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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 9th May, 2023

+ W.P.(C) 8971/2018 & CM APPL. 34589/2018, 9326/2020

UMA KANT SADHAV AND ANR. Petitioners

Through: Mr. Sachin Chopra, Mr. Anuj Tyagi, Ms. Astha Gupta and Mr. Rahul Sharma, Advocates

versus

UNION OF INDIA AND ORS. Respondents

Through: Mrs. Bharathi Raju, Senior Panel Counsel for UOI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This writ petition has been preferred by the Petitioners laying a challenge to the letter dated 23.07.2018 issued by Respondent No. 1 and letters dated 24.07.2018 and 01.08.2018, issued by Respondent No. 3 and seeking a declaration that Petitioners are governed by terms of appointments envisaged in advertisement dated 05.03.2015 and Notification dated 21.11.2016 as well as Rule 3 of National Monuments Authority (Conditions of Service of Chairman and Members of the Authority and Conduct of Business) Rules, 2011 (hereinafter referred to as 'NMA Rules, 2011') read with Section 20H of Ancient Monuments and Archaeological Sites and Remains (Amendments and Validation) Act, 2010 (hereinafter referred to as '2010 Act').

2. Factual expose to the extent relevant and as averred in the writ petition is that Petitioner No. 1 retired from the post of Additional Director, Urban Administration and Development on 30.04.2015,

Central Public Works Department, Government of India, while working in the post of Senior Architect.

3. Respondent No. 1/Ministry of Culture, Government of India invited applications through an advertisement dated 05.03.2015, for appointment of Whole Time and Part Time Members in National Monuments Authority/Respondent No. 3 from 'eminent professionals' with proven experience and expertise in the field of Archaeology, Country and Town Planning, Architecture, Conservation Architecture or Law. It was stated in the Advertisement that the salary of the Whole Time Members would be Rs.67,000/- per month as admissible to Additional Secretary, Government of India and tenure would be three years from the date he/she assumes office.

4. Both the Petitioners applied against the said advertisement and the proposals for their appointments were finally approved by Appointments Committee of the Cabinet ('ACC'). An Office Order dated 20.05.2016 was issued by Respondent No. 1 intimating Petitioner No. 1 about his provisional appointment, pending verification of his character and antecedents. It was further stated that the terms and conditions of appointment including payment of remuneration would be in accordance with the extant NMA Rules, 2011. Similar intimation was sent to Petitioner No. 2 informing him of approval of his appointment by ACC and order dated 09.06.2016 was issued appointing him provisionally. Petitioner No. 1 joined office of Respondent No. 3 on 01.06.2016 while Petitioner No. 2 assumed the charge of the post w.e.f. 15.07.2016.

5. On 11.08.2016, an Office Order was issued by Respondent No. 3 whereby pay of the Chairperson, Member Secretary and Whole Time Members of Respondent No. 3 was fixed in accordance with Central Civil Service (Revised Pay) Rules, 2016 (hereinafter referred

Expenditure Resolution dated 25.07.2016. Basic Pay of the Petitioners was fixed at Rs.67,000/- in Pay Band Rs.67,000-79,000/- under 6th CPC and was revised to Rs.1,87,700/- as per 7th CPC recommendations w.e.f. 01.01.2017. By Notifications dated 15.09.2016 and 21.11.2016, appointments of the Petitioners were notified respectively and published in Part-1 of Section 2 of Gazette of India.

6. Petitioners continued to work as Whole Time Members of Respondent No. 3 drawing the aforesaid salaries and allowances for nearly one and half year, however, suddenly an order was issued by Respondent No.3 on 15.11.2017, stated to be in compliance of DoPT O.M. dated 18.11.1999, whereby the Whole Time Members were called upon to submit a copy of their Pension Payment Orders ('PPOs'), including revised ones, if any. Aggrieved by this order, Petitioners submitted representations on 21.11.2017, pointing out that their service conditions including remunerations, was governed by 2010, Act and NMA Rules, 2011 and could not be altered to their disadvantage and thus deduction of pension, which they were drawing for the past Government service, was illegal as neither the DoPT O.M dated 18.11.1999 nor any other executive instruction could override statutory provisions.

7. On 12.04.2018, Respondent No. 3 issued an order stating that representations of the Petitioners were forwarded to Respondent No.1/Ministry of Culture, where the matter was examined in consultation with DoPT and relying on O.M dated 18.11.1999, the representations were rejected. Petitioners were again called upon to submit copies of their PPOs for further action. This was followed by a spate of representations by the Petitioners, but to no avail.

8. Another order dated 15.05.2018 was issued by Respondent No. 3 intimating the Petitioners that in the absence of their revised

PPOs, arrears of 7th CPC could not be ascertained. Petitioners made yet another attempt to represent and point out that pay fixation under 7th CPC and/or arrears thereof had no link with the PPO as the pay had already been fixed vide order dated 11.08.2016 and calculations of arrears had been made.

9. Once again, an order was issued by Respondent No. 3 on 24.07.2018 informing the Petitioners that their representations were examined in consultation with Integrated Finance Division (IFD) and position remains unchanged that pay of the Petitioners can only be fixed in consonance with DoPT O.M dated 18.11.1999 read with DoPT O.M dated 01.05.2017, where the latter O.M stipulates detailed procedure regarding pay fixation of re-employed pensioners. This communication was in-turn based on a letter dated 23.07.2018 received from Respondent No. 1. Finally, an order was issued on 23.08.2018 by Respondent No. 3 insisting on submission of PPOs, to enable the administration to draw up the salaries of the Petitioners.

10. This compelled the Petitioners to file the present writ petition. During the pendency of the writ petition, the three year tenure of the Petitioners came to an end. There was no interim order staying the deduction, however, on 16.01.2020, this Court passed the following order:-

“During the course of hearing, Ms. Raju, ld. counsel for the respondent no.1 to 3 submits that in the absence of PPOs and the formalities to be fulfilled by the petitioners, the undisputed retiral benefits could not be release to the petitioners. Mr. Chopra, ld. counsel for the petitioners submits that without prejudice to the rights and contentions of the parties, the undisputed dues of the petitioners may directed to be released to the petitioners and that the petitioners shall fulfil the formalities in that regard, if any. The undisputed amounts of the petitioners should be so released within six weeks and for the remaining reliefs prayed in the petition, the same can be considered on merits upon hearing.

List on 14.07.2020.

Order dasti under the signatures of Court Master.”

11. Assailing the impugned action of the Respondents, learned counsel for the Petitioners contended that it is not open to the Respondents to treat the appointment of the Petitioners as re-employment in wake of plethora of documents indicating to the contrary. The submission was that by the advertisement dated 05.03.2015, Respondent No. 1 inviting applications for appointment as Whole Time Members of Respondent No. 3 from 'eminent professionals' in the open market and applications were neither restricted to persons retired from Government service nor separate conditions were stipulated for their appointment. Plain reading of the advertisement shows that eligible persons were invited for fresh 'appointments' and not 're-employment' for a tenure restricted to three years, with complete bar on re-appointment. Information Note dated 28.03.2016, communicating the approval of appointments by ACC, annotated that 'appointment' of the Petitioners as Whole Time Members stood confirmed and there was no mention that the appointment was on 're-employment' basis. Office Order dated 09.06.2016, issued thereafter, categorically provided that terms and conditions of appointment of the Petitioners would be governed by the extant NMA Rules, 2011.

12. It was contended that Section 20H of 2010 Act, in no uncertain terms, provides that salary and allowances once fixed shall not be varied to the disadvantage of the Whole Time Members after their appointment. Rule 3 of NMA Rules, 2011 provides the Basic Pay in the given Pay Band as Rs. 67,000/- which the members are entitled to draw and admits of no exception or separate/different formula for pay fixation in case of retired Government servants. In the absence of any express stipulation carving out a separate methodology for pay fixation, premised on the pay minus pension rule, Petitioners cannot

be penalised by reducing their emoluments, contrary to the express terms of their appointments.

13. Respondents themselves understood the legal import of the express contents of the 2015 Advertisement as well as the absence of a carve out for retired Government employees, treating them as re-employed pensioners and which is why in the subsequent Advertisement dated 10.01.2018, it was specifically mentioned that interested eminent professionals in the relevant fields, intending to apply shall along with their Curriculum Vitae mention their present occupation with emoluments, etc. and attach a copy of PPO, in case of a retired Government servant.

14. It was argued that it is a settled law that terms and conditions of service or tenure of an employee are governed by those stipulated in the advertisement, offer letter and the applicable Statute/Rules/Regulations of the concerned Department/employer and it is not open to an employer to change the conditions of service, post-appointment, to the detriment of an employee. In the present case, there is a specific bar under the 2010 Act, which prevents the Respondents from altering the service conditions of the Petitioners to their detriment and most certainly deducting pension from the pay would amount to unilaterally changing the service conditions of the Petitioners, causing grave prejudice and monetary loss.

15. Nature of appointment of the Petitioners, it was urged, cannot be termed as 're-employment' which was not the mode of appointment specified in the Advertisement/ACC approval/appointment letters and it needs no gainsaying that if the proposal and approval was for re-employment, ACC would not have used the term 'appointment'. After the end of almost half the tenure, Respondents cannot wake up to alter the nature of appointment and consequentially

the pay-fixation of the Petitioners.

16. DoPT O.M. dated 18.11.1999, which the Respondents are intending to apply to the Petitioners, categorically stipulates that the provisions of the O.M. will apply only when it is not in conflict with the Constitutional provisions or provisions in the Statute, under which a Statutory Body/Tribunal/Regulatory Authority is established. In view of the provisions of Section 20H of 2010 Act and Rule 3 of NMA Rules, 2011, pertaining to fixing of emoluments, any DoPT O.M or executive instruction, which provides or works to the contrary, cannot be invoked to alter the Pay of the Petitioners. It is trite that when financial rules framed by the Government are capable of more than one interpretation, Courts should lean towards an interpretation which goes in favour of an employee.

17. Reliance was placed on the judgment of this Court in *E. Sreedharan v. Union of India & Others, 2008 SCC OnLine Del 1309*, to contend that re-employment can only be on the same or similar post in the same Department or same channel of promotion and if the appointment conditions do not specifically mention the nature of appointment as re-employment, it is not open to the employer to import new words at a subsequent stage. Reliance was also placed on the judgments of the Himachal Pradesh High Court in *Justice Arun Kumar Goel (Retd.) v. State of Himachal Pradesh and Another, 2009 SCC OnLine HP 2954*, and of the High Court of Orissa in *Justice Debendra Mohan Patnaik v. State of Orissa & Ors., 2007 SCC OnLine Ori 32*, wherein the Courts have held that pension is not a bounty of the State and reduction of the salary to the extent of pension received for the erstwhile service is illegal.

18. *Per contra*, learned counsel for the Respondents contended that it is an admitted fact that both Petitioners were retired Government employees when they applied for the post of Whole Time Members

Government service. It is also admitted by the Petitioners that their pay and other emoluments were fixed in accordance with Rules, 2016 and therefore, they cannot claim that the said Pay fixation Rules or other DoPT O.Ms would be inapplicable in their case. Once their pay fixation as Whole Time Members is under Rules, 2016, they shall be subject to the 'pay minus pension' rule in terms of DoPT O.M dated 01.05.2017, which deals with applicability of Rules, 2016 to persons re-employed in Government service after retirement and whose pay is debitable to civil estimates. Petitioners have not brought forth how they are covered by any of the exceptions mentioned in the O.M. dated 01.05.2017.

19. Applicability of pay minus pension Rule, it was contended, is not dependent upon stipulations in the advertisement or prescribed eligibility criteria for appointment as Whole Time Members of Respondent No.3. The sole consideration for applying this rule is the status of the concerned member and if he joins as retired Government servant drawing pension, the nature of his employment is 're-employment' in the second Government service or Statutory/Regulatory Body. Petitioners cannot place themselves in a category of eminent or independent professionals at the time of applying for the post of Whole Time Members as their status would remain one of a retired pensioner seeking re-employment in another Government department or an autonomous organization under the Government.

20. Learned counsel submitted that the action of the Respondents impugned herein, is not a hasty decision but was taken after obtaining opinion and advice from DoPT and was premised on the provisions of O.M dated 18.11.1999. The 2010 Act or the NMA Rules, 2011 cannot be read in isolation and have to be read in tandem with Rules, 2016 and O.Ms dated 18.11.1999 and 01.05.2017. It is not the Petitioners'

case that the Rules, 2016 or DoPT O.Ms are contrary to Section 20H

of the 2010 Act or Rule 3 of NMA Rules, 2011 and more so, Petitioners are not oblivious or ignorant of applicability of DoPT O.Ms, when the Office Order appointing the Petitioners makes a reference to a DoPT communication. Drawing the attention of the Court to the O.M dated 30.05.2017, it was argued that para 6 thereof provides that Chairperson and Member of a Regulatory Authority/ Body, who on the date of his/her appointment was in service of Central/State Government, shall be deemed to have retired from such service with effect from the date of his/her respective appointment as such Chairman/Member and in case such a Chairman/Member is in receipt of pension, the same shall be deducted in accordance with the prevailing orders applicable to the re-employed pensioners. Reference is made in the O.M to an earlier O.M dated 29.01.1998, where guidelines were issued regarding perquisites and other terms and conditions of service of Chairpersons and Members of Regulatory Authorities, as per which the pay was to be fixed applying the pay minus pension rule. 2010 Act and NMA Rules, 2011 do not exclude the applicability of DoPT O.Ms and therefore, there is no illegality in the action of the Respondents in re-fixing the pay of the Petitioners after adjusting the pension drawn by them for their past service. In fact, Respondents have initiated action for recovery of excess amounts with respect to earlier Whole Time Members also and copies of such orders have been placed on record with the affidavit.

ANALYSIS:

21. Broadly understood, two issues arise for consideration of this Court: (a) whether the engagement of the Petitioners as Whole Time Members in the office of Respondent No. 3 is 're-employment' or 'appointment'; and (b) whether pay and allowances of the Petitioners can be re-fixed by applying the pay minus pension Rule.

22. In order to decide the seminal question whether the employment of the Petitioners as Whole Time Members with Respondent No. 3 is 're-employment' or 'appointment', it would be pertinent and relevant to examine some documents which form the genesis/bedrock of their relationship with Respondent No. 3. First in line is the advertisement, which is extracted as follows:-

"TIMES OF INDIA

New Delhi, Dated 05.03.2015

INVITING NOMINATIONS FOR APPOINTMENT AS FULL-TIME AND PART TIME MEMBERS OF THE NATIONAL MONUMENTS AUTHORITY

*Applications are invited from the **eminent professionals** with proven experience and expertise in the fields of Archeology, Country and Town Planning, Architecture, Heritage, Conservation - Architecture or Law for **appointment** as full-time (01) and part-time (02) Members of the National Monuments Authority (NMA), a body constituted under the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 by the Central Government.*

- a) **The full-time member of the NMA shall be eligible to draw salary of Rs.67,000/- per month with other allowances as admissible to Central Government officers.***
- b) **The part-time Members of the NMA shall be eligible for sitting charges @ Rs.3,000/- per day but not exceeding Rs.50,000/- in a month.***
- c) **The tenure of whole-time and part-time Member of the NMA shall be three years from the date on which he/she assumes office as such, they will not be eligible for re-appointment.***
- d) **Any person who has held any post in the Archaeological Survey of India or in the Ministry of Culture of the Government of India or a State Government or has not been found fit to be considered for being appointed to any such post, shall not be eligible to be appointed as a member of the NMA.***
- e) **Any person, who had either been granted a permission or license or refused any such permission or refused grant of a license or any person or any of his/her relative having any interest in a prohibited area or a regulated area shall not be eligible to be appointed as a member. 'Relative' means-***
 - i) **Spouse of the Member of the NMA;***
 - ii) **Brother or sister of the member of the NMA;***

- iii) Brother or sister of the spouse of the member of the NMA;
 - iv) Brother or sister of either of the parents of the member of the NMA;
 - v) Any lineal ascendant or descendant of the member of the NMA;
 - vi) Any lineal ascendant or descendant of the spouse of the member of the NMA;
 - vii) Spouse of the person referred to in clauses (ii) to (vi).
- f) The person so appointed to function as a member, part-time or wholetime, should not be of the age more than 67 years.

Interested eminent professionals of the relevant fields as mentioned above may send their applications on plain paper to the Member Secretary, National Monuments Authority, 24, Tilak Nagar Marg, New Delhi - 110001 with their Curriculum Vitae (CV) explaining their experience and expertise for consideration of the Central Government within 45 days of the date of publication of this advertisement.

The Candidates applied in response to the advertisement published in the Employment News (Dated 20th to 26th December 2014) need not to apply again.

*Member Secretary
National Monuments Authority
On behalf of the Secretary to the Government of India
Davp 09125/11/0007/1715"*

23. Information Note dated 28.03.2016 records that ACC had approved the appointment of the Petitioners in Respondent No. 3 for a period of three years or till the age of 70 years or till further orders, whichever is the earliest, and is extracted hereunder:-

"File No. 4/8/2016-EO (SM.II)

Information Note (28.03.2016)

*This Appointments Committee of the Cabinet (ACC) has approved the **appointment** of the following three persons as Whole Time Members in National Monuments Authority (NMA) under Ministry of Culture for a period of three years, or till the age of 70 years or till further orders, whichever is the earliest:*

- (i) *Shri Lima Kant Sadhav (Former Additional Director, Urban Administration & Development, Government of Madhya Pradesh), F-110/41, Shivaji Nagar, Bhopal-462016.*
- (ii) *Shri Satish Kumar (Architect-Planner), B-594, Kendriya Vihar, Sector-51, Noida - 201301.*
- (iii) *Shri A.B. Shukla, IAS (Retd.) YT: 1996), C-II/D-3, Block-A,*

MS Flats, Baba Kharak Singh Marg, New Delhi - 110001.

2. Necessary communication in this regard has been sent to the Ministry of Culture.”

24. Letter dated 13.04.2016 is addressed to Petitioner No. 2 informing him of the approval of his ‘appointment’ by ACC, as a Whole Time Member and is extracted hereunder:-

*“No.2D-2/2016-NMA/Admn(Pt)
Government of India
Ministry of Culture

*Room No,202, D Wing, Shastri Bhawan
New Delhi, dated 13.04.2016*

To

***Shri Satish Kumar,
Architect - Planner)
B-594, Kendriya Vihar
Sector-51, Noida - 201301***

***Subject: Your appointment as Whole Time Member in the National
Monuments Authority - regarding - Date of Application
14.04.2015.***

Sir,

*I am directed to refer to your application dated 14.04.2015 for the post of Whole Time Member in the National Monument Authority (NMA) and to convey that the Appointment Committee of the Cabinet has approved your **appointment** as a Whole Time Member in the NMA.*

2. You are accordingly requested to send the dully filled Attestation Form enclosed herewith immediately to enable further necessary action in the matter.

Yours faithfully,

Sd/-

(Madan Chaurasia)

Under Secretary to the Government of India

Telefax: 011 23387875”

25. From the narrative of facts, it is ubiquitously manifest that Petitioners were retired Government servants, when they applied against the advertisement dated 05.03.2015, inviting applications from eminent professionals in the fields mentioned therein for various posts including Whole Time Members with Respondent No. 3. A conjoint

reading of the three documents reflects that applications were invited from all eligible candidates and were not restricted to retired Government employees. No reservation or concession was extended to this class of aspiring candidates in the process of selection and it was a tenure appointment for three years. The nomenclature 're-employment' does not find mention anywhere in the Advertisement. Another important facet that becomes palpably clear from the advertisement is the salary that the Whole Time Members were entitled to draw i.e. Rs.67,000/- per month with other allowances as admissible to Central Government officers, was specified and there was nothing which even remotely suggested that retired employees would be entitled to a different pay package with lesser salary, on account of deduction of their pension. Unlike the later advertisement in 2018, the 2015 advertisement did not lay down the pre-condition of production of PPOs in case of retired Government officers and clearly there was no carve out treating the retired Government servants as a separate class of re-employed members entitled to lesser pay and different from Rs. 67,000/- plus allowances, applying the pay minus pension rule. It is only logical that a candidate applies for a post against an advertisement by looking at the eligibility conditions and terms of employment specified therein and needless to say that the author of the advertisement is required to prescribe the terms of service therein and nothing can be left to imagination or presumption. Therefore, what is not stipulated in the advertisement cannot be imposed after selection and whatever is stipulated must be adhered to by the prospective employer. Advertisements have to be read as they are and no words that do not exist can be imported. As per procedure, upon selection, an offer letter is issued by an employer and the objective is to inform the selected candidate of the terms and conditions that would govern his employment and it is on these

assured and promised terms, that the selected candidate takes a decision to accept the employment or not. The offer and acceptance makes a binding contract and it is thereafter not open to change the employment terms subsequently, that too placing the employee in a disadvantageous position. Therefore, having represented in the advertisement and the offer letters that Petitioners were being appointed as fresh appointees with no connection with the past service and/or deduction of pension drawn for services rendered in the Government, Respondents are estopped by the doctrine of estoppel to vary the salaries or any other employment term, after Petitioners acted on the representation and accepted the offer.

26. The Information Note gives strength to Petitioners' stand that ACC had granted approval for appointment and not re-employment and this is fortified by the offer letters, where carefully and consciously the nomenclature used is 'appointment'. This Court does not have the benefit of exact proposal before the ACC or the approval given, however, the only logical inference that can be drawn from the Information Note and offer letters is that the proposal was not for 're-employment'. In this context, I may refer to a judgment of the Co-ordinate Bench in *E. Sreedharan (supra)*, where the Court held that ACC being the Apex body for approval of appointments would not use the word 'appointment' if what was being approved was a case of 're-employment'. There is no material placed on record by the Respondents to establish that Petitioners were offered or appointed on re-employment basis and the plethora of documents filed by the Petitioners point to the contrary and thus the Court cannot be called upon to read something into the advertisement that does not exist.

27. The next question that arises for consideration is whether the Respondents are entitled to re-fix the pay of the Petitioners by applying the pay minus pension rule, which stems, according to the

Respondents from the various DoPT O.Ms, referred to above. In order to examine this issue, it would be useful to refer to a few other documents and the statutory provisions governing and binding the parties to the *lis*. On 09.06.2016, Respondent No.1 issued an Office Order, pursuant to DoPT communication dated 28.03.2016, referring to the provisional appointment of Petitioner No. 2 and it was clearly mentioned therein that the terms and conditions of employment including payment of remuneration will be as per extant NMA Rules, 2011. The Office Order is extracted hereunder for ready reference:-

*“No. 20-2/2016-NMA/Admn (Pt)
Government of India
Ministry of Culture*

*Room No. 202, D Wing, Shastri Bhawan
New Delhi, dated 09.06.2016*

OFFICE ORDER

*In pursuance to DOP&T Communication No. 4/8/2016-EO(SM.II) dated 28.03.2016, Shri Satish Kumar has been appointed **Provisionally**, with effect from his date of joining, as Whole Time Member in the National Monument Authority (NMA), an organization under the Ministry of Culture, Government of India pending verification of his Character and antecedents etc. **The terms & conditions including payment of remuneration will be as per extant NMA rules during his provisional appointment.***

2. The Provisional appointment is accordingly subject to the condition that in case any false information or suppressing material information while fulfilling the Attestation Form submitted by him comes to notice, the government has full right to terminate his appointment and the appointee is liable for appropriate criminal actions as a consequence.

*Sd/-
(Madan Chaurasia)
Under Secretary to the Govt. of India
Telefax: 23387875”*

28. Pay slip annexed with the writ petition in the case of Petitioner No. 1 for the month of July, 2016 reflects the fixation of Basic Pay at Rs.67,000/- in Pay Band Rs.67,000-79,000/- and is as under:-

NATIONAL MONUMENTS AUTHORITY MINISTRY OF CULTURE 28, CHANDNIMARG, NEW DELHI PAY SLIP FOR THE MONTH, JULY, 2016				
PAN NO			PAY SCALE	5000-75000-171000
EMPLOYMENT NAME	DR. UMA KANT SINGHAW		PAY IN PAY BAND	
DESIGNATION	WHOLE TIME MEMBER			
PLACE OF POSTING	DELHI (DELHI)			
DUES	AMOUNT (RS.)	DEDUCTIONS	AMOUNT (RS.)	
BASIC	57,500/-	PAY	25,000/-	
HRA	20,100/-	EDU. CESS	750/-	
DA	53,750/-			
TOTAL DUES	1,76,350/-	TOTAL DEDUCTIONS	25,750/-	
NET PAY	1,46,100/-			
NET PAYABLE	1,46,100/-			

29. Therefore, it is evident that from the very beginning of the process of appointment of the Petitioners, it was represented to them that pay fixation would be governed by the 2010 Act and NMA Rules, 2011 and no exception was taken stipulating that their pay fixation would be premised on the pay minus pension formula. Even in the offer of appointment, it was not envisioned that pay fixation would be at variance with the statutory provisions governing the terms and conditions of Whole Time Members appointed with Respondent No. 3 and rightly so as statutory provisions are sacrosanct. Since the service conditions are governed by the 2010 Act, it would be imperative to look at the relevant provisions and for that purpose Section 20H needs to be alluded to and is as follows:-

“20H. Salary, allowances and meetings of Authority. - (1) The salaries and allowances payable to the whole-time Chairperson and whole-time members, and the other terms and conditions of their service or fees or allowances payable to the part-time members, of the Authority shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the whole-time Chairperson and wholetime members shall be varied to their disadvantage after their appointment.

(2) The Authority shall regulate its own procedure for the purposes of holding its meetings (including quorum of such meetings) and granting permissions under this Act.)

(3) All the decisions of the Authority shall be published in such manner as it may decide and also on its own website and on the website of the Central Government.”

30. In this context, it is also important to refer to Rule 3 of NMA Rules, 2011 which is as follows:-

“3. Salaries, allowances and other conditions of service:- The salary and allowances payable to the whole-time Chairperson, whole-time members and part-time members shall be as under-

(a) the whole-time Chairperson shall be paid a fixed salary of rupees eighty thousand per month plus other allowances as are admissible to an officer of the rank of Secretary to the Government of India;

(b) the whole-time member shall be paid salary in the Higher Administrative Grade in the scale of pay (Rs.67,000/- plus annual increment @ 3% - 79,000/-) plus such other allowances as are admissible to an officer of the rank of Additional Secretary to the Government of India;

Provided that if a whole-time member at the time of appointment is drawing a scale higher than the Higher Administrative Grade, his pay shall be protected as per the existing rules of the Government of India;

(c) the part - time member shall be paid a sitting allowance of rupees three thousand for each day he attends the meeting of the Authority and shall be entitled to reimbursement of transportation charges at the rates as admissible to the whole-time member.”

31. Therefore, the pandect for regulating the fixation of salaries and allowances qua the Whole Time Members including other terms and conditions of their service is Section 20H(1) of 2010 Act read with Rule 3 of NMA Rules, 2011. Section 20H(1) provides that salaries and allowances shall be as may be prescribed and the proviso thereto mandates that neither the salary and allowances nor other terms and conditions of service shall be varied to the disadvantage of the Whole Time Members, after their appointments. Rule 3 stipulates that the salary of a Whole Time Member shall be fixed in the Higher Administrative Grade in scale of pay (Rs. 67,000/- plus increment @ 3% - 79,000/-). Two crucial aspects that thus emerge by a conjoint reading of Section 20H and Rule 3 are that the salary of the Petitioners was to be fixed in consonance with the provisions of Rule 3 and this was not a term which could be varied to their disadvantage. In view of

the statutory prescription containing a proscription against varying the salary and emoluments to the disadvantage of Whole Time Members, no executive instruction, to my mind, can override and permit pay-fixation to the contrary. It is trite that administrative instructions cannot override statutory rules. [*Ref. P. Sadagopan and Others v. Food Corporation of India, Zonal Officer (South Zone), Represented by its Zonal Manager and Another, (1997) 4 SCC 301*]. In *Sant Ram Sharma v. State of Rajasthan and Others, AIR 1967 SC 1910*, a Constitution Bench of the Supreme Court held that statutory rules cannot be amended by executive instructions and only if the rules are silent on a particular point, Government can fill up the gaps by issuing executive instructions, in conformity with the existing Rules. This was reiterated in *Union of India v. H.R. Patankar and Others, 1984 Supp SCC 359*. Therefore, once the field is occupied by statutory Rules, DoPT Instructions cannot step in to the contrary, permitting Respondents to re-fix the pay of the Petitioners by reducing it on account of deduction of pension earned for their past service.

32. Learned counsel for the Petitioners rightly pointed out that the case of the Petitioners is squarely covered by the judgment of this Court in *E. Sreedharan (supra)*. In the said case, Petitioner retired from the Indian Railways and was appointed as CMD, Konkan Railway Corporation Ltd. after selection by the PESB, which was approved by the ACC. His pay scale as approved by the ACC was Rs. 9000-10000 for 5 years or completion of project, whichever was earlier. Office order of appointment also stipulated that the Petitioner was being appointed as CMD in Schedule 'A' of scale of pay of Rs. 9000-10000. Petitioner accepted the offer and joined as CMD on 31.10.1990. After two years, a letter was issued by the Railway Board informing him that his Basic Pay would be reduced by Rs.4,000/- per

month, on account of the pension he was receiving from his erstwhile

employment. Petitioner challenged this action and the contentions were very close to the ones by the present Petitioners. It was urged that Petitioner's case was a case of appointment and not re-employment or extension of service and pensionary benefits could not be deducted from his basic salary invoking the DoPT O.Ms, in question. It was also contended that pay of a Chief Executive of an organisation could not be half of other Executives in the same organisation. Respondents contested the petition on the ground that there was no provision for fresh appointment in the Rules applicable to persons who retire from Government service on superannuation and are re-employed with Public Sector Undertakings. The emoluments of retired Government servants on re-employment can only be fixed by deducting the pension drawn on account of the earlier service in the Government. After examining the rival contentions, the Court held as follows:-

“23. At the time of consideration of the proposal for appointment, if the Appointments Committee of the Cabinet had not considered the reduction of the amount of pension from the scale of pay approved by the Committee in terms of the office memorandum dated 23rd September, 1969, in that case the respondent No. 1 without approaching the Appointments Committee of the Cabinet could not amend or modify the approval of the proposal for appointment of the petitioner. Despite the matter being argued on various dates, no effort has been made by respondent No. 1 to produce anything to show that any clarification was even tried to be taken from the Appointments Committee of the Cabinet whether the salary payable to the petitioner as CMD would be after deducting the pension which the petitioner was receiving. The petitioner had been appointed to a prestigious post of a Corporation which was given a prestigious project and in the circumstances what transpired before the Appointments Committee of the Cabinet could not be modified or amended by the respondent No. 1, Ministry of Railways, on the basis of its own presumptions. The respondent No. 1 cannot amend the approval granted by the Appointment Committee of the Cabinet nor can contend that the effect of office memorandum should have been considered by the said committee.

24. Learned counsel for respondent No. 1 has very emphatically relied on V.S. Malimath (supra) which was a case pertaining to the salary of a Member of National Human Rights Commission. In the said case, it was held that the services rendered by a Member of

National Human Rights Commission is to be treated as service in connection with the affairs of Union and, therefore, the pension received for such service was held to be deductible under Rule 3 of the Salaries, Allowances and other conditions of Services Rules, 1993. Proviso to Rule 3 contemplates that if the Member of the National Human Rights Commission is in receipt of the pension other than the disability or war pension in respect of any previous service under the Government or the Union or the Government of the State, then his salary in respect of service as a Member shall be reduced by the amount of pension. Apparently, the case of the V.S. Mallimath (supra) is clearly distinguishable as Rule 3 of (Salaries, Allowances and Other Conditions of Services), Rules, 1993 specifically contemplated deduction of pension from the salary payable to the Member of National Human Rights Commission whereas there is no such rule of Konkan Railway Corporation that the salary of the Chairman-cum-Managing Director shall be reduced by the pension, if any, received by such Chairman-cum-Managing Director for the services rendered by him to the Union Government. The service of a member to the National Human Rights Commission cannot be equated with the service in a Corporation. On the basis of ratio of said judgment it cannot be inferred that the service as CMD of respondent No. 4 has to be treated as service in connection with the affairs of the Union.

25. *The ratio of said decision does not substantiate the plea of the respondent No. 1. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 a the Supreme Court had observed:—*

“The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

Similarly in Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd., (2003) 2 SC 111 (vide para 59), the Supreme Court had observed:—

“It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

26. *Learned counsel for the Railways has also very emphatically contended that the services of persons who retire from Government service on attaining the age of superannuation are normally utilized as an extension of service or re-employment in service and there is no provision or rule prescribing fresh appointment. Learned counsel for the petitioner refuting the contention of the counsel for the*

Ministry of Railways had contended that 're-employment; is when an employee who has worked earlier and who superannuates and whose settlement dues are paid and if such a person is appointed on the same post or similar post in the same Department and in the same channel of promotion. Whereas extension of service is allowing a person to continue after superannuation in the same post on the same terms and conditions, perks and privileges as he was getting before superannuation, and in case of extension of service his settlement entitlements are not paid.

27. *The petitioner superannuated from the Railways as the Technical Member of the Railway Board. Admittedly, he was not given extension of service as he had not continued as a Member of the Railway Board. For re-employment, the employment should be on the same post or similar post in the same Department or in the same channel of promotion. This cannot be disputed that Konkan Railway Corporation, whose Memorandum of Association is on the record of the case, is a distinct legally entity. The Chairman-cum-Managing Director of such an independent Corporation cannot be termed equivalent to a Member of the Railway Board in the present facts and circumstances nor can such a post be treated as similar. In any case, if the Appointment Committee of the Cabinet had to 're-employ' the petitioner as a Chairman-cum-Managing Director of Konkan Railway, they would have specified that the petitioner is 're-employed' as the Chairman-cum-Managing Director of the Konkan Railway Corporation in their order dated 30th October, 1990. The said order of the Appointment Committee of the Cabinet use the word 'appointment' and even the Ministry of Railways in its order dated 30th October, 1990 issued pursuant to the decision of the Appointments Committee of the Cabinet used the word "appointment". The committee which is the apex body for approval of appointments would not use 'Appointment' when they were allegedly approving 'Re-employment. Two years thereafter, while allegedly sending the letter of employment to the petitioner, the Ministry of Railway could not contend that the case of the petitioner was of 're-employment' and not of 'appointment' and that from the pay approved by the Appointments Committee of the Cabinet, the amount of pension was liable to be deleted. The Ministry of Public Grievances and Pension, Department of Personnel and Training and the Department of Public Enterprises are the parties to the petition. However, no counter affidavit or any reply has been filed by them nor has it been disclosed as to what was the proposal put up before the Appointment Committee of the Cabinet which was approved by the committee and whether the proposal included reduction of pay by the amount of pension received by the petitioner. In absence of any of these things, pleas taken by the respondent No. 1 are just without any basis. Though the appearance has been put on behalf of Konkan Railway Corporation Limited, however, even the said respondent where the petitioner was employed as Chairman-cum-Managing Director, has not filed any reply nor have they refuted the pleas and contentions raised by the petitioner. The petitioner in its earliest representation dated 9th November, 1992 to the impugned*

letter dated 18th September, 1992 of the Ministry of Railways had categorically raised the plea and had contended that on being appointed as the Chairman-cum-Managing Director of Konkan Railway Corporation, which was entrusted with a prestigious task to build the Konkan Railways, the Chairman could not be expected to have a salary of Rs. 5,000/- whereas full time Directors of the same organization were drawing a salary of about Rs. 7,300/-. Even from the sum of Rs. 5,000/-, other amounts were deductible which was leaving the petitioner only with a salary of Rs. 1,080/-. None of the representations of the petitioner and the pleas raised therein were properly considered and by communication dated 15th January, 1998, after the retirement of the petitioner, his request not to deduct the amount of pension was rejected. While rejecting the request of the petitioner not to deduct the amount of pension, the respondents had not relied on their own office memorandum dated 10th December, 1997 because of which other representations were made by the petitioner seeking to set aside the order dated 15th January, 1998. The copy of order dated 15th January, 1998 declining the request of the petitioner has not been filed despite the fact that the writ petition was vehemently argued on various dates. The respondents have also failed to file the copies of O.M No. BPE-3/3/85-S&A Cell dated 29th October, 1986 and O.M No. 1/1/86-S&A Cell dated 6th March, 1989.

28. The representations were decided by the respondents by decision dated 7th February, 2002 and the writ petition was filed on 12th April; 2002. Therefore the respondent No. 1 cannot even succeed on the plea of delay and laches which has also not been taken by them in the pleadings. Though this ground that the petitioner is not entitled for any relief in the writ petition on account of delay and laches has not been taken specifically, but considering the entirety of facts and circumstances, the plea has been considered and it has to be held that the relief cannot be denied to the petitioner on account of alleged delay and laches.

29. The plea of the learned counsel for the petitioner that deduction of amount of pension from the pay scale of the petitioner in case of an independent entity like Konkan Railway Corporation would also lead to very anomalous situations cannot be rejected outright. It was contended that had the tenure of the petitioner continued till after 5th Pay Commission which was applicable from 1st January, 1996 under which the amount of the pension was increased substantially, on account of deduction of the amount of pension, which was more than the amount of the salary, if the plea of the respondents are to be accepted then such a re-employed employee would be working without getting any thing, as his pension would be more than his salary and the amount of pension is to be deducted from his salary.

30. For the forgoing reasons the inevitable inference is that the petitioner appointment as CMD of an independent Corporation was not re-employment in Civil Services or on a post in connection with the affairs of the Union Government. The petitioner was 'Appointed'

to the post of CMD of the Respondent No. 4 and his salary was fixed as Rs. 9000-10000 and the amount of pension which was received by the petitioner was not deductible from his salary. Consequently all the amounts which have been deducted by the respondents from the salary of the petitioner were illegal and the respondents are liable to refund all the amounts to the petitioner.

31. In the facts and circumstances and for the foregoing reasons, therefore, clause 3 of letter No. 90/E(O)II/7/22 dated 18th September, 1992 stipulating deduction of Rs. 4,000/- as pension per month from the revised scale of Rs. 9,000-250-10,000 is set aside holding that the respondents were not entitled to deduct any amount on account of pension from the scale of pay of the petitioner of Rs. 9000-250-10000. Consequently, the respondents are also directed to pay the entire amount deducted by them, on account of pension, from the pay of the petitioner as Chairman cum Managing Director of Konkan Railway Corporation and pay the entire amount along with simple interest at the rate of 12% per annum within four weeks. Considering the facts and circumstances, the respondent No. 1 shall also pay a costs of Rs. 30,000/- to the petitioner. With these directions the writ petition is allowed.”

33. In ***Justice Debendra Mohan Patnaik (supra)***, the High Court of Orissa was dealing with a similar issue of deduction of pension from the salary of the Petitioner, who was appointed as President of State Consumer Disputes Redressal Commission, Orissa while functioning as sitting Judge of the High Court. Section 16 of the Consumer Protection Act, 1986 provides that salary and allowances payable to the Members of the State Commission shall be as prescribed by the State Government and Rule 6 of the Orissa Consumer Protection Rules, 1987, framed under the Act provides that President of the State Commission shall receive the salary of a Judge of a High Court if appointed on whole-time basis. Petitioner was paid the salary after deducting his pension and aggrieved with that, a writ petition was filed before the High Court of Orissa. The Court examined whether the Respondents were justified in deducting the pension while fixing the salary of the Petitioner and came to an irresistible conclusion that the State Government had acted illegally and unreasonably by reducing the salary of the Petitioner to the extent

of pension in the absence of a Statute permitting such deduction and directed the Respondents to pay the amounts deducted from his salary for the relevant period. Relevant observations of the Court are as follows:-

“10. Be that as it may, we are concerned with the Rules framed by the State of Orissa which does not make any provision for deduction of pension from the total salary of the President, State Commission and in the past, as we have indicated, the State Government has paid the benefit of a sitting Judge to the Chairman of the Liquor Tragedy Commission and there is nothing before us to accept the reason why the petitioner shall not be given the benefit according to the provisions of the Act and the Orissa Consumer Protection Rules and the benefits so extended to Justice S.K. Ray by virtue of the order of this Court which was kept unaltered by the Apex Court.

11. Pension is not a bounty as has been held by the Supreme Court in several decisions. It is a part of one's own earning, which is retained and is given after superannuation as per the rules. Thus, an indefeasible right is created. That right cannot be taken away or abridged in any manner in course of a subsequent employment unless statute under which the employment is made specifically provides for such abridgement. In case of a statutory appointment like the one the petitioner was holding, namely, President of State Consumer Disputes Redressal Commission, which is made under the Consumer Protection Act, unless there exists a provision in the Act itself the indefeasible right to pension earned by a High Court Judge cannot be abridged in any manner particularly in the teeth of the constitutional provision of Article 221(2) as interpreted by the Supreme Court in Sankalchand Himatlal Sheth's case (AIR 1977 SC 2328) (supra). No such provision having been pointed out to us in the Consumer Protection Act or the Rules made thereunder, the conclusion is irresistible that no part of the petitioner's pension earned as a Judge of the High Court can be taken into account while fixing the salary for the period he served as whole time President of the State Commission under the Consumer Protection Act. Consequently the deduction of Rs. 12,724/- per month from his salary is illegal and would constitute a constitutional infraction.”

34. To the same effect is the decision of the Himachal Pradesh High Court in **Justice Arun Kumar Goel (Retd.) (supra)**, in which reliance is placed on the judgment of the Division Bench of the Orissa High Court in **Justice Debendra Mohan Patnaik (supra)**. It would be also relevant to refer to a judgment of the Madhya Pradesh High Court in **N.K. Jain v. State of M.P. and Others, 2013 SCC OnLine MP 3605**.

In the said case, Petitioner was a retired Judge of High Court of W.P.(C) 8971/2018

Madhya Pradesh and sought quashing of the order of the Respondents whereby his pension was sought to be deducted for purpose of fixation of his salary. Learned Senior Counsel for the Petitioner had urged that under Rule 6(1) of the Madhya Pradesh Consumer Protection Rules, 1987, President of the State Commission is entitled to receive salary of the High Court Judge if appointed on whole-time basis and any Executive order contrary to the said Rule cannot be sustained in law. It was also submitted that wherever Legislature intended to provide for deduction of the amount of pension from the salary, specific provision has been made as in the case of M.P. Lokayukta Avam U.P.-Lokayukta Adhiniyam, 1981 and the Rules framed thereunder, whereas no similar provision existed in Rule 6(1), enabling deduction of pension from the salary. The Court agreed with the Petitioner that once there is a positive mandate with respect to the salary on appointment on whole time basis in the statutory provision, no administrative order can be issued in contravention, to take away part of the salary towards pension. Relevant observations are as under:-

“9. Thus from perusal of Rule 6 of the Rules, it is apparent that the same contains a positive mandate that the President of the State Commission shall receive the salary of a Judge of the High Court if he has been appointed on whole time basis. It is well settled in law that pension is not a bounty. The Supreme Court while considering Article 221(2) of the Constitution of India in the case of Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193 : AIR 1977 SC 2328, has held that right to pension earned by a High Court Judge cannot be abridged in any manner particularly in view of Article 221(2) of the Constitution of India. Neither the Consumer Protection Act, 1986 nor the Rules framed by the State Government thereunder contains such provision which provides for adjustment of the amount of pension against the salary payable to the Chairman of the State Commission. On the other hand Rule 6(1) contains a positive statutory mandate that the President of the State Commission shall receive the salary of a Judge of the High Court, if appointed on whole-time basis. It is well settled in law that if an administrative order is issued in contravention of statutory provision, the same has no sanctity in law. [See : B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731 (2)] It is also well settled in law that in considering the question of delay, the test is not of physical running

of time. [See : Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur, (1992) 2 SCC 598.] The delay may not defeat the claim for relief unless the position of the other side is so altered which cannot be retracted on account of lapse of time or inaction on the other party. However, the question of delay has to be examined in the facts of each case. [See : Hindustan Petrol Corporation v. Dolly Das, (1999) 4 SCC 450 and M.P. Ram Mohan Raja v. State of Tamil Nadu, (2007) 9 SCC 78.]

10. *In the instant case the delay is not such which is fatal to the claim of the petitioner. The decision relied upon by learned Advocate General i.e. M.S. Chawla (supra) has no application to the facts of the case as the same pertains to appointment of President of District Consumer Forum wherein it has been held that such appointment is re-employment of pensioner. Similarly in the case of V.S. Mallimath (supra) Rule 3 of the National Human Rights Commission Chairperson and Members (Salaries, Allowances and Other Conditions of Service) Rules, 1993 provided that pension has to be deducted from the salary, whereas in the case in hand there is no such provision. Therefore, the aforesaid decision is of no assistance to the respondents.*

11. *In view of the preceding analysis, the impugned condition contained in the order dated 27-9-2003 is contrary to Rule 6(1) of the Rules and, therefore, the same cannot be sustained in the eye of law. Accordingly, the same is hereby quashed. The respondents are directed to refund the amount deducted from the salary of the petitioner to him within a period of three months. In the result, the writ petition is allowed."*

35. It would be profitable to refer to a judgment of the Division Bench of the High Court of Uttarakhand in ***Lt. Gen. (Retd.) Dr. M. C. Bhandari v. State of Uttarakhand and Others, 2010 SCC OnLine Utt 567***. In the said case, Petitioner had retired from the Indian Army on attaining the age of superannuation on 30.08.2006 and was appointed as Chairman of the Uttarakhand Public Service Commission on 03.11.2006. The Governor of the State of Uttarakhand is competent to frame regulations to determine the conditions of service of the Chairman of the Commission deriving power from Article 318 of the Constitution of India which provides as follows:-

"318. Power to make regulations as to conditions of service of members and staff of the Commission. – In the case of the Union Commission or a Joint commission, the President and, in the case of a State Commission, the Governor of the State may by regulations -

(a) determine the, number of members of the Commission and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.”

36. In exercise of the power under Article 318, the Uttaranchal Public Service Commission (Conditions of Service) Regulations, 2004 were framed which stipulated the salary of the Chairman at Rs.26,000/- in Regulation 7(1). At the time of induction of the Petitioner he was paid salary at the rate of Rs.26,000/- per month, however, subsequently the salary was reduced by a sum equivalent to monthly pension drawn by him for service rendered in the Indian Army. This action of the Respondents was impugned by the Petitioner on the ground that his service conditions could not be varied to his disadvantage after his appointment in terms of proviso to clause (b) of Article 318. Agreeing with the Petitioner, the Division Bench held as follows:-

“7. The second submission advanced by the learned counsel for the petitioner is that Regulation 7(2) of the 2004 Regulations framed by the Governor of State of Uttarakhand under Article 318 of the Constitution of India is ultra vires Article 14 read with Article 39(d) of the Constitution of India. In this behalf, the submission of the learned counsel for the petitioner is, that pension earned by the petitioner is with reference to service rendered by him with the Indian Army, the same has no concern with the duties and responsibilities shouldered by him as Chairman with the Uttarakhand Public Service Commission. As such, according to learned counsel, it would be arbitrary, if pensionary benefits earned by the petitioner, as a consequence of service rendered by him while in the service of the Indian Army, are ordered to be deducted from the emoluments payable to him as Chairman of the Public Service Commission (determined under Regulation 7(1) of the 2004 Regulations). It is also the contention of the learned counsel for the petitioner, that the petitioner has been discharging all duties vested in the Chairman of the Uttarakhand Public Service Commission, ever since he assumed his duties as such i.e. with effect from 24.11.2006. As such, it is submitted, that deduction of any amount therefrom, on the basis of factors unrelated or unconnected with his

employment as Chairman of the Uttarakhand Public Service Commission, would be violative of the principle enshrined in Article 39(d) of the Constitution of India.

8. *In order to support his aforesaid contention, learned counsel for the petitioner has placed reliance on a judgment rendered by a learned Single Judge of the Punjab and Haryana High Court in Ram Phal Singh v. State of Haryana (Civil Writ Petition No. 15159 of 1996) decided on 8.9.2004. Pointed attention of this Court has been drawn to the following observations recorded therein:*

“...In this behalf it would be pertinent to mention that while calculating the emoluments payable to the petitioner, deduction of pension payable to him (on account of service rendered by him under the government) as well as deduction of pension equivalent to Death-cum-Retirement gratuity paid to him (for service rendered by him under the Government) are being made from the stipulated remuneration of Rs. 6000/- under Regulation 6(1) of the 1973 Regulations. The aforesaid deductions comprising of pension, as well as pension equivalent to Death-cum-Retirement, Gratuity, constitute earnings of the petitioner in lieu of the service rendered by him under the government. The action of making the instant deductions amounts to depriving the petitioner of his existing rights, prior to his appointment as a member of the Public Service Commission. The aforesaid earnings are not relatable to the duties and responsibilities which a member of the Public Service Commission discharge as a member of the Public Service Commission. It is wholly unreasonable to make the aforesaid deductions from remuneration of the petitioner because the aforesaid payments have no nexus to the duties and responsibilities of the petitioner as a member of the Public Service Commission. The only issue relevant for determining the emoluments payable to the members of the Public Service Commission is the duties and responsibilities discharged by them as members of the Public Service Commission. All the members of the Public Service Commission discharge the same duties collectively as a unified body and the duties and responsibilities of the members of the Public Service Commission are interchangeable, there can, therefore, be no justification to pay them differently for the duties discharged by them. In view of the above, it is natural to conclude that the first proviso under Regulation 6(2) of the 1973 Regulations which envisages a stipulation wherein a number of the Public Service Commission fixed under Regulation 6(1) of the 19, 3 Regulations, is clearly ultra vires the provision of the Constitution of India and is therefore, liable to be set aside and is accordingly set aside. The petitioners and others, who were drawing wages under the government at a level less than the remuneration under the Regulation 6(1) of the 1973 Regulations (prior to their appointment as members of the Public Service Commission) are hereby held to be entitled to the remuneration fixed under Regulation 6(1) of the 1973 Regulations, without any deduction therefrom.”

9. *In the case relied upon by the learned counsel for the petitioner Regulation 6 of the Haryana Public Service Commission (Conditions of Service) Regulations, 1973 was subject matter of challenge. Regulation 6 aforesaid is being extracted hereunder:*

“6. Pay (1) The Chairman shall receive a remuneration of seven thousand rupees in a month and each of the other members a remuneration of six thousand rupees a month. They shall also be entitled to such other allowance as may be admissible in future from time to time to government employees drawing the same pay in addition to four hundred rupees a month as car allowance, provided a car is maintained.

(2) Chairman of the Member, if at the time of his appointment as such, is a retired Government employees, he will be entitled to the remuneration in sub-regulation (1) in addition to the pension sanctioned to him. Provided that the amount of remuneration plus the gross amount of pension of the pension equivalent to other forms of retirement benefits does not exceed the pay last drawn by him before his retirement or the remuneration mentioned in sub-regulation (1) whichever is higher.

Provided further that the total remuneration plus the gross of pension and the pension equivalent to other forms of retirement benefits, excluding the allowances shall in no case exceed eight thousand rupees per month.

3. The Chairman or the member who at the time of his appointment as such, is in the service of the central or State Government and does not exercise option under sub-regulation (1) of regulation 9 shall be paid the remuneration drawing by him immediately before his appointment as Chairman or member as the case may be or the remuneration mentioned in sub regulation (1) whichever is higher till the date of his retirement from Government service in the normal course and thereafter his remuneration shall be regulated as provided in sub regulation (2).

4. A member who in the absence of the Chairman on leave or otherwise is asked to perform the additional duties of the Chairman, shall be entitled to an additional remuneration at the rates of two thousand rupees a month. Provided that such additional duties are performed for a period of not less than fourteen days.”

Although the Regulations set aside by the judgment rendered in Ram Phal's case (supra) may not be in pari materia with Regulation 7(2) of the 2004 Regulations, yet the effect of the two is basically the same. The remuneration in the State of Haryana, payable to a Chairman/Member of the Public Service Commission, was to be in addition to the pension drawn by him. The remuneration payable to a Chairman, of the Haryana Public Service Commission, for the services rendered as Chairman could be different, from what his predecessor got, or what his successor would get, for doing the same work. If the Chairman had a hefty pension packet, his earnings as

Chairman would be lesser, than another whose pension was a meager amount. The earnings for working as Chairman would be the maximum for a person who was not drawing any pension. It is, therefore, the contention of the learned counsel for the petitioner, that the judgment rendered in Ram Phal's case (supra) squarely covers the controversy raised in the instant writ petition.

10. We have considered the second contention advanced by the learned counsel for the petitioner. There can be no doubt whatsoever that pensionary emoluments payable to the petitioner were in lieu of the service rendered by him with the Indian Army. The same is, therefore, unrelatable to the service rendered by the petitioner as a Chairman of the Uttarakhand Public Service Commission. It is also not a matter of dispute, that while functioning as the Chairman of the Uttarakhand Public Service Commission, the petitioner has been rendering all the duties and responsibilities expected of a person holding that assignment. As such, there being neither any reduction in hours of service, nor the responsibilities vested in him in the capacity of Chairman of the Public Service Commission. His emoluments as Chairman of the Public Service Commission were originally determined under Regulation 7(1) of the 2004 Regulations at Rs. 26,000/- per mensem. Since the petitioner was rendering all the duties and responsibilities of the post of Chairman of the Uttarakhand Public Service Commission, there could have been no deduction in his emoluments. By the impugned order dated 16.9.2008, his monthly remuneration was reduced by a sum equal to the monthly pension being drawn by him. It is this deduction from his remuneration, that is subject matter of challenge through the instant writ petition. Since the aforesaid deduction has been based on Regulation 7(2) of the 2004 Regulations, the petitioner has challenged the constitutional validity of the aforesaid regulation as well. A deduction based on factors alien to the principle of "equal pay for equal work" would be violative of the provisions of Article 14 read with Article 39(d) of the Constitution of India. Deduction from the salary of Rs. 26,000/-, of the amount of pensionary emoluments earned by the petitioner, in lieu of service rendered by him with the Indian Army, in our view, has no nexus to the duties and responsibilities vested in the petitioner, as Chairman of the Public Service Commission, and as such, must be deemed to be contrary to the principle of "equal pay for equal work" and in complete derogation thereof. The decision rendered in Ram Phal's case (supra) was also to this pointed effect. We accordingly express our approval to the ratio laid down, on the issue in hand, in Ram Phal's case (supra). For the same reasons as had weighed in Ram Phal's case (supra), we are satisfied that Regulation 7(2) of the 2004 Regulations is liable to be held as ultra vires Article 14 read with Article 39(d) of the Constitution of India. Accordingly, Regulation 7(2) of the 2004 Regulation is hereby quashed, being ultra vires the provisions of the Constitution of India.

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12. We have considered both the submissions advanced by the learned counsel for the State Government, as have been noticed in the foregoing paragraph. We have noticed hereinabove, while narrating the facts, that the petitioner came to be inducted as a Chairman of the Uttarakhand Public Service Commission, as a consequence of an order passed by the State Government on 3.11.2006. At the time of his appointment as Chairman of the Public Service Commission, his emoluments were fixed in terms of Regulation 7(1) of the 2004 Regulations. As such, the petitioner was not aggrieved with the determination of the emoluments payable to him. The grievance of the petitioner arose only when the emoluments payable to him under Regulation 7(1) of the 2004 Regulations were reduced by a sum equal to the amount of pension received by him. This order was purportedly passed by the State Government on 16.9.2008, under Regulation 7(2) of the 2004 Regulations. It is, therefore, apparent that the cause of action arose to the petitioner for the first time on 16.9.2008 and as such, the present writ petition, which was filed by the petitioner in 2008 cannot be considered to be belated in any manner whatsoever.

13. Insofar as the second submission advanced by the learned counsel for the State is concerned, there can be no doubt, that the Regulations of 2004 were framed in exercise of the powers vested in the Governor under Article 318 of the Constitution of India. However, no regulations can be framed, which are violative of any other provision of the Constitution of India, more so the fundamental rights enshrined in Part-III of the Constitution of India. The principle of "equal pay for equal work" has been culled out by the Apex Court on the basis of Article 14 read with Article 39(d) of the Constitution of India. This principle applies to every employee, who receives remuneration at the hands of the Government. The Chairman of Public Service Commission is entitled to the protection flowing out of the aforesaid principle. As such, Regulation 7(2) of the 2004 Regulations, which has been held to be violative of the aforesaid principle was liable to be set aside as the same was ultra vires the provision of the Constitution of India. As such, we find no merit even in the second submission advanced at the hands of the learned counsel for the State.

14. For the reasons recorded hereinabove, the impugned order dated 16.9.2008 is hereby set aside. Regulation 7(2) of the 2004 Regulations is also set aside, as being ultra vires the provisions of Article 14 read with Article 39(d) of the Constitution of India. The instant writ petition is, accordingly, allowed in the aforesaid terms."

37. Therefore, going by the aforementioned judgments including of this Court in ***E. Sreedharan (supra)***, and coming home to the facts of the present case, it is evident that Petitioners were not 're-employed' as the advertisement invited applications from general public fitting

into the eligibility conditions mentioned therein. There was no requirement of the retired Government employees submitting their PPOs, unlike in the advertisement issued by the Respondents in 2018. Clearly, the representation to the aspiring candidates was that on selection, they would be 'appointed' and would be paid the salary mentioned in the advertisement. It also needs a mention that at no stage, Petitioners were informed or given any impression that their pay will be fixed after deducting the pension earned by them for their service in the erstwhile Government departments. On the contrary, Section 20H of 2010 Act and Rule 3 of NMA Rules, 2011 clearly indicate that the pay of the Petitioners is ordained to be fixed in the Pay Band Rs.67,000-79,000/- with a Basic Pay of Rs. 67,000/- and cannot be varied to their disadvantage. Moreover, as held by the Supreme Court Pension is not the bounty of the State and the right to draw the same cannot be taken away or abridged in any manner in course of a subsequent employment unless statute under which the employment is made specifically provides for such abridgement. In this case, there exists no provision in the Act/Rules permitting the Respondents to abridge the indefeasible right to pension earned by the Petitioners and the impugned action is in the teeth of Section 20H and Rule 3.

38. The deduction, in my view, also works to a great disadvantage not only in terms of monetary loss but also creates a discrimination and class within a class between the Whole Time Members appointed after retirement from Government service and those who do not boast of the said background. If the methodology adopted by the Respondents is to be accepted, then two Whole Time Members, one who is a retired pensioner and the other a non-pensioner would be drawing different Basic Pay and emoluments, while working on the same post and doing the same duties. This would be clearly

violative of the equality principle enshrined in Article 14 of the Constitution of India as well as the time tested principle of equal pay for equal work.

39. Much was argued by learned counsel for the Respondents that the DoPT O.Ms. are applicable to the Petitioners and therefore, their pay fixation cannot be outside the pay minus pension Rule. This contention, in my view, deserves to be rejected at the outset. Respondents largely predicate their case on pay fixation of the Petitioners under Rules, 2016 and on this score urge that all DoPT O.Ms., including O.Ms. dated 18.11.1999, 01.05.2017 and 30.05.2017, will have an automatic application. There is no dispute that the pay fixation of the Petitioners is governed by the 2016, Rules but the applicability of the other O.Ms. will have to be separately examined keeping in backdrop the provisions of 2010 Act and NMA Rules, 2011, the statutory regime governing the appointments of the Petitioners. In my view, both the O.Ms. dated 18.11.1999 and 30.05.2017 deal with employment of a Chairperson and Member in a Regulatory Authority or Body who was in service of the Central/State Government on the date of his/her appointment in the Regulatory Authority or Body and provide a deeming fiction that in such a case, he/she will be deemed to have retired on the date of appointment with such Statutory Body/Tribunal. In this context alone, O.M. dated 30.05.2017, on which heavy reliance was placed by the Respondents, provides that pay shall be fixed by applying the pay minus pension Rule. Both O.Ms. are wholly inapplicable to the present case and in light of the finding of this Court that Petitioners were not re-employed, even the third O.M. dated 01.05.2017 shall have no application. Significantly, O.M. dated 18.11.1999 itself envisages and envisions a situation where there could be a conflict between the said

and provides that in case of a conflict, the statutory provision will override the O.M.

40. For all the aforesaid reasons, the writ petition deserves to be allowed. Accordingly, the impugned orders and letters are quashed and set aside, directing the Respondents to re-fix the pay and allowances of the Petitioners, without any deduction towards the pension earned by them on account of their past service with the Government and refund the amounts deducted from the pay of the Petitioners with simple interest @ 6% per annum from the date of deduction till actual payment.

41. Writ petition stands allowed in the aforesaid terms and the pending applications stand disposed of.

JYOTI SINGH, J

MAY 09, 2023/kks/shivam

