**IN THE HIGH COURT OF PUNJAB AND HARYANA**
**AT CHANDIGARH**
**(Sr. No. 261)**

**(1)** **CWP-27294-2019 (O&M)**
**Date of Decision : 29.11.2024**

**Mukesh Berry**

**...Petitioner**

**Versus**

**State of Punjab**

**...Respondent**

**(2)** **CWP-22038-2023 (O&M)**

**Avtar Singh Sandhu**

**...Petitioner**

**Versus**

**State of Punjab and another**

**...Respondents**

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. Vinod K. Kataria, Advocate for the petitioner in CWP-27294-2019.

Mr. Harparteek Singh Sandhu, Advocate and
Mr. Amandeep Singh, Advocate for the petitioner in CWP-22038-2023.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

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***<u>Harsimran Singh Sethi J. (Oral)</u>***

1. By this common order, two writ petitions, the details of which have been given in the heading, are being decided as both these petitions involve the same question of law on similar facts.

2. In the present petitions, the petitioner(s) who were earlier in the service of the Government of Punjab but were engaged as Additional Advocate General in the Office of the Advocate General, Punjab to defend the State of Punjab, have approached this Court that the emoluments which are being paid to the petitioners after their engagement with the Office of the Advocate General, Punjab is not correct and the pension being drawn by them after their retirement, need not be deducted from the fixed emoluments which are to be paid to them while being engaged as Additional Advocate General.

3. Learned counsel appearing on behalf of the petitioner(s) submit that the same view was also taken by the Advocate General Punjab as per his letter dated 14.09.2017 but the respondents though, initially granted the benefit to the petitioners, namely, Mr. Amar Pathak and Mr. Avtar Singh but later on, the said benefit has been withdrawn without appreciating the correct facts, hence, the respondents are under obligation to grant the petitioner(s) the full emoluments as per the order engaging them on the post in view of the Notification dated 30.06.2017 while working on the post of Additional Advocate General, Punjab after their retirement from the Government employment.

4. Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that as per the letter of the Government of Punjab dated 24.08.2016, the emoluments were to be paid after deducting the pension, hence, the petitioner(s) cannot raise any grievance.

5. Learned counsel for the petitioner(s) submit that the said grievance of deducting the pension being drawn by the petitioner(s) qua the employment which they rendered with the State of Punjab prior to being engaged as Additional Advocate General in the Office of the Advocate General, Punjab is the subject matter in the present petitions.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. It is a conceded position that prior to the engagement of the petitioner(s) in the Office of the Advocate General, Punjab keeping in view the order passed on 30.06.2017, the petitioner(s) had retired from their respective posts which they were hold substantively with the Government of Punjab. After the retirement, the petitioner(s) were getting pension.

8. Further, it may be seen that the engagement of the petitioner(s) as Additional Advocate General was for a specific period under the specific terms and conditions and on a fixed remuneration. The said engagement cannot be termed as a re-employment or extension in service under any circumstances. The petitioner(s) were not given the same salary which they were enjoying at the time when they were in service of the Government of Punjab so as to hold that the petitioner(s) were given extension in service or re-employment as Additional Advocate General, Punjab to work in the Office of the Advocate General, Punjab starting from June, 2017 onward.

9. Learned counsel for the respondents has not been able to produce any Rule that any engagement in the Office of the Advocate General

Punjab by a retired employee who had served Government, is to be treated as extension in service or re-employment.

10. In the absence of any such Rule produced before this Court, it can only be said that the engagement of the petitioner(s) in the Office of the Advocate General, Punjab was a fresh contractual appointment on specific conditions for specific terms and the petitioner(s) were also entitled for the emoluments which were being paid to the other Additional Advocate General, who were appointed along with the petitioner(s) starting from June, 2017 onward. Hence, the reduction of the amount of pension being received by the petitioner(s) while paying the emoluments to the petitioner(s) which were fixed for the Additional Advocate General, who were engaged by a Notification issued in June, 2017, is not at all made out in the facts and circumstances of the present case.

11. Further, the then Advocate General has already written a letter explaining that the reduction of pension being drawn by the Officers who have engaged to discharge the duties as Additional Advocate General which was to be done on a fixed remuneration, the pension is not to be deducted while paying the remuneration to the engaged Officers concerned. No valid reason has come from the State of Punjab to ignore the said recommendations. In the absence of any justifiable reason, the recommendations which were implemented qua Mr. Amar Pathak and Avtar Singh though same have been subsequently withdrawn. Once, a benefit already extended to the petitioner in CWP No. 22038 of 2023 withdrawing

the same subsequently and that too without giving any valid reason, cannot be sustained in the eyes of law.

12. Learned counsel for the respondents submits that as per Punjab Civil Services Rules (Revise Pay) Rules, 2009 the benefits could not have been extended.

13. It may be noticed that the said 2009 Rules are only applicable upon the regular employees working with the Government of Punjab and not on a person who has been engaged after the retirement. The Rules will be applicable upon an employee who is either in the active employment prior to the superannuation or upon re-employment or extension in service of the said Government servant but in the present case, the situation is such that none of the petitioner was given extension in service or re-employment but were engaged on contractual basis on specific terms and conditions qua their entitlement including the remuneration for the said engagement.

14. Not only this, the engagement in the Office of the Advocate General is governed by the Punjab Law Officers (Engagement) Act, 2017. Rule 8 of the 2017 Act is as under :-

> *"8. The engagement of Law Officers to various categories of posts shall be on contract basis and shall be engaged for such term as may be notified and shall be entitled to such benefits, privileges and corresponding protocol, as may be determined by the Government by specifically mentioning the same in terms and conditions of their engagement:*
>
> *Provided that the Law Officers so engaged shall have no claim on such post in view of their engagement as Law Officers on contract basis :*

*Provided further that notwithstanding anything contained in any other law for the time being in force, the Law Officers so engaged shall not be eligible for regularization."*

15. A bare perusal of the above Rule would show that the appointment is on contract basis and the engagement is for such term as may be notified. It is a conceded position that as per the Notification dated 30.06.2017 appointing the petitioner(s) as Additional Advocate General, the remuneration provided to be paid to them was ₹1,40,000/-, hence, once the remuneration has been mentioned in the Notification itself, which is in consonance with the Act and there is no stipulation in the 2017 Act that the Officers engaged, if are ritrees, their pension will be deducted from the total remuneration admissible to them, no such deduction could have been made by the respondents while extending the remuneration to the petitioner(s). The petitioner(s) were entitled for the remuneration as per the terms and conditions of the engagement without there being any modification, hence, denying the said benefit of remuneration as per the Notification dated 30.06.2017 is contrary to the 2017 Act as well and the said action of the State cannot be sustained in the eyes of law.

16. Hence, deducting the amount of pension from the said remuneration fixed for the engagement, is not at all made out in the facts and circumstances of the present case, therefore, all the petitioner(s) will be entitled for the remuneration fixed for the post of Additional Advocate General, which was part of their engagement without deducting the pension which they were drawing at the time of the engagement.

17. In case, any of the petitioner has not been paid full remuneration as per the order of engagement dated 30.06.2017, the same will be given to them along with arrears.

18. As the petitioner(s) were denied the benefit of full remuneration by the respondents without any valid justification, on the arrears of the remuneration which will be paid to the petitioner(s) under this order, they will also be entitled for interest @ 6% per annum from the date they were entitled for the full remuneration till the release of the said to them.

19. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.

20. Petitions are allowed in above terms.

21. Pending miscellaneous application, if any, also stands disposed of.

22. A photocopy of this order be placed on the file of connected cases.

**November 29, 2024** **(HARSIMRAN SINGH SETHI)**
*kanchan* **JUDGE**

*Whether speaking/reasoned : Yes*
*Whether reportable : Yes*