IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111 LPA- 1960-2023 (O&M)
Decided on 05.12.2023

State of Haryana and others
… Appellants

Versus

K.L. Vasudeva and Others
… Respondents

CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY

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Present: Mr.Deepak Balyan, Addl.AG Haryana

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AMAN CHAUDHARY, J.

CM-4902-LPA-2023

For the reasons stated in the application, delay of 33 days in refiling the appeal is hereby condoned, subject to all just exceptions.

Main Appeal

1. Challenge in the instant Letters Patent Appeal is to the judgment dated 16.05.2023 passed by the learned Single Judge, vide which the writ petition filed by the respondents was allowed.

2. Learned State counsel would submit that the respondents having retired prior to 01.04.2010, the date from which notional benefits were to be granted, as per instructions dated 18.10.2011, were thus not entitled to fixation of their pension in the revised corresponding pay scale of Rs.37,400-67,000/- with grade pay of Rs.8700/-. Learned Single Judge has by misconstruing instructions dated 10.06.2011 and without properly appreciating the aforesaid instructions, being prospective in nature, wrongly allowed the writ petition. Therefore, a wrong precedent has been created. The judgments relied upon were also not applicable, these being distinguishable on facts.

3. We are unable to countenance the submission made on behalf of the appellants for reasons more than one.

4. The lis in the case at hand being entitlement of fixation of pension of the petitioner-respondents in the scale of Rs.37,400-67,000/- with Rs.8700/- grade pay in terms of the Haryana Civil Services (Revised Pension Part-I) Rules, 2009, wherefrom the issue that has emerged for consideration is, whether on basis of date of retirement, any classification can be made amongst the retirees.

5. Concededly, the petitioner-respondents clamouring for the last decade, if not more, for their rights, are in the evening of their lives being between the age group of 75 to 85 years, out of whom, during the currency of the litigation, two have even passed away, they being respondent Nos.2 and 5, whose LRs have been brought on record.

6. As is evincible from para 16 of the impugned judgment that a reference had been made to cases of refixation of pension of four colleagues of the petitioner-respondents as depicted from Annexures P-33 to P-36, who had retired prior to 01.01.2006 on attaining the age of superannuation and had been granted the benefit of the corresponding revised pay scale as provided by instructions dated 18.10.2011, regarding which in the grounds of appeal the distinction sought to be drawn is on the premise that they were holding the post of Principal, which is the promotion post of HOD and thus, cannot be equated. In this regard, it is apposite to make a reference to the instructions dated 18.10.2011, as per which the personnel to be placed in revised pay are those who were holding the posts of Lecturer/Senior Lecturer/HOD/Joint Director, in the revised pay structure on 01.01.2006 of PB-III, Rs.15,600-39,100/- with Rs.8700/- as Grade Pay, the eligibility of the same interalia was based on 20 years service rendered as Lectures, 7 years as Head of the Department/Senior Lecturers/HOD/Joint Director

and they must fall within 15% of the total sanctioned posts. These conditions were indubitably fulfilled by all petitioner-respondents at the time of their retirement. The homogeneity of this class of pensioners including the petitioners-respondents who retired before 01.04.2010 and those retired prior to 01.01.2006 and after 01.04.2010 could therefore not be in dispute. As per the revised 2009 Rules *ibid*, the petitioner-respondents were entitled for fixation of pension in the corresponding scale, which no doubt had been fixed w.e.f. 01.01.2006, however, it is only when the instructions dated 18.10.2011 were issued that the corresponding scale of Rs.37,400-67,000/- with Rs.8700/- grade pay were not made admissible to those retirees, who retired prior to 01.04.2010, the date on which it was to be notionally granted. As envisaged by Rule 6 of the 2009 Rules ibid, pension was to be 50% of the minimum of pay scale/pay band plus grade pay. The attempt of the State, on basis of the instructions dated 10.06.2011, is lamentable to eclipse the petitioner-respondents of the benefit of the enhanced pay after revision of normal pay scale, it being against the statutory rules, has been viewed in the right perspective by learned Single judge and held to be unsustainable, there also being behind it the weight of the law as per dictum in **Sant Ram Sharma vs. State of Rajasthan**, 1967 SCC OnLine SC 16 and in **State of Haryana vs. Shamsher Jang Bahadur,** (1972) 2 SCC 188, that administrative instructions cannot override the statutory rules.

7. The issue as has arisen, is no longer *res integra*. Pertinently, the artificial classification being drawn between the pensioners who retired prior to 01.01.2006 and after and before 01.04.2010, cannot be sustained being illegal, arbitrary and discriminatory, as it amounts to carving out a class within a class. In the judgment of **All Manipur Pensioners Assn. vs. State of Manipur,** (2020) 14 SCC 625, upon which a profitable reference is made, it being applicable on all

fours to the case at hand, the classification by which the formula of pension, whereby those retiring prior to 01.01.1996 were given a lower rate of revised pension, as compared to those retiring later (who were given a higher rate of revision), was held to be discriminatory by Hon'ble the Supreme Court by observing that, "The facts leading to the present appeal in a nutshell are as under: that the State of Manipur adopted the Central Civil Services (Pension) Rules, 1972, as amended from time to time. As per Rule 49 of the Central Civil Services Rules, 1972, a case of a government employee retired in accordance with the provisions of the Rules after completing qualifying service of not less than 30 years, the amount of pension shall be calculated at 50% of the average emoluments subject to a maximum of Rs. 4500 per month. It appears that considering the increase in the cost of living, the Government of Manipur decided to increase the quantum of pension as well as the pay of the employees. That the Government of Manipur issued an office memorandum dated 21-4-1999 revising the quantum of pension. However, provided that those Manipur Government employees who retired on or after 1-1-1996 shall be entitled to the revised pension at a higher percentage and those who retired before 1-1-1996 shall be entitled at a lower percentage." An apt reliance can also be placed on **Maharashtra State Financial Corpn. Ex-Employees Assn. vs. State of Maharashtra,** 2023 SCC OnLine SC 100, wherein the appeal was allowed to the extent that those who retired from the services of MSFC between 01.01.2006 to 29.03.2010, and the legal heirs/representatives of those who died during that period, shall be entitled to arrears based on pay revision, alongwith interest @ 8% p.a. on these arrears from 01.04.2010 within eight weeks, by Hon'ble the Supreme Court observing and holding that, "In the present case, therefore, applying the ratio in the above decisions, it is clear that there is no distinction between those who retired (or died in service) before 29.03.2010 and those who continued in service - and were given the pay revision. Those who worked during the period 01.01.2006 to 29.03.2010 and those who continued thereafter, fell in the same class, and a further distinction could not be made. The exclusion of the retired employees, who retired between 01.01.2006 and 29.03.2010 on achieving their date of superannuation, is violative of Article 14 of the Constitution of India."

8. Trite it is to say that there cannot be any inherent right in the employer to differentiate the similarly situated by fixing separate dates regarding the fixation of their pension based on the enhanced/upgraded pay scales, that too, as in the present case, through the administrative instructions in face of the statutory rules of 2009 *ibid,* amounts to not only violence to the constitutional guarantee of equality but also withholding the benefits of the petitioner-respondents, that are legitimately and rightfully theirs. Hon'ble the Supreme Court in **E.P. Royappa vs. State of T.N.,** (1974) 4 SCC 3, held that, "The basic principle which informs both Articles 14 and 16 of the Constitution of India is equality and inhibition against discrimination. From a positivistic point of view, equality is antithetic to arbitrariness." Further in **Man Singh vs. State of Haryana,** (2008) 12 SCC 331, that "We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the

doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."

9. On a conspectus evaluation of the matter and having implored ourselves with the abounding pronouncements, we find that the impugned judgment is neither perverse nor illegal, in wake of which the present appeal being sans merit, is hereby dismissed.

10. Keeping in view the life of the litigation, age of the petitioner-respondents, death of two of them, we hope and trust that the State will comply with the directions of the learned Single Judge expeditiously, preferably in a period of one month and inform this Court.

11. Pending application(s), if any, shall be rendered as disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

05.12.2023
gsv/ashok

Whether speaking / reasoned: YES / NO
Whether Reportable: YES / NO