



CWP-16098-2021 (O&M)
Date of Decision : 25-07-2024

.....Petitioner(s)

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

Present: Mr. Karanjeet Singh Brar, Advocate
for the petitioners.

Mr. Satnampreet Singh Chauhan, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance raised by the petitioners is that the petitioners were given current duty charge of the higher post, which charge remained with them upto the date of their retirement hence, the petitioners who were working on the higher post on current duty charge on the date of their retirement last pay drawn should be taken into account for fixing their pensionary benefits.

Learned State counsel submits that the current duty charge of the higher post was given to the petitioners but, as they were never regularly promoted on the higher post, the last pay drawn salary cannot be taken into account as, the pensionary benefits of the petitioners are to be fixed on the

basis of the substantive rank being held by the petitioners at the time of retirement.

I have heard learned counsel for the parties and have gone through the records of the present case through their able assistance.

As per the rules governing the service, an employee is entitled for fixation of his/her pay and the pensionary benefits on the basis of substantive rank held by him or her. The salary being drawn on the basis of current duty charge cannot be taken into account.

As per the settled principle of law settled by the Hon'ble Supreme Court of India in WP(C) No.300 of 2016 titled "***K. Sreedhar Rao Vs. Union of India Ministry of Law and Justice Secretary***" decided on 06.09.2019, it has been held that the pensionary benefits can only be admissible on the substantive rank and not of the post of which an employee might be discharging the duties at the time of retirement. The relevant paragraph No.7 of the said judgment is as under:-

"Now so far as the reliance placed upon the decision of this Court in the case of Syad Sarwar Ali(supra) by the learned counsel appearing on behalf of the respondent is concerned, learned counsel appearing on behalf of the petitioner is right to some extent that the said decision is distinguishable on facts. It is true that in the said case, the respondent-Judge retired as a puisne Judge and not as an Acting Chief Justice. However, in the said decision, it is specifically observed that the substantive portion of Rule 2 read with Rule 7 of the First Schedule deals with the calculation of the pension payable to a Judge during his judicial career and that in computing the pension, the time which he had spent as a Judge or Acting Chief Justice or Chief Justice is taken into consideration. It is further observed by this Court in the aforesaid decision that the rules containing First Schedule are conscious of the fact that the retiring incumbent may be a Judge or a Chief Justice or may have acted as an Acting Chief Justice for a period of time where for the purpose of calculating the quantum of pension, the period spent by a

Judge as an Acting Chief Justice is taken into consideration for the purpose of fixing the ceiling. It is further observed that however, an Acting Chief Justice, who is one appointed under Article 223 of the Constitution is not equated with the Chief Justice appointed under Article 217 of the Constitution. The above observations clinch the issue. Even otherwise, we have considered the question posed independently and are of the opinion that the petitioner is not entitled to the pensionary benefits including the ceiling in the pension which may be available to a retired Chief Justice and as observed hereinabove, only that period of service rendered by him as an Acting Chief Justice, i.e., 14 months service as an Acting Chief Justice is required to be considered as service rendered as a Chief Justice for the purpose of computation of pension under Rule 2/as per Rule 2 of the Part I of the First Schedule of the 1954 Act.”

Learned counsel for the petitioners has not been able to dispute the said fact or differentiate the case in ***K. Sreedhar Rao’s case (supra)***, in any manner not to be applicable upon him.

The next argument which has been raised by the learned counsel for the petitioners is that in fact some employees have been granted the benefit of on the basis of last drawn pay even though they were not substantively promoted on the higher rank hence, it is a case of discrimination. It is a settled principle of law that any benefits granted to any employee contrary to the rules, same will not give right to another employee to claim the said benefit.

There cannot be any negative discrimination. An employee has to stand upon his/her legs to claim the relief and any benefit wrongly granted to an employee, cannot be made a precedent to ask the Court to follow a precedent which is contrary to the settled principle of law or the rules governing the service.

Keeping in view of the above, no ground is made out for the grant of relief to the petitioners in the present case hence, the present petition is dismissed.

Ordered accordingly.

Pending application, if any, also stand disposed off.

25-07-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO