-67000/-+Rs.8700/- G.P. The petitioners No.5 to 20 have rendered more than 20 years of regular satisfactory service as Lecturer/Senior Lecturer/HOD/JD/TPO before their retirement

and fall within 15% of the total cadre strength, therefore, they are also entitled to fix their pension in the corresponding scale of Rs.37400-67000/-+Rs.8700/- G.P.

[13]. In the impugned order, the respondents have not disputed the corresponding scale of the petitioners as Rs.37400-67000/-+Rs.8700/- G.P., but the claim of the petitioners has been rejected by relying upon the instructions dated 10.06.2011, which is wholly illegal.

[14]. The pension has to be fixed strictly as per the Haryana Civil Services (Revised Pension) Part-1 Rules 2009. As per Rules 6(1) (2) (3) of the aforesaid Rules, every employee is entitled to fix his pension in the corresponding pay scale. The instructions dated 10.06.2011 are contrary to the statutory rules and therefore, the same are not sustainable. It is settled principle of law that when the service conditions are governed by the statutory rules, then the same cannot be modified/diluted on the basis of executive instructions. The statutory rules in terms of Rules 6(1)(2)(3) of the Haryana Civil Services (Revised Pension) Part-1 Rules 2009 cannot be modified by way of executive instructions dated 10.06.2011. As per aforesaid rules, all the petitioners are entitled to fix their pension in the pay scale of Rs.37400-67000/-+Rs.8700/- G.P. notionally w.e.f. 01.04.2010 and actual benefits were granted w.e.f. 18.10.2011.

It is not the case of the respondent-Department that the petitioners are not entitled to be fixed in the corresponding scale of Rs.37400-67000/-+Rs.8700/- G.P. Undisputedly, the pension of the petitioners was fixed w.e.f. 01.01.2006 in the corresponding scale admissible to them at the relevant time. The Haryana Government has revised the pay scales of Lecturers/HODs/Principals etc of Technical Education Department w.e.f. 01.04.2010 notionally and actual benefits have been granted w.e.f. 18.10.2011. All the petitioners are entitled to fix their pension in the corresponding scale of Rs.37400-67000/-+Rs.8700/- G.P.

[15]. By passing the impugned order, the respondents have not disputed the corresponding scale of the petitioners as Rs.37400-67000/-+Rs.8700/- G.P., but the claim of the petitioners has been declined only on the ground that the same is not applicable in case of retirees, who retired prior to such enhancement. The pension of the petitioners has been fixed in the corresponding scales revised w.e.f. 01.01.2006 in spite of the fact that only two petitioners have retired prior to 01.01.2006, therefore, the impugned order in respect of non-admissibility of the benefit of fixation of pay to those retirees, who have retired prior to 01.01.2006 is factually incorrect.

[16]. As per Rule 6(1) of the aforesaid Rules, there is no

distinction in the pay scale and ACP and both categories are entitled for corresponding scale of Rs.37400-67000/-+Rs.8700/- G.P. w.e.f. 18.10.2011. Since the aforesaid rule has made no distinction in both the categories of retirees, therefore, the impugned order is totally unsustainable in law. Vide letter/order dated 18.10.2011, the pay scales were further revised notionally w.e.f. 01.04.2010 and actual benefits were granted w.e.f. 18.10.2011. Many Principals of the respondent-Department who have retired prior to 01.01.2006 have availed the benefits in the corresponding scale admissible vide letter/order dated 18.10.2011. Reference can be made to the cases of re-fixation of Sh. R.N. Goyal, Principal (Retd.) (Annexure P-33), Sh. I.D. Bansal, Principal (Retd.) (Annexure P-34), Sh. Prithvi Raj Verma, Principal (Retd.) (Annexure P-35) and Sh. K.K. Mahandroo, Principal (Retd.) (Annexure P-36) attached with the writ petition.

[17]. In view of above, the petitioners have been illegally discriminated against. All the retirees form a homogeneous group of pensioners and cannot be discriminated against. Reference to para No.5 of the impugned order is squarely covered by the judgment of the Hon'ble Apex Court passed in ***D.S. Nakara and others Vs. Union of India, (1983) 1 SCC 305,*** which has been consistently followed in subsequent

judgments including ***Civil Appeal No.10857 of 2016*** titled ***All Manipur Pensioners Association by its Secretary Vs. The State of Manipur and others*** decided on 11.07.2019, wherein it has been observed that all the retirees are one class of employees and no *inter se* distinction can be made. The ratio laid down in ***D.S. Nakara and others case (supra)*** shall be applicable with full force to the facts of the present case. All the pensioners, irrespective of their date of retirement, viz. pre-1996 retirees shall be entitled to revision in pension at par with those pensioners who have retired post-1996.

[18]. In view of aforesaid legal position, reference to Government notification as made in para No.5 of the impugned order is totally unsustainable in law.

[19]. In view of instructions/letter dated 18.10.2011 clearly reciting the revised pay structure w.e.f. 01.01.2006, the stand taken in the written statement by the respondents to the extent of showing pre-revised pay scale of Rs.14300-400-18300/- was factually incorrect. The revised pay structure w.e.f. 01.01.2006 has been shown to be PB-3 15600-39100+8000/- G.P, for which modified revised pay structure was provided to the tune of PB-4 37400-67000+8000/- G.P at entry level without ACP and special pay for the post of Principal etc. For ACP Pay Structure for Lecturers and others, the entry level pay structure after 20 years

of regular satisfactory service as Lecturer/Programmer was shown to be PB-4 37400-67000+8700/- G.P.

[20]. For the reasons recorded hereinabove, this writ petition is allowed. Resultantly, the impugned order dated 07.11.2013 is quashed. The petitioners are entitled for their revised pension in the corresponding pay scale of Rs.37400-67000/-+Rs.8700/- G.P. w.e.f. 18.10.2011. The petitioners are also entitled for consequential benefits arising from the aforesaid fixation along with interest @ 6% per annum from the due date till final realisation of the amount. Consequential benefits be implemented within two months from the date of receipt of certified copy of this order.

16.05.2023 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**