IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

450 CWP-14172-2001(O&M)
Date of Decision:30.05.2024

Dharam Paul and others
...Petitioners

Versus

State of Punjab and others
...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present: None for the petitioner

Mr. Amarpreet Singh Bains, AAG Punjab

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AMAN CHAUDHARY, J. (Oral)

1. The prayer made in the present petition is for directing the respondents to increase the commutation value of the pension of the petitioners, as they retired after 01.01.1996 and were entitled to it @ 40% of their basic pension on the basis of Instructions dated 21.07.1998.

2. In para 9 of the petition, it has been mentioned that same law points are also involved in **HR Goyal and others vs. State of Punjab and others**,[1] which was pending at that time, however during the pendency of the present *lis*, stands dismissed along with a connected matter titled as **T.R. Singla and others vs. The State of Punjab and others,**[2] the relevant paras thereof read thus:

[1] CWP-11837-2001, decided on 29.08.2002
[2] 2003(3) S.C.T. 809

"It is an admitted fact that all petitioners retired after 1.1.1996. Portion of their pension was commuted and paid to them on different dates between 1996 to 1999. In the meantime, Shri Harinder Pal Singh Sidhu, who retired as Director Prosecution and Litigation, Punjab, filed a **Civil Writ Petition No. 16531 of 1999** contending therein that he has been paid less amount towards commuted portion of his pension. In that writ petition, it was stated that his pension had wrongly been calculated by applying a multiplier of 12 instead of 15 and he was entitled to payment of more amount after making calculation in a correct manner. <u>That writ petition came up for hearing before Permanent Lok Adalat in the High Court and on 17.2.2000, Writ petition was disposed of with a direction that correct amount of commutation of pension be worked out at 40% of the basic pension by applying a multiplier of 15 years and the balance amount of pension should be paid to him within a period of three months</u>. Relevant portion of that judgment reads as under:-

> "The other grievance of the petitioner appears to be quite genuine. According to the notification issued by the Punjab Government on 21.7.1998 annexure P-4, a retiree after 1.1.1996 is now permitted to commute pension equivalent to 40% of the basic pension and commuted of pension is eligible for restoration after 15 years from the actual date of commutation. As a corollary to it, the commuted value of pension i.e. 40% of the basic pension is to be multiplied by 15 years to work out the total commuted amount of pension. In fact the State Government made the calculation of commuted amount of pension accordingly at Rs.5,88,375/- subject to audit and sanction. However, the Accountant General, Punjab applied the multiplier of 12 years and worked out pension which is far less the amount due to the petitioner. We are of the considered view that the petitioner is entitled to commutation of pension at 40% of the basic pension multiplied by 15 years in accordance with the notification referred to above. This legal position is not in dispute. We accordingly directs that the correct amount of commutation of pension of the petitioner should be worked out at 40% of the basic pension applying the multiplier of 15 years and the balance amount of pension should be paid to the petitioner within a period of three months from today along with interest @ 12% p.a. from 1.1.1999 till the date of actual payment."

<u>State of Punjab filed Civil Writ Petition No. 7988 of 2000 against the order dated 17.2.2000 passed by the Lok Adalat. That writ petition came up for hearing before a Division Bench of this Court on 2.8.2000 and the following order was passed</u>:-

> "Learned Advocate General, appearing on behalf of the petitioner - State of Punjab states that he has looked into the matter and finds that the terms in which the Award has been

> made by the Lok Adalat are quite reasonable. Further, he states that the Government would accept the same and comply with the Award. Therefore, he prays for permission to withdraw the writ petition.
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> We appreciate the reasonable stand finally taken by the Government.
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> Permission granted.
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> The writ petition is dismissed as withdrawn."

Respondent No. 1, State of Punjab thereafter, filed a review application in the above mentioned writ petition with a prayer that order dated 2.8.2000 be recalled and the matter be heard on merits. A Division Bench of this Court, on 2.5.2001, passed the following order:-

> "This application has been filed by the Government pleader on behalf of the State of Punjab for review of the order dated 2.8.2000. That order was passed in the presence of and after hearing the Advocate General for the State of Punjab. The Advocate General, had examined the matter and stated that he found that terms in which the award had been made by the Lok Adalat were quite reasonable. Furthermore, he had gone on record to state the Government of Punjab would accept the same and comply with the order. Inspite of the above statement having been made and recorded in Court, the Government pleader, who had filed this application proceeds to assail correctness and reasonableness of the award, inter-alia, in paragraphs 3, 7 and 10 of the application. It is not even remotely averred that there was any mistake on the part of the Advocate General, Punjab, in making the statement before the Court on 2.8.2002.
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> We found no merit in the application.
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> It is therefore, dismissed."

State of Punjab, then filed an appeal against the order dated 2.5.2001 before Hon'ble Supreme Court, which was dismissed on 13.8.2001. Order passed reads as under: -

> "Since the Advocate General has conceded before the High Court on the basis of which the order was passed we are not inclined to entertain the merits of the objection taken in the Special Leave Petition.
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> The Special Leave Petition is dismissed."

Above mentioned facts show that the order passed in the case of Harinder Pal Singh Sidhu (supra) had become final and was implemented by the State of Punjab respondent No. 1.

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The basic dispute is regarding application and interpretation of the Instructions Annexure P-4. Counsel for petitioners contended that petitioners are entitled to get 'commuted portion' of their pension calculated by applying a multiplier of 15. To support his contention, he has relied upon a judgment rendered in **Harinder Pal Singh Sidhu's case (supra).** Counsel for respondents has controverted this averment by contending that judgment in that case is not applicable. Even the Lok Adalat has changed its view in subsequent cases.

To arrive at a proper conclusion, it is necessary to know as to what is the criteria to calculate 'commuted portion' of pension. Prior to the year 1981, there was no concept of restoration of 'commuted portion' of pension. It was a life time affair. Once commuted, amount continued to be deducted from the pension of a retiree till his life time. Vide instructions Annexure P-2 and subsequent instructions, it was provided that 'commuted portion' will be restored after a retiree attains the age of 70 years or 12 years from the date when portion of pension was commuted whatever is earlier.

It is common case of the parties that the 'commuted portion' was to be calculated keeping in view the Commutation Table annexed with Chapter XI of Service Rules. For example, if an employee who retired at the age of 58 years in the year 1998, on his retirement, opts for commutation of his pension before 1998, it will be calculated as under by taking the monthly pension at Rs. 600 per month: -

Monthly Pension	Portion liable for commutation	Commuted portion per annum	Commuted Value (as per table)
Rs. 600/-	1/3 (Rs. 200/-)	200x12=2400	2400×10.46= Rs.25104/-

So far as the above mentioned criteria is concerned, there is no dispute regarding the same. When confronted with the above mentioned situation, counsel for the petitioners failed to indicate as to how, after the issuance of instructions Annexure P-4, the petitioners are entitled to multiply their 'commuted portion' of pension by a multiplier of 15. As per contention of the respondents, multiplier of 12 or 15 has nothing to do, so far as calculation of commuted portion of pension is concerned. Respondents pleaded that after issuance of instructions P-4, commuted portion of pension will be calculated as under: -

Monthly Pension	Portion liable for commutation	Commuted portion per annum	CommutedValue (as per table)
Rs. 600/-	40% (Rs. 240/-)	240x12=2880	2880×10.46= Rs. 30124.80/-

The formula given for calculation seems to be justified and the same was applied by the Permanent Lok Adalat while deciding **CWP No.836 of 2001 titled as Gurcharan Singh versus State of Punjab decided on 10.10.2001**. In that case also, reliance was placed upon a judgment passed by the Lok Adalat in the case of Harinder Pal Singh

Sidhu (supra) and subsequent orders passed in connection thereto. Lok Adalat, after perusing the provisions of Chapter XI of the Service Rules, formulated the following opinion:-

> "It is rightly contended on behalf of the State of Punjab that the fact of multiplication to arrive at the commuted value of pension is that given in the Table referred to in Rule 11. 5(2) and not the factor of 12 as represented by the pensioners. Prior to the orders Annexure P-2, 1/3rd or the amount of monthly pension was multiplied by 12 to reach at the figure of commuted pension for a year and then the factor of number of years purchase as given in the table was applied. For example, 1/3rd of the pension of a retiree amounted to Rs. 100/-. It would be multiplied by 12 to reach at the annual 1/3rd of the pension of Rs. 1200/- and in case he retired on attaining the age of 58 years and he would be of 59 years on his next birthday, number of years purchase would be 10.46. Thus the commuted amount of pension payable to such retiree would amount to Rs. 12,552/-. Now as a result of the order dated 21.07.1998, 40% of the amount of monthly pension could be got commuted, which would in the case of such retiree be Rs. 120/- and annual amount of commuted pension would be Rs. 1440/- and as per the table on applying the number of years purchase 10.46, the commuted amount of pension would work out to Rs. 15, 062.40. In this view of the matter, we find that the contention of the petitioners that monthly amount of commuted pension was required to be multiplied by 15 instead of the multiplication of 12 is clearly misconceived."

A bare reading of the above mentioned passage from the judgment rendered in CWP 836 of 2001 coupled with discussion in the earlier part of judgment, clearly indicates that this multiplier of 12 and 15 has no relevancy, so far as the calculation of commuted portion of pension is concerned.

In **"Common Cause", A Registered Society and others versus U.O.I. and others 1987 (1) SCC Page 142**, Hon'ble Supreme Court justified and has upheld restoration of commuted portion of pension after a period of 15 years (part of pension for commutation may be different in different cases). Thereafter, this principle of restoration of commuted portion after 15 years has been applied by Hon'ble the Supreme Court in various cases. In **Bharat Petroleum Corpn. Ltd. Ex-Employees Association and others versus Chairman & Managing Director Bharat Petroleum Corpn. Ltd., Bombay and others 1993 Supp (4) Supreme Court Cases 37** observed as under:-

> "6. In Common Cause v. Union of India this Court has observed that 15 years is a reasonable period after which the commuted portion of the pension could be restored. In arriving at this conclusion, this Court adopted the principle of years of purchase and observed that an addition of two years to the period necessary for the recovery on the basis of years of

purchase justifies the adoption of the 15 year rule and that appeared to be equitable. We find no reason why the same principle should not apply to the petitioners who were originally employed with Burman Shell and subsequently became the employees of the respondent-Corporation which is an undertaking of the Government of India and "State" within the meaning of Article 12 of the Constitution (See: Som Prakash Rekhi v. Union of India]. The equitable principle underlying the rule for restoration of the commuted portion of the pension after the expiry of the 15 years from the date of retirement which is applicable to the Central Government can equally be applied to the employees of the respondent-Corporation."

Similarly, Hon'ble Apex Court in **Welfare Association of Absorbed Central Government Employees in Public Enterprises and others versus Union of India and another 1996 (2) Supreme Court Cases 187** opined as under: -

"13. If after the expiry of 15 years, the pensioners who have opted for one-third commutation, become entitled to restoration of pension on the ground that the lump sum amount paid had got adjusted before the said period as held in "Common Cause" case, there is no good reason for not applying the same to the petitioners who have commuted their one-third portion of the pension under Rule 37-A of the CCS (Pension)Rules, 1972 without any commitment for this portion of commutation. Presumably the respondents realising the fallacy have withdrawn the scheme of permitting commutation of full pension by OM No. 4/42/91-P&PW (D) dated 31.3.1995.

Para 3 of the Office-Memorandum reads as follows:

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

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

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

14. This means this issue will not arise in future.

15. For the foregoing reasons, we hold that the

> petitioners are entitled to the benefits as given by this Court in "Common Cause" case so far as it related to restoration of one-third of the commuted pension. Consequently, the impugned para 4 of Office Memorandum dated 5.3.1987 is quashed. The writ petitions are accordingly allowed to the extent indicated above. No costs. "

In view of reasoning given above, first contention of the counsel for petitioners fails and the same is rejected. It is found that the calculations in the case of petitioners have rightly been made to arrive at commuted portion of their pension.

Next contention of the counsel for petitioners that, since no change has been effected in the Commutation Table, which was formulated keeping in view interest @ 4.75% per annum and the mortality rate, by ordering restoration of commuted portion of pension after 15 years, respondents will be recovering more while paying less in this process. He contended that in a welfare State, such a policy is not justified. Apparently, this argument raised by the counsel for petitioners seems to be attractive, but the same can not be sustained in view of the fact that by commuting portion of pension and paying that portion in lump sum to a retiree, respondent government is taking a grave risk. Many risk factors are to be taken into consideration. Payment of commuted portion of pension is not in the form of loan or recoverable advance. It is one time irrecoverable settlement and if a pensioner survives till the period fixed for restoration, portion of pension commuted is restored and pensioner starts receiving full pension again. In case a pensioner dies before the expiry of period of restoration, his dependants are granted family pension and no recovery against commuted value is made. To cover this risk factor, government may recover somewhat more amount towards payment of amount of commuted portion of pension which is to be recovered within a period of 15 years. Even in that case, still, interest on the amount recovered will be much less as compared to the one prevalent in banking transactions.

A similar matter came up for hearing before Hon’ble Supreme Court in **"Common Cause", A Registered Society and others (supra)** wherein an application filed under Article 32 of the Constitution of India by the above mentioned society and 3 retired government servants with a prayer to strike down certain provisions of commutation of pension rules applicable to civilians and defence personnel, on the ground that those rules permit Union of India to recover more and pay less to pensioners upon commutation and it was also prayed that directions be issued to formulate a scheme rationalising provisions relating to commutation of pension. The Hon'ble Supreme Court had not acceded to that prayer. For facility of reference, relevant paragraphs 4, 5, 6 and 9 of the judgment are reproduced below: -

> "4. As the position now stands, when a pensioner commutes any part of his pension up to the authorised limit, his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension.
> 5. The petitioners have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and, therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to Live. Thus, two advantages are certainly forthcoming out of commutation - (1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15 year formula so far as civilian pensioners are concerned.
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> 6. The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of commuting pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place.
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> 9. In dealing with a matter of this nature, it is not appropriate to be guided by the example of Life Insurance: equally unjust it would be to adopt the interest basis. On the other hand, the conclusion should be evolved by relating it to the years of purchase basis. An addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15 year rule. That is more or less the basis which appears to be equitable. It may be that this would give rise to an additional burden on the exchequer but it would not be heavy and after all it would bring some relief to those who have served the cause of the Nation at great sacrifice. We are, therefore, of the view that no separate period need be fixed for the Armed Forces personnel and they should also be entitled to restoration of the commuted portion of the pension on the expiry of 15 years as is conceded in the case of civil pensioners. And for them too the effective date should be from April 1, 1985."

A bare reading of the above clearly indicates that exactly similar were the arguments before Hon'ble Apex Court and the

Hon'ble Apex Court justified the restoration of commuted portion of pension after 15 years as is the situation in the present case.

It is also necessary to mention here that vide instructions Annexure P-4 commuted portion of pension has been increased from ⅓rd to 40% of basic pension. In this manner, a retiree will get more in lump sum. By extending period of restoration by 3 years, no injustice appears to have been done to the pensioners by the government. Amount paid in lump sum will increase many folds during the period of restoration and in this manner the arrangement will, still, remain profitable to the retiree. Furthermore, the provisions regarding commutation of pension are optional. It is for the employee to opt for the same or not. It is necessary to move an application to get this benefit. If any of the retiree feels that this provision is not beneficial, he may opt out of the Scheme and in that event he will continue to get his full pension throughout his life.

In view of the reasoning given above, second contention of petitioners also fails and the same is hereby rejected.

Next contention of the counsel for petitioners to the effect that, since the Government has implemented the decision in case of **Harinder Pal Singh Sidhu (supra)**, the petitioners, being similarly situated, are entitled to get the same relief and their commuted portion of pension is required to be calculated by applying a multiplier of 15. This argument also falls to find any favour from this Court. Counsel for the respondents has vehemently contended that the decision in case of Harinder Pal Singh Sidhu (supra) cannot be made applicable to the case of petitioners. That order was passed in peculiar facts and circumstances of that case only. Counsel for respondents further stated that the Lok Adalat has no jurisdiction to pass any direction as has been done in the case of Harinder Pal Singh Sidhu (supra). To support his contention, he has relied upon judgment of this Court in FAO No. 798 of 1999 decided on 7-11-2001 by a Division Bench, titled as Kamal Mehta v. General Manager, Rajasthan Roadways Transport Corporation. He further stated that Harinder Pal Singh Sidhu was not entitled to that relief and he got it only because an order was passed by the Lok Adalat. affirmed by this Court and Hon'ble Supreme Court, though subsequently that very finding was not accepted by the Lok Adalat in another case. He stated that, in view of the changed circumstances, petitioners are not entitled to the same relief.

Once this Court, in earlier part of the judgment, has held that calculations in the case of petitioners have rightly been made and there is no concept of applying the multiplier of 15, while calculating the 'commuted portion' of pension, petitioners are not entitled to get any benefit out of the order passed by the Lok Adalat in the case of Harinder Pal Singh Sidhu (supra). In a subsequent Judgment passed in Kamal Mehta's case (supra), a Division Bench of this Court, after discussing various provisions of the Legal Services Authority Act, 1987 has held that Lok Adalat has no jurisdiction to decide the matter unless both the parties agreed to and arrived at an understanding, otherwise any order passed will be without its jurisdiction.

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Similar is the situation in this case. While affirming the judgment passed in the case of Harinder Pal Singh Sidhu (supra), this Court and the Hon'ble Apex Court, at no point of time looked into the validity or otherwise of the provisions of Annexure P-4. The circumstances under which that judgment was affirmed found mentioned in the earlier part of this judgment. It was only on the basis of an undertaking given by the Advocate General, Punjab the appeal was ordered to be dismissed as withdrawn. Thereafter, review application and the appeal filed by the State before this Court and the Hon'ble Apex Court were also dismissed on that very ground. Under these circumstances, petitioners cannot claim any parity with Harinder Pal Singh Sidhu and cannot say that if they are not given the same relief as given to him, it will amount to discrimination with them.

In some of connected cases, it has been argued by the concerned counsel, though not in this case, that vide instructions Annexure P-4 dated 21-7-1998, cut off date i.e., 1-1-1996, for getting benefit of 40% towards 'commuted portion' of pension and restoration after 15 years, has wrongly been fixed which amounts to an unreasonable classification, since, a retiree before 1-1-1996 will get less benefit than those retiring after that date. For supporting this contention, reliance has been placed on a judgment of Mysore High Court in **K. Srirangachar v. The State of Mysore, AIR 1963 Mysore 247.**

This argument of the counsel is devoid of any force. Commutation of pension, as has been noticed, is a one time affair and it is allowed to enable a retiree to meet his major commitments such as, acquisition of house, marriage of children etc. after retirement. This benefit is one time benefit like gratuity and leave encashment. Once the option of commutation of pension has been availed of, there is no justification for subsequent commutation being allowed merely on account of revision of pension. The fixing of cut off date as 1-1-1996, after revision of pay scales and pension, is perfectly justified. No second opportunity can be given to those retiree who retired before that date to commute a portion of their pension again. No such precedent, applied and followed either by the Union of India or any other State in that regard, has been brought to the notice of this Court.

In view of above reasoning, the writ petition fails and the

> same is dismissed with no order as to costs.
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> This order will also dispose of other bunch of connected writ petitions in the same terms."

3. The LPA-135-2003 preferred against the aforesaid judgment, was dismissed along with other connected LPAs, vide order dated 22.04.2004, which reads thus:

> "Letters Patent Appeal No.41 of 2003 (O&M), which had arisen out of the common judgment under these appeals, was dismissed by a Division Bench, finding that the learned Single Judge, has not committed any error of law or of fact, vide order dated July 07, 2003, to which one of us (Chief Justice) was a party.
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> Having heard the learned counsel appearing on behalf of the appellants, on the question of admission of these Letters Patent Appeals, we dismiss these appeals holding that we too do not find any error of law or of fact committed by the learned Single Judge."

4. In the aforesaid view of the matter, the present petition is dismissed.

(AMAN CHAUDHARY)
JUDGE

May 30, 2024
Hemant

Whether speaking : Yes/No
Whether reportable : Yes/No