2024:DHC:6655

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 09th August, 2024*

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\+ W.P.(C) 10532/2022

RADHE SHIAM SHARMA .....Petitioner
Through: Mr. Mukesh Kumar Gupta, Advocate

versus

RAJYA SABHA SECRETARIAT .....Respondent
Through: Mr. Sandeep Kumar Mahapatra, Central Government Standing Counsel with Mr. Tribhuvan and Mr. Manoj Kumar, Advocates

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\+ W.P.(C) 10585/2022

RAM PRAKASH MITTAL .....Petitioner
Through: Mr. Mukesh Kumar Gupta, Advocate

versus

RAJYA SABHA SECRETARIAT .....Respondent
Through: Mr. Sandeep Kumar Mahapatra, Central Government Standing Counsel with Mr. Tribhuvan and Mr. Manoj Kumar, Advocates

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. These writ petitions have been preferred on behalf of the Petitioners under Article 226 of the Constitution of India for refixing their consultancy fee at par with other similarly placed persons at enhanced rates for the periods in question. As common issues arise in both the writ

petitions, they were heard together and are being decided by this common judgment.

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2. Petitioner retired from Rajya Sabha Secretariat ('RSS') as Joint Director on 31.07.2012 and at the relevant time was drawing pay and emoluments under 6th Central Pay Commission ('CPC')/pay structure under 4th Parliamentary Pay Committee ('PPC'). He was engaged as a Consultant initially for a period of 6 months w.e.f. 15.07.2016 on a consultancy fee of Rs.70,859/- per month after he accepted the terms and conditions of appointment incorporated in Memorandum dated 15.07.2016. Petitioner's period of engagement was extended from time to time till 30.04.2018 on the same terms and conditions and in the interregnum, relaxation in maximum age limit of 65 years was given to the Petitioner w.e.f. 01.08.2017.

3. Petitioner was again engaged as a Consultant from 13.07.2018 for an initial period of 6 months on the same consultancy fee and he accepted the terms and conditions contained in Memorandum dated 12.07.2018. The period of engagement was extended from time to time till 12.07.2020 on the same consultancy fee.

4. Petitioner avers that under 7th CPC recommendations, his Basic Pension was revised to Rs.68,144/- per month and further revised to Rs.69,150/- w.e.f. 01.01.2016 on recommendations of PPC. Petitioner made a representation on 27/28.09.2018 to the Respondent seeking re-fixation of his consultancy fee on the basis of revision in Pension under 7th CPC and also alleged discrimination claiming that similarly placed persons such as one Sh. B.K. Shrivastava, who had retired in the year 2019 from Lok Sabha Secretariat as Joint Director (R) with Basic Pension of Rs.71,000/- per

month was appointed at a Consultancy fee of Rs.1,11,817/- per month. Not getting any favourable response from the Respondent, Petitioner approached this Court and filed the present writ petition.

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5. Petitioner retired from Lok Sabha Secretariat ('LSS') as Joint Director on 31.07.2011 drawing pay and emoluments under 6th CPC/pay structure under 4th PPC. He was engaged as a Consultant initially for a period of 6 months w.e.f. 16.11.2016 after he accepted the terms and conditions of appointment contained in Memorandum dated 09.11.2016. The consultancy fee was fixed at a consolidated amount of Rs.70,825/- per month. The period of engagement was extended from time to time till 30.04.2018 and relaxation in the maximum age limit of 65 years was granted to the Petitioner.

6. Petitioner was again engaged as a Consultant from 13.07.2018 for an initial period of 6 months as per terms and conditions contained in Memorandum dated 12.07.2018 and the period was extended from time to time till 12.07.2020. The terms and conditions of appointment including the consultancy fee remained the same. It is averred that under the 7th CPC and recommendation of 5th PPC implemented w.e.f. 01.01.2016, Basic Pension of the Petitioner was revised to Rs.69,150/- per month from 01.01.2016. This led to the Petitioner making representations to the Respondent seeking enhancement and resultant re-fixation of the consultancy fee basis the pension revision, but to no avail.

COMMON CONTENTIONS OF THE PETITIONERS

7. Petitioners retired on superannuation in 2011 and 2012 respectively and at that time they were drawing pay and emoluments as per the pay

structure under 6th CPC/4th PPC and accordingly their pension was fixed on the basis of last pay drawn under 6th CPC and this formed the basis of working out the consolidated fee, on their appointments as Consultants. Petitioner in W.P. (C) 10532/2022 was appointed as Consultant w.e.f. 15.07.2016 and Petitioner in W.P. (C) 10585/2022 was appointed w.e.f. 16.11.2016 and since their appointments were post 01.01.2016 from which date the 7th CPC and 5th PPC were implemented, consultancy fee ought to have been revised and re-fixed taking into account the revision in pension.

8. Petitioners have been discriminated inasmuch as for similarly placed Consultants, consultancy fee has been fixed taking into account the last pay drawn and Basic Pension under 7th CPC/5th PPC. Illustratively, it is pointed out that Sh. B.K. Shrivastava retired from LSS in 2019 from the post of Joint Director (R) and was drawing Basic Pension of Rs.71,000/- per month with Parliamentary Allowance at Rs.15,000/- per month, Dearness Allowance ('DA') at the rate 17% and Conveyance Allowance of Rs.7,000/- per month. His consultancy fee was fixed at Rs.1,11,817/- per month while in the case of Petitioner in W.P. (C) 10532/2022, consolidated fee as a Consultant remained unchanged at Rs.70,859/- per month and in case of Petitioner in W.P. (C) 10585/2022, the consultancy fee continued at Rs.70,825/- per month, resulting in a huge financial loss to the Petitioners.

CONTENTIONS ON BEHALF OF THE RESPONDENT

9. Petitioners were appointed as Consultants in RSS in Verbatim Reporting Service on contractual basis post their retirements from RSS and LSS respectively. Appointments were made on fixed monthly consolidated fee and the terms of their engagements were spelt out in the offer of appointments and were well known to the Petitioners at the initial stage

itself. It was made clear to the Petitioners in the terms of engagement that consultancy fee shall be a fixed amount and there was no clause which provided for revision in the consultancy fee, either on renewal of the contracts or on account of revision in pension due to Pay Commission's recommendations.

10. On 18.05.2016, the approved formula for fixation of consultancy fee in RSS/LSS was 'Last Basic Pay drawn + DA as on 18.05.2016 + Parliamentary Allowance + Transport Allowance' minus Basic Pension and Dearness Relief as on 18.05.2016 on Basic Pension. Consultants were not entitled to accommodation or HRA or any other allowances/perks. Consultancy fee of the Petitioners was arrived by applying this formula effective from 18.05.2016.

11. Subsequent to the implementation of 7th CPC/5th PPC recommendations resulting in revision in pension, Petitioners made representations seeking re-fixation of their consultancy fee. During processing of these representations, clarification was sought from DoPT vide ID Note dated 02.09.2020 whether consultancy fee was to be revised for those who had retired while drawing pension under 6th CPC pay structure but were engaged as Consultants post 01.01.2016. DoPT vide ID Note dated 03.11.2020 informed the Respondent that it was in the process of framing guidelines regarding engagement of retired Government servants as Consultants in Government Ministries/Departments and since it was likely to take time to arrive at a decision, DoPT advised RSS to take an administrative decision after consulting Department of Expenditure. Subsequently, Department of Expenditure, Ministry of Finance, Government of India issued an O.M. dated 09.12.2020 formulating guidelines for

regulation of remuneration in case of contract appointments of retired Government employees as Consultants to bring uniformity and as per the said O.M., monthly fixed remuneration was to be arrived at by deducting Basic Pension from pay drawn at the time of retirement and the remuneration was to remain unchanged during the term of the contract. It was also decided that there will be no annual increment/percentage increase during the contract period and DA shall not be allowed.

12. Consultancy fee of the Petitioners was fixed on the formula '*last pay drawn at the time of retirement minus pension',* which was uniformly applied to all similarly placed officers. Being a fixed amount agreed between two contracting parties, Petitioner cannot claim enhancement in the consultancy fee. Even otherwise, the grievance is misplaced as Petitioners have stood to gain by the Consultancy Agreements as they were beneficiaries of higher rates of several allowances, for instance, the rate of Parliamentary Allowance was Rs.4,000/- per month for Group 'A' post holders like the Petitioners during 6th CPC pay structure, which was revised to Rs.15,000/- per month w.e.f. 01.01.2016 and therefore, while the Petitioners would have drawn Rs.4,000/- per month, after their retirement, they were drawing Rs.15,000/-.

13. The allegations of the Petitioners that they have been discriminated vis-à-vis the other Consultants in respect of fixation of consultancy fee is wholly misplaced. Petitioner in W.P. (C) 10532/2022 retired from RSS on superannuation on 31.07.2012 while Petitioner in W.P. (C) 10585/2022 retired from LSS on 31.07.2011 and on the date of retirements, the last pay drawn was under the 6th CPC and pension was fixed on this pay structure. Applying the formula for fixing the consultancy fee, their last pay drawn

was taken under the 6th CPC pay structure from which the Basic Pension was deducted while in the case of Sh. B.K. Shrivastava, with whom comparison is being made, his last pay drawn was under the 7th CPC as he retired on superannuation in December, 2019 i.e. post implementation of 7th CPC recommendations and his pension and consultancy fee was bound to be on the higher side.

14. Heard learned counsel for the Petitioners and learned Central Government Standing Counsel for the Respondent.

ANALYSIS AND FINDINGS

15. The moot point that arises for consideration in the present petition is whether the Petitioners are entitled to revision in the consolidated fee paid to them as Consultants Verbatim Reporting Service for the engagement period with RSS, on contractual basis. Petitioners do not join issue with the formula adopted by the Respondent for fixation i.e. last pay drawn at the time of retirement minus Basic Pension, but contend that consultation fee ought to be revised factoring in the revision in pension under 7th CPC/5th PPC. Respondent, on the other hand, urges that consultation fee was a term of the contract and both contracting parties agreed that it would be a fixed monthly remuneration and will remain unchanged during the contract period *dehors* any pay revision.

16. Having given my thoughtful consideration to the rival contentions, I am of the view that the stand of the Respondent is correct and deserves to be accepted. Petitioners were appointed as Consultants with RSS, post their superannuation as Joint Directors from RSS and LSS respectively, on contractual basis at a consolidated and fixed monthly remuneration on *pro-rata* basis. The contracts were initially for a period of 6 months and

were subsequently renewed. Petitioners were re-engaged again for 6 months and second time also, the contracts were renewed from time to time. There was no provision in the Memorandums offering engagements to the Petitioners for revision in the consultancy fee. In fact, in the offers of appointment, it was stipulated that monthly payment of consultancy fee would be subject to satisfactory performance report by J.S. (Reporting). It was thus clear to the Petitioners when they accepted the offers that the nature of appointment was contractual and at a consolidated fee fixed on *pro-rata* basis with no link to pay revisions under the CPC/PPC recommendations.

17. Respondent has brought forth in the counter-affidavits that the pay fixation formula adopted for fixing the consultancy fee payable to the Consultants engaged in RSS was as per the decision taken on 18.05.2016 pursuant to a meeting of the '*Committee to work out the fee to be paid to the Consultants'* convened on 05.05.2016, chaired by the Secretary, RSS based on the pay structure in LSS so as to bring parity in the two organizations. As per this decision, the formula adopted for fixation of consultancy fee was 'last basic pay drawn + DA applicable on the date of joining + Parliamentary Allowance + Transport Allowance minus Basic Pension and Dearness Relief on Basic Pension on the date of joining. There is no provision in the terms of engagement for enhancement and re-fixation of the consultation fee. It is palpably clear that the consultancy agreement was a contract between two contracting parties i.e. Petitioners and RSS and the consolidated amount was envisioned as a static amount and not a 'variable' subject to change basis any contingency.

18. After the Petitioners made representations for revision in the

consultancy fee upon revision in their Basic Pensions, upon implementation of 7th CPC/5th PPC, RSS sought clarification from DoPT whether the consultation fee was to be revised and was informed that matter was under consideration with the Department of Expenditure, Ministry of Finance. Finally, an O.M. was issued by the said Department on 09.12.2020 for regulating remuneration payable to retired Government employees on their appointment as Consultants, on a uniform basis. O.M. dated 09.12.2020 provides the methodology of fixing remuneration of contract appointment by deducting the Basic Pension from the pay drawn at the time of retirement. It was also stipulated that the amount of remuneration fixed shall remain unchanged for the term of the contract and there will be no annual increment/percentage increase during the contract period.

> *"6. Remuneration*
>
> *6.1 A fixed monthly amount shall be admissible, arrived at by deducting the basic pension from the pay drawn at the time of retirement. The amount of remuneration so fixed shall remain unchanged for the term of the contract. There will be no annual increment / percentage increase during the contract period.*
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> *Example*
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> *An employee retired in the Pay Level 13 and the pay at the time of retirement was Rs.1,55,900. Thus, the basic pension will be Rs. 77,950. If the employee is appointed on contract basis, including as Consultant, the remuneration shall be fixed at Rs.77,950 (1,55,900-77950)."*

19. Thus methodology stipulated in the O.M. was the same as the formula adopted earlier by RSS to fix the consultancy fee of the Petitioners i.e. the pay drawn at the time of retirement minus the Basic Pension. Consultancy fee of the Petitioners was fixed taking the last pay drawn by them at the time of retirement and deducting the Basic Pension, both under the 6th CPC/4th PPC and no infirmity can be found in the initial fixation. Being a fixed

consolidated remuneration, agreed by the parties as a term of contract, revision/enhancement cannot be granted to the Petitioners upon revision of pension under 7th CPC/5th PPC. If the contentions of the Petitioners are accepted, it would amount to changing the meaning and connotation of the expression '*last pay drawn at the time of retirement*' i.e. pay drawn in the pay structure prevalent when the employee retires, as well as the agreed terms of the contracts, which the Petitioners entered into willingly. The concept of fixed monthly remuneration to a Consultant cannot be confused with the pay of a regular serving employee who is entitled to pay revisions under successive Pay Commissions' recommendations. Equally misplaced is the claim for parity with Sh. B.K. Shrivastava for the simple reason that he superannuated in December, 2019 and his last pay drawn at the time of retirement was under 7th CPC and was bound to be higher and thus the consultancy fee was higher.

20. For all the aforesaid reasons, the writ petitions are dismissed being devoid of merit.

JYOTI SINGH, J

AUGUST 09, 2024/kks