IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-18198-2016 (O&M)
Date of decision: 20.01.2025

Baldev Singh Brar ...Petitioner

VERSUS

State of Punjab ...Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. A.D.S. Jattana, Advocate for the petitioner.
Mr. B.S. Bali, Addl. AG Punjab.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenging the inclusion of certain conditions for fixation of pension in Clause 4.2 in memo No.3/23/09-3FPPC/885 dated 17.08.2009 issued by the Department of Finance, Government of Punjab, the petitioner has approached this Court alleging that such addition is an arbitrary and illegal insertion to deprive the benefit admissible to the pensioner/the employee, and discriminates between those who retired before 01.01.2006 and those who retired thereafter without any valid basis and in violation of law.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner was appointed as a Sectional Officer (now re-designated as Jr. Engineer on 09.09.1964) and was compulsorily retired from service on 06.02.1996 after having rendered service of 30 years 09 months and 14 days. He was drawing salary in the pay-scale Rs.5800-9200 with Grade Pay of Rs.3800/-. The basic pension of the petitioner was fixed @ Rs. 3480/- which was revised w.e.f. 01.01.2006 to an amount of Rs.7865/-. He contends

that service of the petitioner was governed by the Punjab Civil Services Rules and as per Rule 3.8 of the Punjab Civil Service Rules, Vol. II, service rendered by every Government employee begins to qualify for pension when he taken charge of the post to which he was first appointed. Relying upon the said Rules, it is submitted, that the Punjab State Government employees are entitled to a maximum pension after rendering services of 33 years. Respondent-State of Punjab constituted a Pay Commission for revision of Pay Scales of the Punjab Government employees and also to decide the measures to fund the additional expenditure on implementation of its recommendations.

3. It is submitted that as per the Notification issued by the Government of Punjab on 27.05.2009 in exercise of the powers conferred by the Proviso to Article 309 read with Clause (3) of Article 187 of the Constitution of India, the Punjab Civil Services (Revised Pay) Rules, 2009 were put in force. As per Rule 5 thereof, the drawal of pay in the revised pay structure was to be determined in terms thereof and that a Government employee could opt to continue to draw pay in the existing scale, until the date on which he earns his next or any subsequent increment(s) in the existing scale or until he vacates his post or ceases to draw pay in that scale and wherein an employee has been placed in a higher pay scale between 01.01.2006 and the date of Notification of these Rules on account of promotion, up-gradation of pay scale under the Assured Career Progression Scheme or otherwise, he may opt to switch over to the revised pay-structure from the date of such promotion, up-gradation etc. As per Rule 7, the pay of

the Government employee who opts or is deemed to have opted under sub-Rule (3) of Rule 6 was to be governed by the revised pay structure and their pay was to be fixed in the manner prescribed thereunder.

4. It is further argued by the learned counsel for the petitioner that the file regarding the implementation of the recommendations of the 5th Pay Commission report regarding revision of pay as well as the pension was put up before the competent authority. The issues were deliberated upon in the meeting of Implementation Committee under the Chairmanship of the then Chief Secretary on 06.02.2009 when the then Principal Secretary Finance was also present. In that meeting *inter alia* it was decided to implement para Nos. 7.27 and 7.28 with the caveat that the recommendations in para No. 7.27 be not accepted as the same had not been agreed to by the Central Government of India. It was further decided that para No.4.2 would be inserted to read as follows and that the erstwhile para No.4.2 would be renumbered to para No.4.3. The decision taken to approve para No.4.2 to be inserted in the Rules, reads thus:-

> ***"Para 4.2:- the fixation pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scales from which the pensioner had retired. <u>Since the consolidate pension will be inclusive of commuted portion pension, if any, the commuted portion will be directed from the amount while monthly disbursement.</u>"***

5. The above said draft Notification of paragraph No. 4.2 was accordingly approved by the competent authority including the Principal Secretary Finance and the Finance Minister as well. He contends that notwithstanding the decision taken by the Implementation Committee approving the draft recommendation as also the insertion of Clause 4.2, the respondent-Department issued the above said circular dated 17.08.2009 in which para No.4.2 was at variance with the decision as approved. The said Clause reads thus:-

> "*4.2. The fixation of Pension –xxxxxxxx-- plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired.* ***This will be reduced pro-rata if the qualifying service of the pension fall short of 33 years.***"

6. He submits that the while the **non-highlighted** part of the order is in accordance with the decision and as approved by the Implementation Committee, the **highlighted portion** is an addition carried out in the circular notwithstanding that there was no such approval granted by the competent authority and by deleting the portion as highlighted in the decision and extracted on the pre-page. He contends that the said anomaly has seemingly been incorporated by the respondents in a ministerial copying of a similar decision taken by the Ministry of Personnel, Public Grievances and Pensions, Govt. of India. He contends that vide Notification dated 29.08.2008, the 6th Central Pay Commission had been notified and that as per the Gazette Notification, the fitment benefits had been prescribed. He contends that notwithstanding the acceptance of the recommendations of the

Government of India with slight modifications, at the time when the official memorandum was issued on 14.10.2008 vide Folio No.38/37/08-P&PW (A).pt.1 by Ministry of Personnel Public Grievances & Pensions, Department of Pension & Pensioners' Welfare, Government of India, a similar foot-note was also put to the Annexure 1, in the revised pension based on revised pay bands and grade pays for posts carrying present scales in Group A, B, C & D as per the 6th Central Pay Commission. The said foot-note is extracted as under:-

> ***"Note- 1: As per Para 4.2 of OM No. 38/37/08-P&PW (A) dated 1.9.2008, the revised pension of those who retired after completing maximum required qualifying service (i.e. 33 years) before 1.1.2006 cannot be less than the pension indicated in column 8 above (i.e. 50% of the sum of Minimum of Pay Band and Grade pay/ scale corresponding to the scale of pay the pensioners held at the time of their retirement). The pension in Col.8 above will be reduced pro-rata, where the pensioner had less than the maximum required qualifying service (i.e. 33 years) for full pension as per Rule 49 of the CCS (Pension) Rules, 1972 as applicable on 1.1.2006 and in no case it will be less than Rs. 3500/- p.m. In case, the pension consolidated as per Para 4.1 of above OM is higher than the pension calculated in the manner above, the same (higher pension) will be treated as Basic pension."***

7. He contends that it is seemingly taking a cue from the aforesaid

that the office memorandum issued by the Government of Punjab made an alteration prescribing the requirement of qualifying service of 33 years for pension and thereby approving a pro-rata cut in the minimum pension in case the total length of service was less than 33 years. It is submitted that the aforesaid office memorandum and the note contained thereunder was a subject matter of challenge in O.A. No.1051 of 2012 and others before the Central Administrative (CAT). The said O.A. was however dismissed vide judgment dated 16.08.2013. The said judgment was challenged upto the Hon'ble Supreme Court wherein the order passed by the CAT was set aside by the Hon'ble Supreme Court and the parties were directed to move a review application in the O.A. He contends that a review application was accordingly filed on a limited issue before the CAT, Principal Bench which held that no such Clause could have been incorporated so as to reduce the minimum pension on a pro-rate basis solely on the strength of having rendered less than 33 years of service. Accordingly, the respondent-UOI was directed to ensure that the identical placed retirees be not differentiated in the said score once they have superannuated from the same post and from the same pay band. The operative part of the judgment reads thus:-

> ***"16. We are of the view that while in para 46, we had accepted the principle that pension of pre-2006 S-30 employees being less than post-2006 employees belonging to lower posts was absolutely unreasonable, however, this has not translated clearly and without ambiguity in para 47 of our order as cited above in para 8 and 9. Therefore, this is a***

mistake or error apparent on the face of the record. Moreover, this would also come under the category of any other sufficient reason in the light of Kamlesh Verma (supra) and Kamal Sengupta (supra). Therefore, this preliminary objection of the learned counsel for the respondents is overruled.

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18. As regards the third issue raised by the respondents, we had gone through this issue while passing order dated 20.11.2014 and examined the judgments of the Hon'ble Supreme Court in D.S. Nakara Vs. Union of India, 1983 SCC (L&S) 145 and S.P.S. Vains (supra) and thereafter passed our order. So those arguments cannot be repeated again while deciding this RA.

19. Having gone through our order and issue raised by the learned counsel for the applicants, we are of the opinion that our order as contained in para 47 needs to be modified. It is, therefore, ordered that the following lines will be added in para 47 between the words viz. S-24 S-29 pay scales and We, however, reject the claim.:

As we have held in para 46 above that a pre-2006 retiree of S-30 getting a pension less than post-2006 retirees in lower grade is absolutely unreasonable, we further direct the

respondents that the basic pension of pre-2006 retirees in S-30 should be fixed such that it is not less than Rs.38,500/-."

8. He further contends that a specific objection has been raised by the petitioner in the writ petition that the competent authority had never approved incorporation of any such pro-rate deduction in the minimum pension for the qualifying service of the person fell short 33 years and that notwithstanding non-denial of the specific pleadings as also the office noting(s), the respondents have resorted to deduction of the pension. The specific averments in this regard are as under:-

> ***"18. That the recommendations of the 5th Pay Commission itself shows that the pattern which was being followed by the commission, and was dealt by the government of Punjab at the level of the Finance Minister was as had been adopted by the Central Government.***
>
> ***19. That while dealing with this issue, the file notings and approvals were taken from the highest officers and Finance Minister after deliberations and discussions on the imputations, financial implications of the said recommendations. The implementation committee was formed which was headed by the then Chief Secretary, being appointed as its Chairman.***
>
> ***20. That as per the file notings, which had been applied under RTI by one of the other adversely affected pensioner, states the following: -***

"This file relates to the implementation of the recommendations of the 5th pay commission report regarding the pensioners. Chapter 7 of the report relates to the issue of pensions and the recommendations are contained from Para 7.6 onwards. These issues were deliberated upon in the meeting of the implementation committee under the chairmanship of the then Chief Sec on 06/05/2009 when the then PSF was also present. In that meeting inter alia it was decided to implement para 7.27 and 7.28 with the caveat that the recommendation in para 7.27: -

> ***"The fixation as per this fitment formula will be subject to the provisions that the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the Pay Scale and the Grade Pay thereon corresponding to the pre-revised scale from which the pensioner had retired."***

May not be accepted as this is not been agreed to by the Central Government either.

We have been receiving a lot of representation from the Pensioners Associations, pensioners joint front et cetera requesting for following the GoIs notification in the manner

of grant of revised pension rather than the recommendation of the 5th Punjab Pay Commission.

There are 2 main issues that the pensioners have presented and they relate to para 7.27 viz.:-

(i) Para 7.27 envisages a multiplication factor of 1.74 whereas GoI has agreed to a multiplication factor of 1.86 to its pensioners in the matter of fitment benefit to pensioners. There is also in line with the increase proposed for existing employees.

(ii) GoI has also accepted that the fixation of the pension as per the fitment formula will be subject to the provision that the revised pension in no case shall be lower than 50% of the sum of the minimum of the pay in the Pay Band and the Grade Pay thereon corresponding to the pre-revised pay scales from which the pensioner retired.

(iii) The demand of pensioners at Sr. No. 2 (i) is fully justified in terms of the fact that a multiplication factor for fitment benefit should be 1.86 and the same as that allowed by GoI to its pensioners.

The recommendations of the 5th of Punjab Pay Commission as at Sr. No. 2 (ii) have been accepted by GoI

vide it's No. 38/37/08-P&PW (A) of 01/09/2008 at flag 'z' and hence we may also accept the same. The draft notification would accordingly be amended to read as: -

> ***Para 4.1 the pension/family pension of existing pre-2006 pensioners will be consolidated with effect from 01/01/2006 by adding together: -***
>
> ***i. The existing pension/family pension.***
>
> ***ii. Dearness pension, where applicable.***
>
> ***iii. Dearness relief up to AICPI (IW) average indexed 536 (Base Year 1982- 100) i.e. @24% of the Basic Pensions/Basic Family Pension plus Dearness Pension as admissible, vide this Departments OM No. 42/2/2006- P&PW (G) dated 05/04/2006.***
>
> ***iii. Fitment weightage @40% of the existing pension/family pension.***
>
> ***Whether the existing pension in (i) above include the effect of merger of 50% of dearness relief w.e.f. 01/04/2004, the existing pension for the purpose of fitment weightage will be recalculated after excluding the merger Dearness Relief of 50% from the pension.***
>
> ***The amount so arrived at will be regarded as consolidated pension/family pension with effect from 01/01/2006.***

& Para 4.2 would be inserted to read as follows and in draft, para 4.2 would be renumbered to para 4.3: -

> ***Para 4.2: the fixation pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scales from which the pensioner had retired. Since the consolidated pension will be inclusive of commuted portion pension, if any, the commuted portion will be directed from the amount while monthly disbursement."***

The 5th Punjab Pay Commission had calculated an annual liability for the revision of pension to be Rs. 650 crore. With the proposed modification the liability is likely to increase to Rs. 695 crores and effect 2.38 lakh pensioners of the Punjab government.

A decision about the payment of arrears and other allowances would be taken in due course of time along with the other issues related to pensioners/existing employees.

Draft notification and above is submitted for kind approval please.

Sd/-S.E, 28.07.09

PSF Sd/- 03.08.09

FM Sd/-11/08

Sd/-

SE Sd/-

PSF Sd/-

ASF (R).

From pre-page 22 as per the orders of the Hon'ble Finance Minister.

The amended clear draft is submitted for acceptance/signatures.

Sd/-17/08/2009

Sd/-17/08/2009

SV () Before issuing the same may kindly be checked.

Sd/-17/08/09

ASF (R) Please see before issuing. Sd/-17/08/09

PSF Sd/-17.08.09

ASF (R) Sd/-

USF (B).

The draft recommendations of the 5th Punjab Pay Commission for pre-01/01/2006 for implementation have been accepted. The copies-8000 may kindly be allowed to be sent to The Controller, Printing & Stationary Department, as per the accepted draft, for printing, if so approved.

The draft is accepted/it is submitted for Signatures.

Sd/-

Issued vide PV 99-159

issued vide PV 162-63

The copy of the noting portion is annexed herewith as Annexure P-6.

21. That thus, the draft which had been approved by the Hon'ble Finance Minister as well as the highest officials of the Finance Department as well as the Chief Secretary, along with the support staff, was done by following the guidelines and recommendations already approved & published in the Gazette notification, Annexure P-5, by the Central Government. Even their own draft was changed, as can be seen from the above, to bring it in conformity with the Central government notification for pre- 01/01/2006 retirees. It is pertinent to mention here, there was no stipulation or a caveat/clarification for any further deductions on the basis of the length of service.

22. That however, at the time of notification vide No. 3/23/09 3FPPC/885 by the Government of Punjab, Department of Finance (Finance Pension Policy & Coordination Branch) dated: 17/08/2009 for implementing the recommendations of the 5th Punjab Pay Commission revision of pension pre-01/01/2006 pensioners/family

pensioners/recipients of extraordinary pension etc. again an unauthorised/unapproved lines were added in para 4.2 and the same is quoted herein below for the ready reference of this Hon'ble court: -

> ***"Para 4.2: The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scales from which the pensioner had retired. This will be reduced pro rata if the qualifying service of the person fall short of 33 years"***

23. That as can be seen from the accepted draft from the file noting, Annexure P-6, and the discussion and the modifications done after due deliberations so as to bring it in conformity with the Central government notification, the fact was neither put to the policymakers with regard to the pro-rata cut in the pensioner on the basis of the length of service nor it had ever been approved by the policymakers to make such a cut. A copy of the notification dated 17/08/2009 is annexed herewith as Annexure P-7.

24. That thus, unapproved/unauthorised insertions were made without any basis or authority and therefore, this writ petition is being filed on the first issue for the deletion of

the lines with regard to pro-rata cut on the basis of the length of service, the same being discriminatory and arbitrary and without any justification or approved authority.

25. That furthermore, it is pertinent to mention here that at the time when the discussions and deliberations with regard to implementation of the 5th Punjab Pay Commission with regard to pre-01/01/2006 retirees was being discussed, Annexure P-6, the financial implication of such a move was also discussed and the amount that was required was also increased proportionately in view of the fact that since the central government had implemented a multiplication factor of to 1.86, therefore, the respondents had also increased the said multiplication factor from 1.74 to 1.86.”

9. Reference may also be made to the specific response filed by the respondents to the said paragraphs:-

“18. It is submitted that recommendations of Central Pay Commission are recommendary in nature and are not binding on State Government. The contents of para No.1 to 7 of preliminary submissions are reiterated.

19. It is submitted that the recommendations of 5th Pay Commission with regard to issuance of instructions dated 17.8.2009 were submitted before the Committee headed by the Chief Secretary Punjab. After approval of the Committee the instructions dated 17.8.2009 were issued with the approval of

Finance Minister, Punjab.

20. That the contents of Para No. 20 of CWP are admitted as a matter of record, however contents of Para No.2 to 7 of preliminary submissions are reiterated.

21. It is submitted that Annexure P-5 referred to by the Petitioner is notification dated 27.5.2009 issued by the Government of Punjab, Department of Finance (Finance Personnel Branch-1) regarding Pay Scales of employees on the recommendations of 5th Punjab Pay Commission. Petitioner has wrongly stated that the Annexure P-5 has been issued by the Government of India.

22. That the contents of this para are denied. It is submitted that draft of instructions dated 17.8.2009 (Annexure P-7) was issued after the approval of the then Hon'ble Finance Minister Punjab. Contents of para No. 19 are reiterated.

23. That the contents of this para are denied. It is submitted that draft of instructions dated 17.8.2009 (Annexure P-7) was issued after the approval of the then Hon'ble Finance Minister Punjab. Contents of para No. 19 are reiterated.

24. That the contents of this para are denied that unapproved/unauthorised insertions were made without any basis or authority. It is submitted that draft of instructions

dated 17.8.2009 (Annexure P-7) was issued after the approval of the Competent Authority. The Contents of Para No.22 are reiterated.

25. That the contents of Para No. 25 of CWP are admitted as a matter of record. The contents of para No.2 and 3 of preliminary submission are reiterated."

10. He thus submits that an additional qualification added in the office memorandum altering the admissible pension was clearly beyond the decision and approval of the draft taken by the competent authority and amounted to unauthorized additions in the draft approved on 17.08.2009.

11. Learned counsel appearing on behalf of the respondent-State of Punjab, however, contends that the contentions of the petitioner cannot be accepted that since the office memorandum issued on 17.08.2009 was approved by the Principal Secretary Finance and that the said condition has been rightly imposed and as the petitioner had not undergone the qualifying service of 33 years for payment of the maximum pension, the *pro-rata* cut on qualifying service for the period falling short of 33 years was rightly imposed.

12. He is however not in a position to controvert that the reply filed by the respondent does not dispute the specific assertion made by the petitioner that the competent authority i.e. the Implementing Committee had not taken a decision with respect to the alteration in the draft, as notified by the office memorandum of 17.08.2009.

13. He is also in a position to dispute about the existence of a

similar clause in the Note as issued by the Government of India and the same having been set aside by the CAT in its judgment which had become final.

14. Having considered the rival submissions advanced on behalf of the respective parties and having gone through the documents appended alongwith the present petition, it has remained disputed that notwithstanding the decision of the Implementation Committee to grant the benefits including a minimum pay to the extent of 50% of the grade pay, the respondents approved a further deduction in the pension in an event of the qualifying service of pension being below 33 years and thereby imposing a *pro-rata* cut. The aforesaid clause having not been approved by the Implementation Committee, the office memorandum thus incorporated a condition without competence. The said office memorandum, to the said extent, is thus in violation of the decision so taken.

15. The respondents have also failed to rebut the specific pleading made by the petitioner in this regard and rather acknowledged the same to be a matter of record including office noting(s) which approved the draft insertion 4.2 as has already been extracted earlier in the present judgment.

16. For the foregoing reasons, the instant writ petition is **allowed**. The addition "***This will be reduced pro-rata if the qualifying service of the pension fall short of 33 years***", in Clause 4.2 in memo No.3/23/09-3FPPC/885 dated 17.08.2009 issued Department of Finance, is thus held to be without authority and is hence set aside.

17. The respondent-State is further directed to re-calculate the

admissibly pensionary benefits to the petitioner within a period of 03 months of the date of receipt of certified copy of this order. The admissible dues shall thereafter be released to the petitioner within a further period of 02 months.

18. Needless to mention that in the event such benefit are not released in the period specified as above, the respondent-authorities shall be liable to pay interest @6% per annum on the differential amount. Additionally costs of Rs.50,000/- be also recovered from the officer/official causing delay to be deposited with the with the Poor Patient Welfare Fund (PPWF) of Post Graduate Institute of Medical Education & Research, Chandigarh.

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Prayer in the application is for impleadment of the authorities of the department of the answering respondent as respondents No.2 and 3 in the main petition.

However, no justification for impleadment of the said department is made out since there is no claim that has been raised by the petitioner against the department in question and the length of service etc. is not a subject matter of dispute. The challenge is solely to the decision and memorandum issued by the Department of Finance.

The application is dismissed.

(VINOD S. BHARDWAJ)
JUDGE

20.01.2025
Mangal Singh

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