

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-1488-2023 (O&M)

Date of decision:- 25.01.2024

State of Haryana and another

...Appellant(s)

Versus

Sukhbir Singh Gulia (Retd.)

...Respondent(s)

CORAM: **HON'BLE MS. JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE**
HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Deepak Balyan, Additional Advocate General, Haryana,
for the appellants.

Mr. Rajender Singh Malik, Advocate,
for the respondent.

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RITU BAHRI, A.C.J. (ORAL)

CM-3805-LPA-2023

For the reasons mentioned therein, the delay of 38 days in filing the appeal is condoned.

The application stands disposed of.

LPA-1488-2023

The appellants have come up in appeal against the judgement and order dated 07.08.2023 passed by the learned Single Judge, whereby the writ petition filed by the petitioner (respondent herein) had been disposed of directing the respondent-authorities to consider the claim of the petitioner for granting him pension keeping in view the letter dated 11.06.2014 which was withdrawn by the Government of Haryana vide executive instructions dated 28.06.2019 which were subsequently quashed by the learned Single Judge in CWP-9668-2020 titled as *Sunil Katyal Vs State of Haryana and others* vide judgement and order dated 16.05.2023.

2. The learned Single Judge, while allowing CWP-9668-2020, has held that as per the letter/executive instructions dated 28.06.2019 (Annexure P-6), the benefit of pension cannot be denied to the respondent – Sunil Katyal. In paragraph 20 of the impugned judgement in CWP-9668-2020, the learned Single Judge has observed that Sh. Yoginder Paul Gupta and Sh. Hemant Attri and co-retirees, namely, Sh. Sarban Singh and Dr. Amar Singh had been granted the benefit of pensionary benefits and Dr. Amar Singh had been granted the pensionary benefits subsequent to the letter of withdrawal dated 28.06.2019.

3. Learned State counsel has argued that Dr. Amar Singh was already getting the pension. However, learned counsel for the respondent – Sunil Katyal has clarified that after serving in the Service Commission, he has been granted the benefit of additional pension despite the letter dated 28.06.2019. With respect to Sh. Yoginder Paul Gupta and Sh. Hemant Attri, learned State counsel has not been able to contradict the view taken by the learned Single Judge in CWP-9668-2020 that both these persons have retired prior to 2019 and have been granted the benefit of pension. Learned State counsel has further argued that the letter dated 28.06.2019 states that this letter was clarificatory in nature and the Chief Secretary has clarified that the letter dated 20.09.2018 will not be applicable to the Right to Information Commission, Haryana.

4. In CWP-9668-2020, the respondent - Sunil Katyal retired on 27.07.2019. He was governed by the terms and conditions of the order dated 10.04.2015 (Annexure P-2). The salary and allowances were fixed vide order dated 10.04.2015. As per the provisions of Section 15(4) of the Haryana Right to Service Act, 2014, the pay and allowances of the Commissioners and other terms and conditions of their service were same as those of the State Information Commissioners as laid down in sub section (5) of Section 16 of the Right to Information Act, 2005. The appointees were also entitled to pensionary benefits and leave encashment as admissible to the State Information Commissioners in the State Information Commission, Haryana as laid down in sub section 5(b) of Section 16 of the Right to Information Act, 2005. The terms and conditions in the order dated 10.04.2015 were issued with the concurrence of the Finance Department UUO No. 2/21/2014-5FG/4704 dated 01.04.2015.

5. The terms and conditions No. 3 and 10 as contained in the order dated 10.04.2015 are reproduced hereunder:-

3.	Salary, allowances and other facilities	The salary and allowances payable to and other terms and conditions of service of the Commissioners shall be the same as that of the State Information Commissioners, as laid down in sub Section (5) of Section 16 of the Right to Information Act, 2005, which is presently Rs. 80,000/- fixed.
10.	Pensionary benefit and leave encashment	They will be entitled to pensionary benefits and leave encashment as admissible to State Information Commissioners in the State Information Commission, Haryana.

6. In paragraph 4 of the impugned judgement in CWP-9668-2020, the learned Single Judge has referred to the instructions/circular dated 11.06.2014 sent by the Chief Secretary, Government of Haryana to the Secretary, State Information Commission, Haryana on the subject of terms and conditions of service of State Information Commissioners regarding grant of pensionary benefits to State Information Commissioners. As per instructions, it was conveyed that the Government has decided to fix the terms and conditions of service of State Information Commissioners. The terms and conditions in case the State Information Commissioners are retired Government officers, an additional pension in respect of a State Information Commissioner shall be fixed after deducting the pension one is drawing already from any Government and the maximum limit of the total annual pensions shall be ₹ 4,80,000/-. The terms and conditions in case the State Information Commissioners are other than the retired Government officers, who at the time of appointment as such was not in the service of the Central or a State Government and who has not retired from Government service any time prior to joining this position, shall at his ceasing to hold the office, be paid a pension for his life after rendering a service of a minimum three years as the State Information Commission/Chief Information Commission with the following conditions:-

(i) The specific provision for determining pension will be made by the Administrative Department in the rules, as the service under reference being a separate service carrying a maximum of 5 years of service with it. The rule of minimum period of 10 years of service required for pension is relaxed to that extent.

(ii) Entitlement for additional pension at the age of 80, 85, 90, 95 and 100 years will be as per rules applicable in respect of the State Government pensioners.

(iii) The Pension may be worked out @ 50% of the last pay drawn will be reduced pro rata, where the pensioner had less than the maximum required qualified service (i.e. 28 years) for full pension as per rules applicable in respect of State Government pensioners.

(iv) No such pension shall be payable to the State Information Commissioner if he has been removed from his office.

7. As regards the earned leave encashment, the following shall apply:-

(i) In case of re-employment of a retired officer, as the State Chief Information Commissioner, he would be entitled for leave encashment after completion of his term of five years upto 300 days earned leave including the benefit of earned leave

encashment already availed, while retiring, in other words, if leave of 300 days has already been availed, no more benefit of leave encashment will be available.

(ii) In case of appointment of a fresh (non-retiree) incumbent, he will be entitled for the benefit of un-availed earned leave encashment upto one half (1/2) of the earned leave credited to his account on completion of 150 days or the term whichever is earlier in terms of FD's letter No.11/12/98-4FR, dated 12th August, 1998.

8. The case of the respondent in CWP-9668-2020 was forwarded by the competent authority/office of the Chief Commissioner, Haryana Right to Service Commission to the Chief Secretary, Government of Haryana prior to his retirement vide memo No. 6644 dated 29.05.2019. The respondent – Sunil Katyal belonged to non-service class and had completed five years of service and modalities were suggested for fixing his pension.

9. Vide instructions dated 28.06.2019, the Government of Haryana decided to withdraw the instructions dated 11.06.2014 as amended further by letter dated 06.11.2015 with immediate effect. It also clarified that the Chief Secretary's instruction dated 20.09.2018 will not be applicable to the Right to Information Commission, Haryana. While allowing CWP-9668-2020, the learned Single Judge has observed that prior to executive instructions dated 28.06.2019 Sh. Yoginder Paul Gupta, Sh. Hemant Attri and co-retirees, namely, Sh. Sarban Singh and Dr. Amar Singh have also been granted the benefit of pensionary benefits. Dr. Amar Singh has been granted pensionary benefits subsequent to the letter of withdrawal dated 28.06.2019. The appellants were bound by the terms and conditions of the appointment issued by the competent authority on 10.04.2015 which had been issued with the concurrence of the Finance Department dated 01.04.2015 and the respondent had the right to be given the salary and allowances under Section 15(4) of the Haryana Right to Service Act, 2014 and there has been no amendment in the abovesaid Act till date. The impugned letter dated 28.06.2019 issued by appellant No. 1 withdrawing the letter dated 11.06.2014 was quashed and the respondent – Sunil Katyal was held entitled to pension and other service benefits.

10. In the present case as well directions were given by the learned Single Judge to the appellants to consider the claim of the respondent – Sukhbir Singh Gulia for granting him pension keeping in view the notification dated 11.06.2014 which was withdrawn by the Government of Haryana vide

executive instructions dated 28.06.2019 which were subsequently quashed by the learned Single Judge in CWP-9668-2020. Moreover, in the present case, no rules have been framed with respect to category of such cases as that of the respondent who was appointed and governed by service conditions under the Right to Information Act, 2005 as applicable on the date of his retirement and, as such, the salaries, allowances and other conditions of service of State Chief Information Commissioner and State Information Commissioner were not to be varied to their disadvantage after their appointment.

11. No ground is made out to interfere with the impugned judgement passed by the learned Single Judge.
12. The appeal being meritless, accordingly, stands dismissed.

(RITU BAHRI)

ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)

JUDGE

25.01.2024

Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No