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

**CWP No.13682 of 2017**
**Date of Decision: 28.04.2025**

Dr. Anil Khurana and others

…Petitioners

Versus

State of Haryana and others

…Respondents

***CORAM:*** ***HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA***
***HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Mr. S.K. Malik, Advocate
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana
for respondents No.1 to 4.

Ms. Rubi Khokhar, Advocate
for respondent No.5.

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**SANJEEV PRAKASH SHARMA, J.(Oral)**

1. The petitioners were appointed as Readers in the year 2008 and their appointments indicated the pay-scales of Rs.12000-420-18300. On appointment, they were admitted to pay structure of Rs.23000/-. The petitioners were appointed on different dates in 2008 and 2009. Haryana Civil Services (Revised Pay) Rules, 2008 made verdict enforceable on 01.01.2006 and the grade-pay was fixed at Rs.8000/-. In terms of the notification giving multiplication factor of 1.86, the petitioners' pay-scales were fixed. Feeling aggrieved, the petitioners submitted representations to the State Government regarding the anomalies as their pay becomes lesser than the persons working in the lower scale and pre-revised pay-scale. Taking note of the grievances, a

clarification was issued by the respondent-State stating that every level of pay of directly recruited Readers in the University appointed on or after 01.01.2006, may be granted Rs.22320/- in Pay Band-3 with AGP of Rs.8000/- notionally w.e.f. 01.01.2006 and actually from the date of notification.

2. Learned counsel for the petitioners submits that the action of the respondents in making payment notionally w.e.f. 01.01.2006 was unjustified and the petitioners were entitled to claim the said benefit from the date of coming into force of the Pay-Scales Rules, i.e from 01.01.2006 itself and the arrears should be paid to them.

3. The Constitutional Bench of Hon'ble Supreme Court in case of ***Chairman, Railway Board vs. C.R. Rangadhamaiah, 1997 (3) SCT*** *722*, has examined as to when retrospective effect should be given to the Rules and has held as under:-

> *"23. In* ***Salabuddin Mohamed Yunus v. State of Andhra Pradesh, 1985(1) SCR 930,*** *the appellant was employed in the service of the former Indian State of Hyderabad prior to coming into force of the Constitution of India. On coming into force of the Constitution the appellant continued in the service of that State till he retired from service on January 21, 1956. The appellant claimed that he was entitled to be paid the salary of a High Court Judge from October 1, 1947 and also claimed that he was entitled to receive pension of Rs. 1,000/- a month in the Government of India currency, being the maximum pension admissible under the rules. The said claim of the appellant was negatived by the Government. He filed a Writ Petition in the High Court of Andhra Pradesh. During the pendency of the said Writ Petition relevant rule was amended by notification dated Feburary 3, 1971 with retrospective effect from October 1, 1954 and the expression "Rs. 1000 a month" in clause (b)*

*of sub-rule (1) of Rule 299 was substituted by the expression "Rs. 857.15 a month". This amendment was made in exercise of the power conferred by the Proviso to Article 309 read with Article 313 of the Constitution. The said amendment was struck down by this Court as invalid and inoperative on the ground that it was violative of Articles 31(1) and 19(1)(f) of the Constitution. Relying upon the decision in Deokindandan Prasad (supra), it was held :-*

> *"The fundamental right to receive pension according to the rules in force on the date of his retirement accrued to the appellant when he retired from service. By making a retrospective amendment to the said Rule 299(1)(b) more than fifteen years after that right had accrued to him, what was done was to take away the appellant's right to receive pension according to the rules in force at the date of his retirement or in any event to curtail and abridge that right. To that extent, the said amendment was void." (pp. 938-939).*

*24. It is no doubt true that on December 5, 1988 when the impugned notifications were issued, the rights guaranteed under Articles 31(1) and 19(1)(f) were not available since the said provisions in the Constitution stood omitted with effect from June 20, 1979 by virtue of the Constitution Forty fourth Amendment) Act, 1978. But the notifications G.S.R. 1143(E) and G.S.R. 1144(E) have been made operative with effect from January 1, 1973 and April 1, 1979 respectively on which dates the rights guaranteed under Article 31(1) and 19(1)(f) were available. Both the notifications insofar as they have been given retrospective operation are, therefore, violative of the rights then guaranteed under Articles 19(1) and 31(1) of the Constitution.*

*25. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned* *amendments, in so far as they have been given retrospective operation, are also violative of the rights guaranteed under Article 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.*

*26. The learned Additional Solicitor General has, however, submitted that the impugned amendments cannot be regarded as arbitrary for the reason that by the reduction of the maximum limit in respect of Running Allowance from 75% to 45% for the period January 1, 1973 to March 31, 1974 and to 55% from April 1, 1979 onwards, the total amount of pension payable to the employees has not been reduced. The submission of the learned Additional Solicitor General is that since the pay scales had been revised under the 1973 Rules with effect from January 1, 1973, the maximum limit of 45% or 55% of the Running Allowance will have to be calculated on the basis of the revised pay scales while earlier the maximum limit of 75% of Running Allowance was being calculated on the basis of unrevised pay scales and, therefore, it cannot be said that there has been any reducation in the amount of pension payable to the respondents as a result of the impugned amendments in Rule 2544 and it cannot be said that their rights have been prejudicially affected in any manner. We are unable to agree. As indicated earlier, Rule 2301 of the Indian Railway Establishment Code prescribes in express terms that a pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government. The respondents who retired after January 1, 1973 but before December 5, 1988 were, therefore, entitled to have their* *pension computed on the basis of Rule 2544 as it stood on the date of their retirement. Under Rule 2544, as it stood prior to amendment by the impugned notifications, pension was required to be computed by taking into account the revised pay scales as per the 1973 Rules and the average emoluments were required to be calculated on the basis of the maximum limit of Running Allowance at 75% of the other emoluments, including the pay as per the revised pay scales under the 1973 Rules. Merely because the respondents were not paid their pension on the basis in view of the orders of the Railway Board dated January 21, 1974, March 22, 1976 and June 23, 1976, would not mean that the pension payable to them was not required to be computed in accordance with Rule 2544 as it stood on the date of their retirement. Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notifications dated December 5, 1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal has, in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated December 5, 1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from January 1, 1973 to March 31, 1979 and reduce it to 55% in respect of the period from April 1, 1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution."*

4. In the present case, if we look into the clarification issued by the Pay Anomaly Committee, it is apparent that the grievance of the petitioners has been aptly and suitably meted out. While the petitioners have been placed in the

pay-scale w.e.f. 01.01.2006 granting them Pay Band-3 with AGP of Rs.8000/- w.e.f. 01.01.2006, it is only the arrears which have been denied as the decision has taken time for the said purpose. However, over all, the benefit has already been granted. Contention of learned counsel for the petitioners that the actual benefit should be paid to the petitioners, is found to be without basis. It is not a case where someone else was getting higher pay than them. It is only that the pay anomaly resulted in persons working on lower post getting the same pay and the Pay Anomaly Committee has meted out the grievance. Actual benefit, therefore, is not required to be given. Further, we also hold that such grant of pay and benefits is purely a policy decision of the State which also takes into consideration the financial aspects. This Court would not be in a position to decide as to how much financial burden may be caused to State Government on account of actual payments to be made and they can always take a decision not to pay actual arrears while laying down the policy.

5. Accordingly, we do not find any reason to interfere with the notification and the writ petition is misconceived and the same is dismissed.

6. Pending application, if any, stands disposed of accordingly.

**(SANJEEV PRAKASH SHARMA)**
**JUDGE**

**28.04.2025**
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**(MEENAKSHI I. MEHTA)**
**JUDGE**

*Whether speaking/reasoned: Yes/No*
*Whether Reportable: Yes/No*