IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 8508 of 2023
Date of Decision: 26.03.2024

Suresh Kumar Gupta ...Petitioner…

Versus

State of H.P. & others ..Respondent...

Coram
Hon'ble Mr. Justice Bipin Chander Negi, Judge.
Whether approved for reporting?[1]

For the petitioner: Mr. Ashish Verma, Advocate.

For the respondents: Mr. Diwakar Dev Sharma, Additional Advocate General.

Bipin Chander Negi, Judge (oral)

By way of instant petition, the petitioner has prayed for following substantive reliefs:-

> *"(i) That the respondents may kindly be directed to pay the entire arrears of revision of pay scale w.e.f. 01.01.2016 up to the date of retirement alongwith interest @ 9% per annum from the due date till the date of its realization.*
>
> *(ii) That the directions may kindly be issued to the respondents department to pay the entire arrears of revised pension from the date of retirement up to till date of its realization to the petitioner alongwith interest @ 9% per annum.*
>
> *(iii) That the respondents may also be directed to pay revised gratuity (DCRG) and revised commutation value of pension to the petitioner alongwith interest @ 9% per annum w.e.f. the date of retirement up to till the date of its realization."*

2. Petitioner is a retired employee. Petitioner had retired on 30.09.2018 from the post of Planning Officer, from I &PH, Mandi, H.P.

[1] Whether reporters of Local Papers may be allowed to see the judgment?

3. Government of Himachal Pradesh had notified Himachal Pradesh Civil Services (Revised Pay) Rules, 2022 vide notification dated 3rd January, 2022, whereby, the revision of pay came into force w.e.f. 01.01.2016. State Government had also issued office memorandum dated 25th February, 2022, whereby Rules regulating Pension, Retirements/Death/Service Gratuity and Family Pension under the C.C.S.(Pension) Rules 1972 and the Commutation of Pension under the CCS (Commutation of Pension) Rules, 1981, were revised/modified.

4. The petitioner became entitled to the benefit of revision of pay w.e.f. 01.01.2016 in terms of Himachal Pradesh Civil Services (Revised Pay) Rules, 2022 and for revised gratuity, leave encashment and commutation on pensionary benefits in terms of office memorandum dated 25th February, 2022.

5. Since, the petitioner till date has received only partial amount out of the due and admissible amount in terms of aforesaid revisions, he has approached this Court for directions as noticed above.

6. Respondents have filed the reply. They have not denied the claim of petitioner. The financial constraints and lack of resources have been put up as defence for non payment of amount due to the petitioner. It has been submitted that the State Government is in the process of gradually wiping out its liability

towards the payment of dues of its employees on account of revision of pay scales as also modification in the Rules regulating Pension, Retirements/ Death/ Service Gratuity and Family Pension under the C.C.S. (Pension) Rules 1972 and the Commutation of Pension under the CCS (Commutation of Pension) Rules, 1981.

7. I have heard learned counsel for the parties and have also gone through the record carefully.

8. Similar issue had come up for consideration in ***CWP No. 7376 of 2023***, titled ***H.P. Secretariat & other Affiliated Pensioners Welfare Association vs. State of H.P. & others,*** decided on 22.03.2024. The relevant extract of the same are reproduced below for a ready reference:

> *" 8. In view of the admission made by respondents, there is no difficulty or impediment in granting the prayers made in the petition. The only question that remains to be answered is whether the pensionary and allied benefits as envisaged under Revised Pay Rules, 2022 and office memorandum dated 25th February, 2022, can be withheld by the State Government for indeterminate period on the pretext of lack of resources. The questions needs to be answered in negative for the simple reason that once legally vested right accrues to a serving or retired government employee, the same cannot be denied or even withheld that too for an indefinite period. Further more, the pensionary benefits including gratuity, leave encashment and commutation enure as security to a retired government employee, who has toiled for substantial part of his life by rendering public service at the cost of his flesh and blood with the hope and under a promise to secure his and his family's future after retirement. More often than not, the retiral benefits to a retired government employee are the only source of bread and butter. Once, the government has announced the grant of aforesaid benefits to its employees, the same can neither be subsequently denied nor delayed for indeterminate period more particularly on the pretext of financial constraints. The State Government is under legal obligation to fulfill its promise.*

> *9. Recently, in Punjab State Cooperative Agricultural Development Bank Limited vs. Registrar Cooperative Societies and others, (2022)4 SCC 363, the Hon'ble Supreme Court has observed as under:-*
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> > *"57. In our view, non availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfill the rights of the employees in protecting the vested rights accrued in their favour."*

9. Accordingly, the instant petition is allowed and a direction is issued to the State Government to pay the due and permissible amounts to the petitioners in terms of Revised Pay Rules, 2022 and OM dated 25th February, 2022, within six weeks from the date of passing of judgment along with interest @ 6% per annum. Petition stands disposed of accordingly.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(Bipin Chander Negi)
Judge

March 26, 2024
(Nisha)