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

1) CWP-1221-2021
Date of decision: 19.08.2025

Sukhdarshan Singh ....Petitioner

Versus

The State of Punjab and others ...Respondents

2) CWP-11674-2020 (O&M)

Prabhat Kumar Goyal ....Petitioner

Versus

Punjab State Agricultural Marketing Board and another ...Respondents

3) CWP-3736-2021

Inderjit Singh ....Petitioner

Versus

State of Punjab and others ...Respondents

4) CWP-12689-2021

Kamaldeep Singh ....Petitioner

Versus

State of Punjab and others ...Respondents

5) CWP-14481-2021

Jaswinder Singh ....Petitioner

Versus

The State of Punjab and others ...Respondents

6) CWP-12915-2021

Rupinder Singh ....Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parminder Singh, Advocate
for the petitioner (in CWP-3736-2021).

Mr. Vikas Arora, DAG, Punjab.

Mr. Harsh Chopra, Advocate and
Mr. Satnam Singh, Advocate
for respondent No.5 (in CWP-12689-2021).

Mr. Rahul Verma, Advocate
for respondent No.6 (in CWP-1221-2021).

Mr. Ashwani Prashar, Advocate
for respondent No.6 (in CWP-12915-2021).

Mr. Saurabh Singla, Advocate for
Mr. Pradeep Bajaj, Advocate
for respondents No.2 to 5 (in CWP-1221-2021,
CWP-3736-2021, CWP-12689-2021,
CWP-14481-2021 & CWP-12915-2021).

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of the aforementioned civil writ petitions as they arise from a similar factual matrix. However, for the sake of brevity, the facts are taken from CWP-1221-2021.

2. The present writ petition(s) have been filed under Articles 226/227 of the Constitution of India for quashing office order No. C-01 (2021) dated 22.12.2020 (Annexure P-11) passed by respondent No.3 whereby, the full pension of the petitioner has been stopped without giving any notice or opportunity of hearing and without following the due process of law as mandated by the provisions of Article 300 A of the Constitution of India.

3. The petitioner(s) joined as Junior Engineer on 21.02.1984 in the Punjab State Tubewell Corporation.

The service particulars of all the petitioners are given below in a tabulated form:-

Sr. No.	**Name of the petitioners**	**Date of Joining Service**	**Parent Department**	**Date of Joining Board on Deputation**	**Date of Permanent Absorption**	**Date of Retirement**
1.	Sukhdarshan Singh	21.02.1984 (JE)	Punjab State Tubewell Corporation	16.03.2001	27.08.2010	31.05.2017
2.	Jaswinder Singh	09.09.1990 (J.E.)	Batala Co-op Sugar Mills	01.10.2008	27.08.2010	30.06.2021
3.	Kamaldeep Singh	13.10.1988 (Asstt. Er., Civil)	Sugarfed	01.08.2007	24.06.2009	31.01.2023
4.	Rupinder Singh	21.05.1986	Milkfed	28.07.2000 to 01.08.2007 Again on 27.02.2009 to 21.07.2013	22.07.2013	30.04.2020
5.	Prabhat Kumar Goyal	20.01.1984 (J.E.)	Punjab State Tubewell Corporation	14.09.2004	29.10.2010	30.04.2020
6.	Inderjit Singh	1989 as Oversear	ZIRA Co-operative Sugar Mill	01.10.2008	27.08.2010	Still in service

4. Learned counsel for the petitioner(s) *inter alia* contends that on 09.07.2012, the Government of Punjab (Department of Finance) issued instructions on 09.07.2012 to all the Departments regarding implementation of New Defined Contributory Pension Scheme in the Public Sector Undertakings and Autonomous Bodies of the Government of Punjab. A decision was taken that all employees appointed on regular basis in Public Sector Undertakings and Autonomous Bodies of the Government of Punjab after 01.01.2004 shall be covered compulsorily under the restructured Defined Contributory Pension Scheme. Thereafter, on 23.02.2017, instructions were issued with regard to the applicability of the pension scheme. However, the cut off date from 01.01.2004 was replaced to 09.07.2012. On 29.08.2017 yet another instructions were issued by taking a policy decision that the pension scheme/rules application to the employees of the Public Sector Undertakings/Autonomous Bodies prior to 01.01.2004 shall be applicable to all employees appointed between 01.01.2004 to 09.07.2012 in these Public Sector Undertakings/Autonomous Bodies, meaning thereby, the provisions of Punjab State Agricultural Marketing Board

and Market Committees Employees Pension, Provident Fund and Gratuity Rules, 1987 (hereinafter referred to as 'Rules, 1987') were made applicable. Admittedly, all the petitioner(s) joined the respondent-Departments after 01.01.2004 on deputation and they were absorbed permanently from the year 2009 to 2013, as such, in terms of the instructions issued on 29.08.2017, the pensionary benefits and other retiral dues of the petitioner(s) are required to be decided in terms of Rules,1987. The petitioner, namely, Sukhdarshan Singh, retired on 31.05.2017 and his pension was fixed in terms of the Rules, 1987 and his retiral dues were released accordingly.

5. Learned counsel for the petitioner(s) refers to Rule 2 of Rules, 1987 and submits that these Rules apply to all the employees of the respondent-Board from the date of notification i.e. 01.12.1997. Further, provisions of grant of pension are provided under Rules 7 & 8. Till date, there is no amendment in the Rules, however, on 04.10.2018, the Department of Finance, Government of Punjab, issued a circular and made a U-turn from its earlier decision and issued clarification in suppression of all earlier instructions with regard to the applicability of the pension schemes and the entitlement of the employees to the Old Pension Scheme in terms of Rules prior to 01.01.2004 was withdrawn and it was ordered that New Pension Scheme shall be made compulsorily application to all the new employees on the basis of instructions issued on 04.10.2018, the impugned was passed on 22.12.2020 (Annexure P-11). Thereafter, a Committee was constituted to examine the case of the employees in terms of the instructions issued on 04.10.2018. He further refers to the letters dated 09.07.2012 and 23.02.2017 (Annexures P-4 and P-5, respectively), memo dated 29.08.2017 (Annexure P-6), minutes of the meeting dated 02.11.2020 (Annexure P-8) and order dated 04.10.2018 (Annexure R-2/2)

submits that the case of 13 employees who have been permanently absorbed in the respondent-Board were considered and it was decided that employees who have joined the respondent-Board on deputation would not be entitled to Old Pension Scheme and they would be covered under the New Pension Scheme as they have joined the respondent-Board after 01.04.2004. Further the entitlement of the petitioner(s) was curtailed by the impugned order without even affording an opportunity of hearing and issuing any notice.

6. Learned Counsel for the respondent-Board submits that the order vide which the impugned order was passed on 04.11.2020 by withdrawing the pensionary financial benefits applicable to the petitioner(s) in terms of the Old Pension Scheme.

7. Learned counsel for the respondent-Board raised the issued of maintainability on the ground that alternative and appropriate remedy of appeal under Section 42 of the Punjab Agricultural Produce Markets Act, 1961 is available, as such, the present writ petition(s) is not maintainable. The petitioner(s) has not availed the right of appeal and any benefit which accrues to the petitioner(s) before their absorption in the respondent-Board cannot be fastened upon the respondent-Board. The petitioners are entitled to claim those benefits from their erstwhile organization where initially they were appointed. Further, the policy decision was taken by the respondent-Board in terms of the latest instructions issued by the Government of Punjab on 04.10.2018 (Annexure R-2/2).

8. Admittedly, the petitioners initially joined the respondent-Board on deputation, however, they were absorbed permanently from the year 2009 to 2013.

9. Further, learned counsel for the respondent-Board could not

controvert the fact that the counterparts of the petitioners who initially joined the respondent-Board and retired from the Board have been given the benefit of Old Pension Scheme.

10. Once the petitioners are absorbed permanently and their services are regulated in accordance with the service rules of respondent board, the petitioners are entitled to the benefits under these Rules. The Rules, 1987 does not create any distinction between an employee who was directly appointed by the respondent-Board and an employee who was absorbed after deputation. It is no longer *res integra* that executive instructions cannot supersede the statutory provisions. The petitioners are regulated according to the Rules of 1987 and would be subjected to benefits according to the same. The respondent cannot curtail these benefits merely on the basis of instructions.

11. The objection of the respondent-Board with regard to invoking the alternative remedy is required to be rejected in view of the two Judge bench judgments of the Hon'ble Supreme Court in **'*Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai*' (1998) 8 SCC 1** and **'*Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others*' (2003) 2 SCC 107,** as the manner in which the impugned order is passed in violation of principle of natural justice and would certainly violate the provisions contained in Rules, 1987.

12. Executive or administrative instructions do not have the authority to amend, override, or supplement statutory rules, nor can any such instructions be issued in derogation of the statutory framework. This is for the reason that administrative directions, being non-statutory in character, do not carry the force of law. On the contrary, statutory rules, framed under the authority of an enabling statute, have the binding force of law, provided they are consistent

with and not repugnant to the parent Act. Thus, while statutory rules occupy the field with full legal sanctity, mere executive instructions cannot operate to curtail, modify, or expand their scope.

13. It is a settle legal proposition that the executive instructions cannot override the statutory provisions. The reliance is being placed on para 6 to 11 of the Full Bench of Hon'ble Allahabad High Court in ***Vijay Singh and others versus State of Uttar Pardesh 2005(2) AWC 1191***. The relevant paras mentioned above are reproduced as under :-

> *"6. It is settled legal proposition that executive instructions cannot override the statutory provisions (vide B.N. Nagarajan v. State of Mysore, AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910; Union of India v. Majji Jangamayya, AIR 1977 SC 757; B.N. Nagarajan v. State of Karnataka, AIR 1979 SC 1676; P.D. Aggarwal v. State of U.P., (1987)3 SCC 622 : (AIR 1987 SC 1676); M/s. Beopar Sehayak (P) Ltd. v. Vishwa Nath, AIR 1987 SC 2111; State of Maharashtra v. Jagannath Achyut Karandikar, AIR 1989 SC 1133; Paluru Ramkrishnaiah v. Union of India, AIR 1990 SC 166; Comptroller & Auditor General of India v. Mohan Lal Mehrotra, 1991(3) S.C.T. 581 : AIR 1991 SC 2288; State of Madhya Pradesh v. G.S. Dall & Flour Mills, AIR 1991 SC 772; Naga People's Movement of Human Rights v. Union of India, AIR 1998 SC 431; C. Rangaswamaeah v. Karnataka Lokayukta, 1998(3) R.C.R.(Criminal) 547 : AIR 1998 SC 2496.*
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> *7. Executive instructions cannot amend or supersede the statutory Rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law; while statutory Rules*

have full force of law provided the same are not in conflict with the provisions of the Act (vide State of U.P. v. Babu Ram Upadhyaya, AIR 1961 SC 751; and State of Tamil Nadu v. M/s. Hind Stone, AIR 1981 SC 711).

8. In Union of India v. Somasundaram Vishwanath, AIR 1988 SC 2255, the Hon'ble Apex Court observed that if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail. Similarly, if there is a conflict in the Rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.

9. Similar view has been reiterated in Union of India v. Rakesh Kumar, 2001(2) SCT 1085 (SC) : AIR 2001 SC 1877; Swapan Kumar Pal v. Samitabhar Chakraborty, 2001(2) SCT 1104 (SC) : AIR 2001 SC 2353; Khet Singh v. Union of India, 2002(2) R.C.R.(Criminal) 277 : (2002)4 SCC 380 : (AIR 2002 SC 1450); Laxminarayan R. Bhattad v. State of Maharashtra, 2003(2) R.C.R.(Civil) 819 : (2003)5 SCC 413 : (AIR 2003 SC 3502) and Delhi Development Authority v. Joginder S. Monga, (2004)2 SCC 297 : (AIR 2004 SC 3291), observing that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.

10. In Ram Ganesh Tripathi v. State of U.P., 1997(1) SCT 494 (SC) : AIR 1997 SC 1446, the Hon'ble Supreme Court considered a similar controversy and held that any executive instruction/order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law. The Hon'ble Supreme Court observed as under (Para 9) :- "They (respondents) relied *upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."*

14. Thus, in view of the above discussion, it is evident that executive instructions cannot be supersede the Rules of 1987. Respondent cannot dis-entitle or exclude the petitioner from the benefits of 1987 rules without amending the rules by merely issuing instructions.

15. It is not in dispute that the length of service of the petitioner in the erstwhile Boards have been counted, once the benefit of the past service in erstwhile Boards have been extended to the petitioners and they have been permanently absorbed and Rules, 1987 would be applicable to the petitioners and the petitioners are entitled to the same relief as admissible to their counterparts who have retired from the respondent-Boards.

16. A Full Bench of this Court in ***A.S. Randhawa, Supg. Engineer (Retd.) vs. State of Punjab, 1997 SCC OnLine P&H 705*** has adverted with an identical issue and held that an employee normally would be paid retiral benefits within two months and in case of payment beyond two months, he shall be entitled to interest. The relevant extracts of the said judgment read as:

> "9. Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair case [1985 (2) L.L.N. 18] (vide supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his

> retirement. Again, as to what should be the rate of interest, it should, in our view, be generally 12 per cent unless the circumstances of a particular case warrant the payment of a higher rate which may extend to even 18 per cent."

Reliance in this regard may also be placed in judgement of the Apex court in ***S.K. Dua vs. State of Haryana, (2008) 3 SCC,*** which has clearly held that an employee can claim interest in terms of Part III of Constitution of India.

17. In view of the discussion above, the present writ petitions are allowed and impugned orders are hereby set aside and consequential benefits to the petitioner be released within a period of three months from the date of receipt of certified copy of this order together with an interest of 6%.

18. Needless to say, the claim of the petitioner, namely, Prabhat Kumar Goyal, shall be considered and decided by counting his past service towards the benefit of the ACP scheme as has been granted to petitioner, namely, Sukhdarshan Singh. While the pensionary benefits of petitioner, namely, Inderjit Singh, who is still in service shall be fixed on his superannuation under Old Pension Scheme in terms of Rules of 1987.

(HARPREET SINGH BRAR)
JUDGE

19.08.2025
Neha

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