
(2014) 04 P&H CK 0191
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7337 of 2013

Ajit Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 04 P&H CK 0191

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Raman B. Garg, Advocate for the Appellant; Harish Rathee, Sr. DAG, Haryana, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Reply on behalf of respondent No. 4 filed in Court, taken on record.

2. Petitioners have approached this Court praying for issuance of a writ of mandamus directing respondents to grant the benefit of revision of pension in terms of notification dated 17.04.2009 (Annexure P-2) whereby the employees retiring between 01.01.2006 and 17.04.2009 have not been granted the benefit of fixation of pension at 50% of the pay withdrawn in the last year of service by treating it as a complete service which would entitle the employee to full pension.

3. Counsel for the petitioner states that no reply has been filed by respondents No. 1 to 3. It is his contention that the respondent-State has adopted the recommendations of the Central Government Pay Commission and there has not been constituted a separate Pay Commission by the State of Haryana as far as the employees of the State are concerned. The present notification dated 17.04.2009 (Annexure P-2) is also based upon one of such situations where the recommendations of the Central Government Pay Commission have been accepted by the Government of Haryana and given effect to. The rider, therefore,

imposed in the notification dated 17.04.2009 (Annexure P-2) restricting it to the employees who would retire on or after 17.04.2009 is not sustainable. Petitioners, who have retired between 01.01.2006 and 17.04.2009 are being discriminated against by putting a cut off date, which is not permissible in law. He further contends that the State of Haryana has, all through since the year 1969, been accepting the notifications issued by the Central Government with regard to the pay revision on the basis of the recommendations made by the Central Government Pay Commission. The clarification thereafter issued by the Central Government has also been implemented by the State of Haryana, one of which is Annexure P-4 dated 20.08.2009, which has been accepted and implemented by the State of Haryana vide notification dated 30.03.2010 (Annexure P-5). He, therefore, contends that the notification qua the petitioners cannot be made applicable by the State of Haryana restricting it to the employees who have retired on or after 17.04.2009.

4. This contention of the counsel for the petitioners cannot be accepted in the light of the Division Bench judgment of this Court in CWP No. 352 of 2012 titled as Gurtek Singh and others vs. State of Haryana and others, decided on 11.01.2012 (Annexure R-2) where it has been held as follows:-

Undisputedly, the petitioners have retired from service on superannuation, in between 1.1.2006 to 16.4.2009. It is also undisputed fact that none of the petitioners has completed 33 years of qualifying service, which would have made them entitled for full pension under the Pension Rules existing at the time of their retirement. With effect from 17.4.2009, the Revised Pension Rules of 2009 came into force. It is an admitted fact that all the petitioners retired from service before coming into force of the Revised Pension Rules of 2009. It is further admitted position that as per the Pension Rules, applicable prior to the Revised Pension Rules of 2009, a retiree was entitled for full pension on completion of 33 years of qualifying service. Under Rule 8.1 of the Revised Pension Rules of 2009, the linkage of full pension with 33 years of qualifying service was modified to the extent that once a Government servant retires after rendering the minimum qualifying service of 28 years, pension shall be sanctioned at 50 per cent of the emoluments as defined in Rule 4 of the Rules subject to other conditions relating the same. However, under sub-rule (3), it was provided that the revised provisions for calculation of pension shall come into force with effect from the date of issue of the notification of the Rules and shall be applicable to Government servants retiring on or after that date. The Governments servants who have retired on or after 1st January, 2006 but before the date of issue of the notification of the Rules, will continue to be governed by the Rules which were in force immediately before these Rules came into effect as regards qualifying service. With regard to the grant of revised pay scales, the Haryana Civil Services (Revised Pay) Rules, 2008 (hereinafter referred to as "the Revised Pay Rules of 2008") were implemented with effect from 1.1.2006, but as far as the provisions regarding calculation of revised pension of the employees who retired between 1.1.2006 to 17.4.2009 (the date of issuance of notification enforcing the

Revised Pension Rules of 2009) are concerned, the Revised Pension Rules of 2009 will apply, but as regards the qualifying service, the old Rules were made applicable. Therefore, it has been found by the Director, Secondary Education, that the petitioners, who have though retired after 1.1.2006, but before 17.4.2009, are not entitled for full pension, as they have not completed 33 years of qualifying service. However, the amount of their pension shall be calculated as per the revised pay in Revised Pension Rules of 2009. Under Rule 8(3) of the Revised Pension Rules of 2009, they cannot be given full pension on completion of 28 years of qualifying service. Thus, we do not find any illegality in the order passed by the Director, Secondary Education.

Faced with this situation, learned counsel for the petitioners argued that Rule 8(3) of the Revised Pension Rules of 2009 is arbitrary and ultra vires to the Constitution of India. We do not find any merit in this argument. Under Rule 8(1), benefit of full pension has been given to the employees on completion of 28 years of qualifying service. Under sub-rule (3), this benefit has been made available to the employees who have retired after 17.4.2009, i.e. after coming into force of the Revised Pension Rules of 2009. Undisputedly, the petitioners have retired much earlier to the aforesaid date. However, they have been given the benefit of revision of pay scales with effect from 1.1.2006, which has been given to all the employees under the Revised Pay Rules of 2008, whether they have retired on or after 1.1.2006, because the revision of pay was made effective with effect from 1.1.2006. Thus, the clarification made by these Rules is not arbitrary. Hence, we do not find any discrimination or violation of Articles 14 and 16 of the Constitution of India in Rule 8(3) of the Revised Pension Rules of 2009.

Dismissed.

5. A perusal of the above judgment would show that the Division Bench has held that the benefit of the notification dated 17.04.2009 is only available to the employees who have retired on or after 17.04.2009. If that be so, the claim, as made by the petitioners in the present writ petition, cannot be accepted.

6. The contention of the counsel for the petitioners that the State of Haryana has been accepting all the notifications issued by the Central Pay Commission and the clarifications issued from time to time by the Central Government (reference in this regard was made by the counsel to Annexures P-4 and P-5), could have been accepted only if such an adoption/implementation of the notification would have come in the case of the notification dated 17.04.2009 by the State of Haryana. The stand of the respondents in the written statement is also very categorical that the said notification is to be made effective w.e.f. 17.04.2009 and not prior thereto.

7. In the light of the Division Bench judgment of this Court in Gurtek Singh's case (supra), the claim, as made by the petitioners in the present writ petition, cannot be accepted.

8. The writ petition, therefore, stands dismissed.