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

Date of decision: 8th May, 2026

+ W.P.(C) 7625/2019, CM APPL. 31753/2019

COL JAMSHAI D AKHTAR (RETD.)Petitioner

Through: Mr. Indra Sen Singh, Mr. Nasir
Mohammad and Ms. Kaberi Sharma,
Advocates.

versus

GENERAL MANAGER (HR) ENGINEERING PROJECTS (INDIA)
ATD. AND ORS.Respondent

Through: Ms. Manisha Agrawal Narain, CGSC
with Mr. Nipun Jain, Advocate.
Mr. Debarshi Bhadra, Advocate for
R-2, 3.

+ CONT.CAS(C) 883/2022

COL JAMSHAI D AKHTAR (RETD.)Petitioner

Through: Mr. Indra Sen Singh, Mr. Nasir
Mohammad and Ms. Kaberi Sharma,
Advocates.

versus

SRI P K SAHOO & ANR.Respondent

Through: Mr. Debarshi Bhadra, Advocate.

+ W.P.(C) 7598/2019, CM APPL. 31601/2019

WG CDR SANDEEP MALHOTRA (RETD.)Petitioner

Through: Mr. Indra Sen Singh, Mr. Nasir
Mohammad and Ms. Kaberi Sharma,
Advocates.



versus

UNION OF INDIA AND ORS.

.....Respondent

Through: Ms. Manisha Agrawal Narain, CGSC
with Mr. Nipun Jain, Advocate.
Mr. Debarshi Bhadra, Advocate for
R-2, 3.
Mr. Devvrat Yadav, SPC with Mr.
Kartik Sharma, GP.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. These matters concern retired defence officers who, after leaving military service, were selected by Engineering Projects (India) Ltd.,¹ a Central Public Sector Enterprise,² through a recruitment advertisement. Their pay was fixed at the minimum of the applicable pay scales and no pay protection with reference to their last drawn military pay was granted. Years later, EPIL sought to deduct the defence pension drawn by the Petitioners from the salary paid by EPIL and, for that purpose, directed them to furnish pension particulars for refixation of pay. The Petitioners challenge that course of action as arbitrary, unreasonable, contrary to the governing policy framework, and irreconcilable with the pay fixation consciously made and acted upon by EPIL itself.

2. Both writ petitions assail individual communications dated 27th May, 2019 issued to each of the Petitioners, as well as the common order dated

¹ "EPIL"

² "CPSE"



12th June, 2019. The communications dated 27th May, 2019 required the Petitioners to furnish pension details so that their pay could be refixed after subtracting pension. Thereafter, by the communication dated 12th June, 2019, the Respondents directed withholding of the Petitioners' salaries on account of non-furnishing of documents. The legal foundation pleaded by the Respondents is principally the Office Memorandum dated 14th December, 2012 issued by the Department of Public Enterprises,³ read with DPE clarification dated 28th March, 2019.

3. The two writ petitions arise from substantially similar facts. Col. Jamshaid Akhtar (Retd.) retired from the Indian Army in the rank of Colonel and later joined EPIL as General Manager (Civil). Wg. Cdr. Sandeep Malhotra (Retd.) retired from the Indian Air Force in the rank of Wing Commander and later joined EPIL as Deputy General Manager (Finance). While their ranks, dates of appointment, posts and pay scales differ, the impugned action, the policy framework invoked by the Respondents, the interim protection granted by this Court, and the central legal issue are common. The matters have, therefore, been heard together and are being decided by this common judgment. Separate factual features shall be noticed where they have a bearing on the relief to be granted.

4. CONT.CAS(C) 883/2022 arises from the interim order passed in W.P.(C) 7625/2019. Since the writ petitions themselves are being finally decided, that contempt petition is also taken up and disposed of by the present judgment.

Factual background in W.P.(C) 7625/2019

5. Col. Jamshaid Akhtar (Retd.), was commissioned in the Indian Army

³ "DPE"



and retired voluntarily on 2nd June, 2012 in the rank of Colonel. According to him, at the time of retirement, he was drawing pay in Pay Band-4 with grade pay and military service pay. Upon retirement, he became entitled to defence pension.

6. In response to an advertisement issued by EPIL, the Petitioner applied for the post of General Manager (Civil) on 2nd August, 2013. His case is that, at the stage of application and interview, he disclosed his previous military service, last pay drawn, and defence pension. He also states that he had expected pay protection with reference to his last military pay, but EPIL informed him that he would be appointed at the minimum of the applicable pay scale.

7. EPIL issued a communication dated 2nd December, 2013, informing the Petitioner that he had been selected as General Manager (Civil) in the IDA pay scale of ₹43,200-66,000/-. The terms and conditions followed on 13th December, 2013. His basic pay was fixed at ₹43,200/- per month, namely, the minimum of the E-7 scale.

8. The terms of appointment did not provide that the defence pension drawn by the Petitioner would be deducted from his pay in EPIL. Nor was there any stipulation that his salary would be liable to retrospective refixation on that basis. One clause required him to declare that he was joining EPIL on a straight appointment and was not holding lien on his previous employment.

9. The Petitioner joined EPIL on 9th December, 2013. After completion of probation, he was confirmed with effect from 9th December, 2014. EPIL thereafter continued to treat him as a regular employee and paid salary on the basis of the pay fixation made at the time of appointment.



10. In December, 2017, EPIL addressed a communication to the Petitioner, seeking proof that he was not drawing dearness allowance on his defence pension. The Petitioner replied that he was aware that a re-employed pensioner could not draw dearness allowance from two sources and that the pension disbursing authority had been informed to discontinue dearness relief on pension. He furnished a pension pay slip to show that dearness relief on pension was not being drawn.

11. Thereafter, EPIL addressed communications dated 19th March, 2018 and 20th December, 2018, requiring the Petitioner to submit documents showing pension received from the date of joining EPIL, so that his pay could be refixed. In response, the Petitioner contended that his appointment had been made through an open selection process; that his pay had been fixed at the minimum of the entry level applicable to the post; and that neither any advance increment nor any pay protection had been extended to him. It was accordingly asserted that no deduction on account of pension could be effected from the pay so fixed.

12. EPIL issued communication dated 3rd January, 2019 stating, in substance, that since the Petitioner had neither been appointed on absorption basis nor come from a PSU, CPSE or Government organisation, there was no question of pay protection or advance increments. It was further stated that, as per Paragraph No. 6 of the DPE Office Memorandum dated 14th December, 2012, his pension amount would be subtracted from his pay in EPIL. EPIL also indicated that clarification would be sought from the DPE on the Petitioner's representation.

13. On 27th May, 2019, EPIL informed the Petitioner that DPE had clarified that the total admissible pension amount of Government retired



personnel would be subtracted from the pay, and that pay fixation of re-employed Government pensioners would be done accordingly in the CPSE. The Petitioner was asked to submit proof of pension drawn from the date of joining. The communication further stated that, if the documents were not submitted within 15 days, his monthly salary would be held up.

14. On 12th June, 2019, EPIL addressed its Finance Division stating that, since the Petitioner and another similarly situated officer had not furnished pension documents, their monthly salary was to be withheld till further communication.

15. These two communications are impugned in W.P.(C) 7625/2019.

Facts in W.P.(C) 7598/2019

16. Wg. Cdr. Sandeep Malhotra (Retd.), retired voluntarily from the Indian Air Force on 31st October, 2013 in the rank of Wing Commander. He was thereafter granted defence pension, which, according to the pleadings, was approximately ₹32,490/- per month.

17. In November/December, 2015, the Petitioner applied for the post of Deputy General Manager (Finance) in EPIL pursuant to an open recruitment process. He was interviewed on 18th February, 2016. EPIL issued an offer of appointment dated 8th March, 2016 appointing him as Deputy General Manager (Finance) in E-5 grade in the IDA scale of ₹32,900-58,000/-.

18. The terms of appointment fixed his basic pay at ₹32,900/- per month, *i.e.*, the minimum of the applicable E-5 scale. Like the Petitioner in W.P.(C) 7625/2019, he was also not given pay protection with reference to his last military pay. The appointment terms did not state that his defence pension would be deducted from his EPIL pay.

19. The Petitioner joined EPIL on 21st March, 2016. His appointment was



subsequently confirmed with effect from 21st March, 2017.

20. The Petitioner states that he had disclosed his status as a retired defence officer and his pension particulars during the pre-interview and pre-joining process. He also states that EPIL was fully aware that he was drawing defence pension when it issued the appointment letter fixing his pay at the minimum of the E-5 scale.

21. Upon joining EPIL, the Petitioner requested his pension disbursing bank to stop dearness allowance on pension. Canara Bank, by letter dated 22nd January, 2018, informed him that dearness relief had been stopped from 1st January, 2018 and excess dearness relief paid from 21st March, 2016 to 31st December, 2017 had been recovered.

22. EPIL thereafter issued communications dated 8th March, 2018, 19th March, 2018 and 20th December, 2018, requiring the Petitioner to submit pension particulars for refixation of pay. The Petitioner responded that the requisite details had already been furnished at the time of appointment and, in any event, no deduction towards pension could be made since his pay had been fixed at the minimum entry level without pay protection and dearness allowance was being drawn only on the pay received from EPIL.

23. EPIL then issued communication dated 27th May, 2019, followed by office note dated 12th June, 2019, seeking to implement deduction of pension from pay and to withhold salary in the absence of pension documents. These communications are impugned in W.P.(C) 7598/2019.

Interim Orders and Subsequent Developments

24. In both writ petitions, this Court passed interim orders on 26th July, 2019 directing the Respondent to maintain *status quo* and restraining them from giving effect to the impugned communications.



25. By virtue of those interim orders, no deduction pursuant to the impugned communications was effected from the salaries payable to the Petitioners during the pendency of the writ petitions.

26. During pendency of the proceedings, both Petitioners resigned from EPIL. Col. Jamshaid Akhtar stood relieved with effect from 15th July, 2021, and Wg. Cdr. Sandeep Malhotra on 30th September, 2022. The controversy, therefore, no longer concerns prospective monthly salary deduction. It now concerns the legality of retrospective recovery and withholding of consequential dues, including terminal benefits or arrears, on the basis of the impugned decision.

27. The Petitioners submit that the Respondents continue to maintain that substantial amounts are recoverable from them on account of defence pension drawn during service with EPIL. The Respondents, on the other hand, state that the amounts received by the Petitioners during service cannot be finally settled unless pay is refixed in accordance with DPE instructions.

Petitioners' Case

28. Mr. Indra Sen Singh, counsel for the Petitioners, submits that the impugned action proceeds on a fundamental misunderstanding of the concept of re-employment and the pay fixation regime applicable to retired defence officers. His submissions are summarised as follows:

28.1 The Petitioners were not absorbed into EPIL from the Armed Forces or any Government department, nor were they appointed on deputation or with continuation of any lien from their previous service. They responded to public advertisements issued by EPIL, participated in an open selection process, and were thereafter appointed as regular employees to civil posts



under EPIL.

28.2 EPIL was fully aware of the Petitioners' status as retired defence officers. Details regarding their previous service, last pay drawn, and pension were duly disclosed during the recruitment process itself. In such circumstances, the Respondents cannot now seek to treat facts which were fully disclosed and within their knowledge as constituting suppression on the part of the Petitioners.

28.3 The Petitioners were not granted any advantage on account of their previous military service while fixing pay in EPIL. Their pay was consciously fixed at the minimum of the applicable pay scale corresponding to the post to which they were appointed. No advance increments were granted, no higher stage fixation was allowed, and no element of military pay or previous service benefit was protected or carried forward.

28.4 The entire rationale of deducting pension arises only where an employee receives the benefit of past service by way of pay protection or fixation at a higher stage. If pay is fixed after reckoning last pay drawn, the non-ignorable portion of pension may be deducted so that the employee does not receive double benefit. However, where the employee is treated as a fresh recruit and fixed at the bare minimum of the scale, there is no occasion to deduct pension once again. This approach is internally inconsistent and arbitrary in law.

28.5 The terms and conditions governing appointment contained no stipulation that defence pension would be deducted from the salary payable by EPIL. The Petitioners accepted appointment on the basis of the terms expressly offered to them. If the Respondents intended to apply pension deduction even where pay had been fixed at the minimum entry level, such



condition ought to have been incorporated in the appointment terms at the threshold. Having remained silent at the time of appointment and having permitted the Petitioners to continue in service for several years, EPIL cannot now reopen the issue to the serious financial prejudice of the Petitioners.

28.6 The Petitioners place particular emphasis on the consequences of the interpretation advanced by the Respondents. The basic pay of Wg. Cdr. Sandeep Malhotra was fixed at ₹32,900/- per month, while his defence pension was approximately ₹32,490/- per month. If EPIL's interpretation is accepted, his effective salary would stand reduced to approximately ₹410/- per month. Similarly, in the case of Col. Jamshaid Akhtar, the effective pay would be approximately ₹10,505/- per month. Such salaries are wholly inconsistent with Grade-A posts such as General Manager and Deputy General Manager, and an interpretation producing such anomalous results cannot be regarded as reasonable unless the language admits of no other construction.

28.7 The Respondents' own conduct over the years militates against the stand now sought to be taken. The Petitioners were appointed; continued in service; and confirmed in their respective posts, without objection. The issue regarding deduction of pension was sought to be reopened only after several years. This is not a case involving immediate rectification of a clerical or inadvertent error, and the allegation that the Petitioners were deriving an impermissible double benefit is therefore overstated and unfair.

28.8 The Petitioners also place reliance upon various Office Memoranda issued by the DoPT, governing re-employed pensioners, including Office Memorandum dated 1st May, 2017 and earlier instructions issued in the



years 1999 and 2010. It is urged that these instructions show that the pay minus pension principle must be understood as part of a structured pay fixation exercise and not as a blunt deduction from minimum entry pay.

28.9 The Petitioners submit that DPE's Office Memorandum dated 14th December, 2012 cannot be read in isolation. It must be harmonised with the DoPT regime, particularly because the DPE instructions themselves refer to pension being regulated as per DoPT orders.

28.10 Even if the Respondents' interpretation is assumed to be correct, retrospective recovery after years of service is barred by settled principles of service law. Reliance is placed on the judgements of the Supreme Court in *State of Punjab v. Rafiq Masih*⁴ and *Thomas Daniel v. State of Kerala*,⁵ to submit that recovery of excess payment is impermissible where the employee has not practised fraud or misrepresentation and the payment resulted from the employer's own interpretation of rules.

Respondents' Case

29. Mr. Debarshi Bhadra, counsel for Respondent Nos. 2 and 3, defends the impugned decision on the following grounds;

29.1 EPIL is a CPSE and is governed by instructions issued by the DPE. The applicable instructions are contained in DPE Office Memorandum dated 14th December, 2012. Paragraph No. 6 of that Office Memorandum expressly provides that re-employed Government pensioners in CPSEs shall draw pay only in the prescribed scale of the post, that no protection of pay of the previous post shall be given, that initial pay shall be fixed at the minimum of the applicable CPSE scale, and that pension admissible to the

⁴ (2015) 4 SCC 334.

⁵ 2022 SCC OnLine SC 536.



retired employee shall be subtracted from admissible pay.

29.2 Paragraph No. 9 of the said Office Memorandum, extends the pay fixation principles applicable to Board-level executives to below Board-level executives and non-unionised supervisors. Since the Petitioners held executive posts below Board level, Paragraph No. 9 brings them squarely within the policy.

29.3 The DPE clarified the position on 28th March, 2019, stating that the pay of re-employed Government pensioners in CPSEs is to be fixed at the minimum of the applicable scale and that pension admissible to the retired employee is to be subtracted from admissible pay. The language of the DPE Office Memorandum is plain and binding, leaving no discretion with the EPIL. It is contended that the Petitioners cannot rely upon Office Memoranda issued by the DoPT governing Central Government civil posts in preference to specific DPE instructions applicable to CPSEs.

29.4 The Petitioners continued to draw full defence pension while simultaneously receiving salary from EPIL and that the object of the DPE policy is to prevent such double financial benefit from public funds. It is contended that despite repeated communications, the Petitioners failed to furnish complete pension particulars, thereby preventing proper pay fixation in accordance with the applicable policy.

29.5 The payments made contrary to applicable rules can be recovered. A mistaken or erroneous pay fixation does not confer a vested right. Reliance is placed on the judgement of the Supreme Court in ***Chandi Prasad Uniyal v. State of Uttarakhand***,⁶ to contend that excess payments of public money made without authority of law are ordinarily recoverable.



29.6 Preliminary objections have also been raised regarding maintainability of the writ petitions. It is contended that EPIL itself has not been impleaded despite the substantive reliefs being directed against it. Respondent Nos. 2 and 3 are merely officers or employees of EPIL and cannot be treated as representing the company in their individual capacity. It is further submitted that the writ petitions suffer from misjoinder and non-joinder of necessary parties and that the Petitioners ought to have first pursued appropriate remedies within the organisation.

29.7 In the contempt proceedings, the Respondent contends that the interim order merely restrained giving effect to the impugned communications. It did not direct release of terminal benefits to the Petitioners after resignation. Reliance is placed on *Sudhir Vasudeva v. M. George Ravishekaran*,⁷ to submit that contempt jurisdiction cannot travel beyond the four corners of the order alleged to have been breached. An objection regarding limitation under Section 20 of the Contempt of Courts Act, 1971 has also been raised.

Questions for Determination

30. The following questions arise for determination:

- (i) Whether the writ petitions are liable to be declined on the preliminary objections of non-joinder, misjoinder, or availability of an internal remedy.
- (ii) Whether, on a proper construction of the DPE Office Memorandum dated 14th December, 2012 and the connected policy framework, the Respondents were justified in seeking to deduct the defence pension drawn by the Petitioners from the salary fixed and paid to them by EPIL, despite their pay having been fixed at the minimum entry-level scale without pay

⁶ (2012) 8 SCC 417.

⁷ (2014) 3 SCC 373.



protection.

(iii) Whether, assuming there was any error in the initial fixation, the Respondents could reopen the fixation and effect retrospective recovery after several years of service, in the absence of fraud or misrepresentation by the Petitioners.

(iv) What consequential relief, if any, should follow in the writ petitions.

(v) Whether, in view of the final adjudication of the writ petitions, any separate order is required in the connected contempt petition founded upon the interim order passed therein.

Analysis and findings

Maintainability of the writ petition

31. This Court is unable to sustain the preliminary objections raised by the Respondents regarding non-joinder, misjoinder, or availability of an internal remedy. The concerned functionaries of EPIL are already before this Court in substance and in representation, and the controversy has been fully contested on merits without any demonstrated prejudice on account of the manner of impleadment. The objections, therefore, remain technical in nature and do not go to the root of the maintainability of the proceedings.

32. Equally, the existence of an internal administrative remedy cannot operate as a bar in the facts of the present case, where the challenge is directed against the legality of the impugned action itself, the controversy turns upon interpretation of binding governmental instructions, and the matter has remained pending before this Court for a considerable period during which interim orders were operating. No useful purpose would now be served by relegating the Petitioners to an internal mechanism after the parties have exchanged pleadings in full and the matter has been heard



extensively on merits. The said objections are, accordingly, rejected.

The legal position on Pension, Pay Fixation and Recovery

33. Certain settled principles with respect to pensionary benefits must first be noticed. Pension is not a bounty payable at the discretion of the employer. It is well settled that the right to pension is a valuable right vesting in a Government servant.⁸ In ***D.S. Nakara v. Union of India***,⁹ the Court explained that pension is earned by past service and is neither a bounty nor a matter of grace. In ***State of Jharkhand v. Jitendra Kumar Srivastava***,¹⁰ the Supreme Court held that pension and gratuity cannot be withheld except by authority of law, and that such benefits partake the character of property.

34. These principles do not imply that a re-employed pensioner is immune from the operation of a valid rule governing pay fixation which takes pension into account. They do, however, underscore that pension earned for past service cannot be subjected to unilateral adjustment or deduction unless the governing rule clearly authorises such consequence and is applied in a manner that is fair, consistent, and in conformity with the object underlying the policy.

35. The principles governing recovery of excess payments also merit consideration. In ***Chandi Prasad Uniyal***, the Supreme Court held that excess payments from public funds may ordinarily be recovered, especially where payment was made without authority. The other side of the principle is equally settled. In ***Rafiq Masih***, the Supreme Court identified situations where recovery would be inequitable and impermissible, particularly when

⁸ Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330.

⁹ (1983) 1 SCC 305.



employees were not responsible for overpayment and recovery after long delay would cause grave hardship. The Court identified, *inter alia*, cases involving recovery from retired employees or employees nearing retirement, cases where excess payment had continued for more than five years prior to the recovery order, and situations where recovery would be unduly harsh or arbitrary.

36. In ***Thomas Daniel***, the Supreme Court reiterated the same principle and restrained recovery where the excess payment had arisen on account of the employer's own erroneous interpretation of the applicable rules, and not due to any fraud, concealment, or misrepresentation on the part of the employee.

37. These decisions do not confer an unrestricted benefit upon employees or prevent correction of every erroneous pay fixation. They instead recognise that the State and its instrumentalities are required to act fairly and equitably while seeking to rectify mistakes of their own making, particularly where the employee neither induced the error nor contributed to it, and has regulated his affairs over a long period on the basis of the salary paid.

38. The distinction assumes significance in the present case. Had the Petitioners concealed the factum of pension or secured higher pay on the basis of any false representation, the legal position may have been materially different. Likewise, had EPIL applied the impugned interpretation contemporaneously at the stage of appointment and pay fixation, the controversy would have stood on a different footing. What is sought to be undertaken, however, is a belated reopening of a pay fixation which was consciously made, acted upon, and allowed to continue for several years.

¹⁰ (2013) 12 SCC 210.



The DPE Office Memorandum dated 14th December, 2012

39. The Respondents' case rests principally upon Paragraph No. 6 of the DPE Office Memorandum dated 14th December, 2012. Since the controversy substantially turns on the interpretation and application of the said Office Memorandum, its relevant provisions require closer examination.

40. The Office Memorandum deals with finalisation of terms and conditions, including pay fixation, in respect of Board-level executives of CPSEs, and the revised procedure therefor. It records that almost all Board-level appointees are placed on IDA pattern pay scales and are appointed on fixed tenure basis. It further records that all appointments in CPSEs are generally on permanent absorption basis, with deputation being confined to rare and exceptional cases.

41. Paragraph No. 3 of the Office Memorandum states that where a person from Government service, including defence service, joins a CPSE on permanent absorption basis, there is need to protect his or her emoluments, and that pension, if any, drawn on account of service rendered in Government, is regulated as per DoPT orders.

42. Paragraph No. 6 deals with re-employed Government pensioners at Board level, providing that such persons would draw pay only in the prescribed scale of the post in which they are re-employed. It says that no protection of pay of the post held prior to re-employment would be given. It further states that initial pay shall be fixed at the minimum of the pay scale applicable to the post in the CPSE. It then states that pension admissible to the retired employee would be subtracted from admissible pay.

43. Paragraph No. 9 states that the pay fixation principles applicable to Board-level executives would apply *mutatis mutandis* to below Board-level



executives and non-unionised supervisors.

44. The Respondents read Paragraph No. 6 as embodying a straightforward formula, namely, minimum of the CPSE pay scale minus pension. According to them, although the Petitioners' pay was fixed at the minimum of the prescribed scales under their appointment letters, the amount of defence pension must thereafter stand deducted from such pay. The Petitioners, however, contend that the provision cannot be construed in such mechanical terms. Their submission is that where an employee has been denied pay protection altogether and appointed at the minimum entry stage as a fresh recruit, pension cannot once again be deducted so as to reduce the effective salary to a nominal amount. According to them, the "pay minus pension" principle forms part of a broader pay fixation exercise in cases where previous service and emoluments are taken into account for fixation of pay.

45. This Court finds considerable difficulty in accepting the Respondents' interpretation. Paragraph No. 6 is fundamentally a pay fixation provision, prescribing the manner in which initial pay is to be determined where a re-employed pensioner joins a CPSE. If the Respondents considered the provision applicable to the Petitioners, the same ought to have been applied at the stage of appointment itself, or at least within a reasonable period after obtaining the requisite particulars. In the absence of fraud, concealment, or misrepresentation on the part of the Petitioners, the provision could not remain unacted upon for years together and thereafter be invoked retrospectively to unsettle service conditions which had been consciously fixed and acted upon.

46. Secondly, the expression "admissible pay" cannot be read as a licence



to reduce the notified minimum pay of the post to a purely notional figure in every case, irrespective of the mode of appointment, the terms offered, the disclosures made, and the employer's own treatment of the employee. The instruction must operate coherently within the pay structure to which it belongs. A construction that renders appointment to a prescribed scale practically meaningless should not be preferred unless the text admits of no other view.

47. Further, there is a material distinction between denying pay protection and deducting pension from pay which has been protected or fixed with reference to past service. Where last pay is protected, or where prior service affects the stage of fixation, the rationale for subtracting the non-ignorable portion of pension is apparent: the employee should not receive both protected pay based on past service and full pension for that very past service. However, where the employer has consciously declined to grant pay protection or any corresponding advantage, the rationale for deducting pension does not operate with the same force.

48. The interpretation canvassed by the Respondents effectively treats two materially different situations alike: first, a re-employed pensioner whose previous pay and service have been reckoned for pay fixation; and second, a retired defence officer recruited afresh through open selection and placed at the minimum of the CPSE scale without any protection of prior emoluments. Such flattening of material distinctions is difficult to sustain.

49. The practical consequences flowing from the Respondents' interpretation further demonstrate the anomaly in such construction. Wg. Cdr. Sandeep Malhotra was appointed to an E-5 executive post with a basic pay of ₹32,900/-, while his defence pension was approximately ₹32,490/-.



On the Respondents' interpretation, his effective basic pay would stand reduced to approximately ₹410/- per month. Similarly, Col. Jamshaid Akhtar was appointed as General Manager (Civil) in the E-7 scale with basic pay fixed at ₹43,200/-, whereas his defence pension was approximately ₹32,695/-. Application of the same interpretation would reduce his effective basic pay to approximately ₹10,505/- per month. This Court does not rest its conclusion merely on the harshness of the outcome. However, where an interpretation leads to a result so plainly disconnected from the ordinary understanding of appointment to senior executive posts carrying prescribed pay scales, the Court is required to examine whether such consequence is indeed mandated by the governing instruction. In the considered opinion of this Court, it is not.

50. The DPE clarification dated 28th March, 2019 does not improve the Respondents' case. It repeats the general formulation that pay of re-employed Government pensioners in CPSEs is to be fixed at the minimum of the scale and pension is to be subtracted from admissible pay. It does not examine the peculiar position of employees already appointed years earlier through open recruitment, fixed at minimum pay, confirmed, continued in service, and then subjected to retrospective re-fixation.

51. Equally, the subsequent communication of the DoPT in November, 2023, which essentially advised the administrative Ministry to defend the present proceedings and maintain a unified stand, cannot be construed as adjudicating upon the legality of the impugned action or determining the rights of the Petitioners.

Application to the present cases

52. The material facts may now be drawn together. Both Petitioners



entered EPIL through open selection. Their appointment letters fixed their basic pay at the minimum of the applicable scale. The terms of appointment did not state that the defence pension drawn by them would be subtracted from the salary so fixed. No pay protection was granted. EPIL accepted and acted upon these terms for several years, during which the Petitioners were continued in service, confirmed in their respective posts, and granted annual increments. The issue regarding deduction of pension was sought to be reopened only thereafter.

53. The Respondents' own communication dated 3rd January, 2019 in the case of Col. Jamshaid Akhtar records that there was no question of pay protection or advance increments since he had neither been appointed on absorption basis nor come from a PSU, CPSE or Government organisation. Having itself treated the Petitioner as disentitled to any benefit flowing from past service because his appointment was through open selection, EPIL could not subsequently seek to retrospectively apply only the adverse consequence of the re-employed pensioner regime by deducting pension from the minimum pay already fixed and paid.

54. The position of Wg. Cdr. Sandeep Malhotra stands on no different footing. He too was appointed in the E-5 grade at the minimum of the prescribed scale. Nothing in the appointment terms indicated that the salary offered represented merely the balance after deducting defence pension. Nor was it ever disclosed to him that the basic pay reflected in the appointment letter was only provisional and liable to substantial reduction at a later stage by adjustment of pension.

55. This Court also finds no merit in the allegation of concealment levelled against the Petitioners. Their status as retired defence officers was



always within the knowledge of EPIL. The communications issued by EPIL in the years 2017 and 2018 themselves addressed the Petitioners in that capacity. The controversy did not arise because any hidden fact subsequently came to light; it arose because EPIL, years later, adopted a different understanding of the governing policy.

56. There is also substance in the Petitioners' submission that the issue regarding dearness allowance or dearness relief had already been addressed. EPIL initially questioned whether the Petitioners were drawing dearness allowance from two different sources. In response, the Petitioners stated that dearness relief on pension had already been discontinued. In the case of Wg. Cdr. Sandeep Malhotra, excess dearness relief was in fact recovered by the bank. These circumstances are inconsistent with any deliberate attempt on the part of the Petitioners to secure an undisclosed double benefit.

57. The Court is not persuaded that the Petitioners' refusal to furnish further pension documents can be treated as misconduct or suppression. The Petitioner disputed EPIL's authority to reopen pay fixation. Their refusal was part of a legal objection to the proposed refixation. It may or may not have been advisable from an administrative standpoint, but it does not establish fraud.

58. Once fraud, concealment or misrepresentation is absent, the case must be tested on the governing instructions, fairness in public employment, and the permissible limits of retrospective correction.

59. The impugned communications were issued in 2019. Col. Jamshaid Akhtar had joined EPIL in December, 2013. Wg. Cdr. Sandeep Malhotra had joined in March, 2016. By then, both Petitioners had served for substantial periods under pay fixation made by EPIL itself. In Col. Akhtar's



case, the arrangement had continued for more than five years. In Wg. Cdr. Malhotra's case, it had continued for over three years. Both had completed probation and stood confirmed. The impugned action was not a prospective clarification of future pay. It sought to revisit payments made from the respective dates of joining.

60. Such action, in the opinion of this Court, bears the vice of arbitrariness. Undoubtedly, a public employer is not precluded from correcting a legal or administrative error upon its discovery. However, the power of correction is not unqualified. Where the employee has neither induced the alleged error nor concealed material facts, and where the employer itself framed the appointment terms, fixed the pay, and consistently acted upon the same over a long period of time, retrospective recovery or refixation must rest upon clear legal authority and compelling justification. Neither is demonstrated in the present case.

61. The Respondent's approach also blurs the distinction between pension and salary. The pension drawn by the Petitioners represented deferred compensation earned for past service rendered in the Armed Forces, whereas the salary paid by EPIL constituted remuneration for services rendered to EPIL in the posts held by them. A valid pay fixation regime may account for both; however, the deduction must form part of the fixation at the proper stage, with clarity and fairness. It cannot be imposed years later in a manner that unsettles completed service and completed payments.

62. The Court therefore holds that, in the facts of these cases, EPIL was not justified in seeking to deduct the defence pension drawn by the Petitioners from the salary fixed and paid by EPIL after appointing them through open selection at the minimum of the applicable scale without pay



protection. The impugned communications dated 27th May, 2019 and 12th June, 2019 cannot be sustained.

Withholding of terminal dues and arrears

63. Both Petitioners are no longer in service with EPIL. Col. Jamshaid Akhtar stood relieved on resignation with effect from 15th July, 2021 and Wg. Cdr. Sandeep Malhotra from 30th September, 2022. The controversy has, therefore, moved beyond the question of monthly salary, which stood protected by the interim orders passed by this Court. What now survives is the Respondents' assertion that substantial amounts would arise if the impugned decision is sustained, and the Petitioners' grievance that their retiral and terminal dues continue to remain withheld on account of the present dispute.

64. Once this Court has held that the impugned refixation exercise cannot be sustained, the Respondents cannot retain terminal dues, leave encashment, gratuity, or other lawful payments merely to secure a possible recovery founded upon that very exercise. A public employer cannot achieve indirectly, by withholding accrued dues, what it is not legally entitled to recover directly.

65. Terminal dues stand on a different footing from monthly salary. They often represent accumulated statutory, contractual, or service benefits earned over the course of employment. Gratuity, in particular, cannot be withheld as a matter of administrative convenience. If an employer seeks to deny or forfeit gratuity, it must establish clear authority in law and strict compliance with the statutory conditions governing such denial or forfeiture. No such foundation has been laid in the present cases.

66. The Respondents have submitted that pay revision arrears have not



yet been approved or released generally in respect of EPIL employees. This Court is not, by the present judgment, creating any special entitlement in favour of the Petitioners to amounts which have not otherwise become payable in accordance with the applicable rules, policies, circulars, or decisions governing EPIL employees as a class. The direction issued herein is confined to amounts otherwise admissible to the Petitioners and withheld only because of the impugned pension deduction dispute or the pendency of these proceedings.

67. If any amount is withheld for a reason wholly independent of the impugned communications, the Respondents must communicate the same expressly. They cannot take shelter under vague references to “pay fixation” or “pending litigation”, once the legality of the impugned re-fixation exercise itself stands adjudicated by this Court.

68. The Respondents shall, therefore, undertake a fresh computation of the Petitioners’ dues without deducting defence pension from the salaries fixed and paid by EPIL. Any amount otherwise payable to either Petitioner shall be released within twelve weeks from the date of this judgment. If the Respondents decline to release any specific component, they shall communicate a reasoned decision identifying the precise rule, policy, circular, or order under which such withholding is claimed. Any delay beyond the aforesaid period of twelve weeks shall entail payment of interest at the rate of 8% per annum.

69. Both writ petitions are allowed in the above terms.

CONT.CAS(C) 883/2022

70. The contempt petition has been instituted by Col. Jamshaid Akhtar alleging disobedience of the interim order dated 26th July, 2019 passed in



W.P.(C) 7625/2019. By that order, this Court had directed the parties to maintain *status quo* and restrained the Respondents from giving effect to the impugned communications. The contempt petition, therefore, is founded not upon any final adjudication of rights, but upon the alleged breach of an interim arrangement made to preserve the position of the parties during the pendency of the writ petition.

71. During the pendency of the writ petition, the Petitioner resigned from EPIL and stood relieved from service. The grievance in the contempt petition is that, notwithstanding the interim protection, the Respondents withheld certain dues payable upon cessation of employment. The Respondents, however, contend that the interim order did not contain any positive direction for release of terminal benefits after resignation and was confined to restraining implementation of the two impugned communications.

72. This Court does not consider it necessary to enter into that controversy. In fact, the Petitioner, Col. Jamshaid Akhtar, also does not press for any punitive action in view of the final adjudication of the writ petition. Moreover, since the substantive writ petition is being decided by the present judgment, the interim order, which operated only during its pendency, must yield to the final determination.

73. In these circumstances, CONT.CAS(C) 883/2022 is disposed of without recording any finding on wilful disobedience. If the directions contained in this judgment are not complied with, it shall remain open to the aggrieved party to pursue remedies available in law.



74. In view of the foregoing, all the petitions are disposed of, along with all pending applications.

SANJEEV NARULA, J

MAY 8, 2026/hc