IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

207 **CWP- 29900-2017**
Date of Decision: 07.11.2024

RAJESH BAGHA

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Gurnoor Sandhu, Advocate
for the petitioners.

Mr. M.S. Teji, AAG, Punjab.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenging the impugned order dated 05.12.2016 passed by the respondent-Department restricting the benefit of honorarium/ salary notified for the petitioner, the instant writ petition has been filed.

Counsel contends that the petitioner was appointed as Chairman of the Punjab State Commission for Scheduled Castes on 29.11.2011. The detailed terms and conditions of his appointment were, however, to be notified later on. Eventually, vide order No.8/92/2006/WC5/878-904 Dated 28.06.2012, the respondents fixed an honorarium/salary of the petitioner at Rs.25,000/- per mensem. Aggrieved of such meager fixation of honorarium/salary and highlighting that a higher honorarium/salary had been paid to the people holding office of the Chairman of Punjab State Commission for Scheduled Castes earlier, a representation was submitted by the petitioner. The respondents, thereafter, passed an office order No.8/66/03-WC-5/2014 dated

05.10.2016 in supersession of the office order dated 28.06.2012, whereby the petitioner was granted a salary/honorarium of Rs.1,00,000/- per month, including all permissible allowances, and after obtaining concurrence of the Department of Finance. He contends that notwithstanding the aforesaid office order having been passed in supersession of the earlier order fixing the honorarium/salary, the respondents did not pay the arrears to the petitioner and instead, sent a subsequent letter dated 05.12.2016, whereby, the concurrence to pay increased salary to the Chairman of the Punjab State Commission for Scheduled Castes was conveyed to have been accorded w.e.f. 05.10.2016.

Aggrieved of the said letter dated 05.12.2016, the instant writ petition has been filed stating that the office order dated 05.10.2016 fixing the salary as Rs.1,00,000/- was passed in supersession of the earlier office order bearing Endst.No.8/92/2006/WC5/878-904 dated 28.06.2012 and after obtaining concurrence of the Finance Department on 15.09.2016, and yet the same are only being confined to the period post 05.10.2016 arbitrarily and to the prejudice of the petitioner. He submits that the honorarium of Rs.25,000/- per month was much below what was being paid to the earlier incumbents. An honorarium of Rs.80,000/- had been fixed for the post earlier vide order dated 09.06.2009 and instead of increasing the same in the year 2012, they fixed it @ Rs.25,000/- per month against which the objection was filed by the petitioner. The reduction was done on the recommendation of the Department of Disinvestment which was even otherwise unsustainable since the Commission is a statutory body for the welfare of the Scheduled Castes. The allowances had to be kept commensurate to the persons holding the posts of Chairperson of other Statutory Bodies

He also places reliance on the judgment of Hon'ble Supreme Court in the matter of ***Calcutta Municipal Corporation Versus Pawan Kumar Saraf and another*** reported as ***(1999) 2 Supreme Court Cases 400*** to contend that a supersession has the effect of annulling/obliterating the earlier order and thus the order of supersession would relate back to the date of original appointment. Consequently, the benefits as would become admissible under the superseding order shall relate back to the date of the original order of appointment itself. The operative part thereof reads thus: -

> *"10. When the statute says that the certificate shall supersede the report, it means that the report would stand annulled or obliterated. The word "supersede" in law means "obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal".* ***(vide Black's Law Dictionary, 5th Edn.)****. Once the certificate of the Director of the Central Food Laboratory reaches the Court, the report of the Public Analyst stands displaced and what may remain is only a fossil of it."*

In response to the same, counsel for the respondent-State contends that notwithstanding the Finance Department's approval for a salary of Rs.1,00,000/- per month having been granted alongwith all admissible allowances, the same was re-revised by the Finance Department vide endorsement dated 03.01.2017. Hence, the terms and conditions of the appointment/salary/allowances of the Chairman of the Punjab State Commission for Scheduled Castes are thus governed by the re-revised honorarium/salary at the rate of Rs.80,000/- (fixed) per month w.e.f. the date of the endorsement i.e. 03.01.2017 and that they have no objection to make payment of the honorarium/salary at the said rate w.e.f. 03.01.2017 till the date he continued in the office of Punjab State Commission for Scheduled Castes.

No other argument has been raised nor any judgment cited by the learned State Counsel.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The controversy in the present case hence relates to the honorarium to be paid to the petitioner, while as per the initial notified honorarium/salary of the petitioner was fixed at Rs.25,000/- per mensem as per order dated 28.06.2012, the said office order was superseded by a subsequent order dated 05.10.2016, as per which, the honorarium/salary of the petitioner was increased to Rs.1,00,000/-. The respondent-Department has, however, placed reliance on the subsequent decision taken by the Finance Department, which was endorsed on 03.01.2017, as per which, the salary was fixed at Rs.80,000/- (fixed) per month for the Chairman of the Punjab State Commission for Scheduled Castes.

The learned State Counsel has failed to establish that as to how the decision/endorsement dated 03.01.2017 modifying the terms and conditions of the engagement of the petitioner had been carried out, more so when a specific order had been passed earlier by the respondent-Department on 05.10.2016 fixing the salary of the petitioner @ Rs.1,00,000/- per month alongwith all admissible allowances and the Finance Department had also approved the same vide letter/endorsement dated 05.12.2016. Even though the documents appended as Annexures R-1 and R-2 by the respondent-State are in relation to the salary of the Chairman of the Punjab State Commission for Scheduled Castes, however, they are not in reference to or in supersession/modification of any earlier order(s) fixing the honorarium/salary of the petitioner.

In order to get a better appreciation of the chronology, the sequence can be understood from the table as under:

Date and Annexure	Endorsement Number	Nature of Document.
29.11.2011 (P-1)	8/92/2006-WC5/1755-1756	Letter of appointment.
28.06.2012 (P-2)	8/92/2006-WC5/878-904 in supersession of earlier order No.8/66/2003-WC5/765 dated 09.06.2012.	Fixing honorarium of Rs.25,000/- per month for the petitioner.
05.10.2016 (P-6)	8/66/03/WC5/2014-15 in supersession of O/o No.8/92/ 2006-WC5/878-904 (No.2 above)	Fixing honorarium of Rs.1,00,000/- per month for the petitioner.
05.12.2016 (P-7)	Letter No.7/2/16-5FE6/887227/1.	Approval by Finance Department to the salary at No.3 above.
03.01.2017 (P-8 + R-2)	Letter No.7/2/16-5FE6/903759/1 in supersession of consent to 7/2/16-5FE6/550 dated 27.12.2016	Fixed salary at Rs.80,000/- per month.
27.12.2016 (R-1)	Endorsement No.7/2/16-5FE6/550 modifying consent vide Endorsement No.7/2/16-424 dated 15.09.2016 for 1 lakh.	Finance Department consented to Rs.80,000/- for Chairman of Punjab State Commission for Scheduled Castes against proposal dated 16.12.2016
03.01.2017	Endorsement No.7/2/16-5FE6/903759/1 in supersession of Endorsement No.7/2/16-5FE6/550 (approval of	Endorsement approved Rs.80,000/-

	Annexure R-1)	

It is thus apparent that while the correspondence up till Sr. No.4 of the table above links to each other and the revised salary of Rs.1,00,000/- had the approval of Finance Department and order also issued by the Competent Authority, the further reduction/revision to Rs.80,000/- as per the Department approval dated 03.01.2017 is in reference to the Finance Department's approval dated 27.12.2016 which actually is in modification of a proposal dated 15.09.2016. The respondent-State has thus not been able to link the documents with the order fixing the salary of the petitioner vide order of 05.12.2016.

No subsequent order superseding the order dated 05.12.2016 has been passed. As such, the renewed/revised terms cannot be read in continuity or supersession of the order already passed.

Even though the respondent has placed much reliance to restrict the benefit w.e.f. 05.10.2016, by relying on the letter dated 03.01.2017, however, the said letter not being linked to the order dated 05.10.2016 which fixes the salary @ Rs.100,000/- in supersession of the order dated 28.06.2012, hence, it cannot be lawfully held enforceable against the petitioner.

Further, a specific query was also put to the learned State Counsel that the approvals appended alongwith the reply are the approvals granted by the Finance Department, but there is no reference to any consequential order that has been passed by the Competent Authority on the strength of the said approvals considering that the appointing Authority for the Chairman of the Punjab State Commission for Scheduled Castes is the Secretary to the

Government of Punjab in the Department of Welfare of Scheduled Caste and Backward Classes. Hence, the approvals (Annexure R-1 and R-2) at best remain the administrative approvals given by the State Government and do not lay down any revised or modified terms and conditions of the engagement. Till such time that the order whereby the honorarium/salary issued to the petitioner is revised or modified, the honorarium/salary @ Rs.1,00,000/- per month fixed vide order dated 05.10.2016 in supersession of the office order dated 28.06.2012, which was specifically approved by the Finance Department on 05.12.2016, shall relate back to the date of its original issuance, becomes payable to the petitioner. There is also no restricted approval granted by the Finance Department and/or the Government, and any such paper clarification, which is more in the nature of curtailing an order, cannot be read over and above an enforceable order.

The instant writ petition is thus allowed and resultantly the respondents are directed to compute the arrears in terms of the salary as fixed vide order dated 05.10.2016 and as approved on 05.12.2016 by the Finance Department w.e.f. the date of appointment of the petitioner.

Let the needful be done within a period of three months of the receipt of certified copy of this order.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

07.11.2024.
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No