
(2016) 04 P&H CK 0255
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7848 of 2002

Dr. G.S. Narula and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Punjab Civil Services Rules — Rule 2.44(a)(i), 2.52, 6.19(c)

Citation : (2016) 3 PLR 794 : (2016) 4 RSJ 483 : (2016) 3 SCT 440

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : R.K. Malik, Senior Advocate with Ms. Rimple Kadyan, Advocates, for the Appellant; Hitesh Pandit, Additional Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—Petitioners by way of present petition are seeking quashing of notification dated 07.12.2001 (Annexure P-2) whereby the Non-Practicing Allowance (hereinafter to be referred as "the NPA") which was earlier considered as part of the pay has been excluded and net effect is that all those who retired after 07.12.2001 (Annexure P-2) will be granted pension after excluding the NPA as part of pay. The Haryana Government has adopted the Central pattern and adopted the same definition of emoluments which is prevailing in the Central Government.

2. The Central Government vide notification dated 07.04.1988 (Annexure P-3) whereby the NPA is to be counted as pay for all service benefits including retirement benefits. In the background of the notification dated 07.04.1998 (Annexure P-3), the notification dated 07.12.2001 (Annexure P-2) is liable to be quashed. The petitioners were appointed as Medical Officers on 04.11.1968, 24.02.1971 and 02.11.1970 respectively.

3. Upon notice, the stand taken by respondent Nos.1 and 2 in the written

statement is that the Haryana Government has broadly followed the Central pattern and issued notifications dated 07.01.2002 (Annexure R-1) and dated 10.10.2002 (Annexure R-2). The petitioners are not entitled to count the NPA as emoluments for the purpose of pension under the provisions of Section 6.19 (c) of Punjab Civil Service Rules and the Pension is required to be computed on the basis of only pay as defined by Rule 2.44(a) of Punjab C.S.R. Vol. Part I. The state Government, vide notification dated 07.12.2001 (Annexure P-2) has amended the Rule 6.19) of Punjab Civil Services Rules Vol. II. The provision of Rule 2.44 (a)(i) of Punjab C.S.R. does not include the element of special pay sanctioned in the nature of NPA as defined by Rule 2.52 of Punjab Civil Services Rules, Volume I, Part I. The element of NPA paid to the doctors treated as special pay.

4. The Government as per instructions issued by the Department of Finance on 20.03.1992 (Annexure P-1) had specially classed the NPA to be counted as part of the pay for all purposes including the purpose for calculation of dearness allowance. However, vide gazette notification dated 07.12.2001 (Annexure P-2) thereby superseding the previous special instructions to the extent that the special pay (NPA) granted to the doctors would not form part of the pay as defined vide Rule 2.44(a)(i) of Punjab C.S.R. Vol. I Part-I. It is further stated that while revising the rates the NPA from 01.04.2001 as per Government instruction dated 09.04.2001 (Annexure R-3) the Government has restricted the counting of NPA as part of pay for the purpose of D.A. entitlement of loans and advances and TA/DA only and the entitlement of counting the NPA as emoluments for pension was withdrawn. The instructions dated 10.10.2002 (Annexure R-II) for ready reference is as under: -

"The undersigned is directed to invite your attention to the subject noted above and to state that Haryana Government is following the principals adopted by Government of India for consolidation/revision of pension of its pensioners covered under the provisions of the Punjab Civil Services Rules Volume-II (as applicable to the State of Haryana) the principle has been laid down in the following O.M. stated by the Government of India.

O.M. No.45/3/99-P&PW (A) dated 29th October, 1999.

In conformity with clarification issued by the Government of India, the Governor of Haryana having decided to adopt the said clarification of 29th October, 1999 in respect of the pensioners under Haryana Government is pleased to order that NPA is not be taken on 1.1.86. It is also not to be added to the minimum of the revised scale of pay as on 1.1.1996 in case where consolidated pension/Family Pension is to be stopped up to 50% or 30% respectively in terms of notification No. 1/2(8) 98-FR-II Part. VIII) dated 7th January, 2002."

5. The State Government is now bound by the notifications dated 07.01.2002 (Annexure R-1) and dated 10.10.2002 (Annexure R-2) respectively and the same were issued after receiving clarification of Government of India, vide letter dated

29.10.1999.

6. In replication to the written statement filed by respondent Nos.1 and 2, the petitioner had pleaded that those doctors who were retired prior to 07.04.2001 in their cases NPA allowance was taken into consideration for calculating pension. This benefit was extended to those doctors who were recruited prior to 01.11.1966. During the pendency of this writ petition it has been decided vide letter dated 26.04.2006 (Annexure P-5) that those who retired after 18.04.2006, the NPA shall be treated as part of pay and counted for the purpose of pension. The benefit of counting of the NPA as part of the pay for the purpose of pension has not been extended to those, who have retired between 07.12.2001 to 17.04.2006. This classification is neither reasonable and on the face of it violative of Article 14 and 16 of Constitution of India.

7. Perusal of order dated 26.04.2006 (Annexure P-5) shows that the Government has taken a conscious decision that the HCMS Doctors retiring w.e.f. 18.04.2006, the NPA will be treated as part of pay within the meaning of Rule 6.19(c) of Punjab CSR Volume II and will count for pensionary benefits. In the case of HCMS Doctors, who have already retired between 07.12.2001 to 17.04.2006, the NPA will be counted for revision of pension notionally and the actual benefit will be admissible prospectively i.e. from 18.04.2006 onwards.

8. Mr. R.K. Malik, Senior Advocate, for the petitioners has referred to a judgment passed by Supreme Court in the case of K.C. Bajaj and others v. Union of India and others, Civil Appeal Nos. 10640-46 of 2013, decided on 27.11.2013. The perusal of this judgment shows that the petitioners were employees of Central Health Services, Government of India or the Railways. The question before the Supreme Court was with regard to O.M. dated 7.4.1998, the Ministry of Personnel (Public Grievances and Pension), Department of Pension and Pensioners' Welfare fixed the NPA ratio at 25% of the basic pay subject to the condition that pay plus the NPA shall not exceed Rs. 29,500/- for the doctors belonging to Central Health Services. It was also mentioned that the NPA shall count as pay for all service benefits including retiral benefits. After eight months, the Ministry of Personnel (Public Grievances and Pension) issued O.M. Dated 17.12.1998, incorporating the decision taken by the President that w.e.f. 1.1.1996, pension of pensioners irrespective of the date of their retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced from 1.1.1996 of the post last held by the pensioner. The clarification issued by the Ministry of Personnel (Public Grievances & Pension), Department of Pension & Pensioners' Welfare New Delhi on 29 October, 1999 with regard to whether entry admissible as on 01.01.1986 was taken into consideration after re-fixation of pay on notional basis or whether the NPA was to be added to the minimum of the revised scale while considering stepping up consolidated pension on 1/1/96. While issuing this clarification it was stated that "NPA granted to medical officers does not form part of the scales". This clarification was challenged by Doctor K.C. Bajaj and others under Section 19 of the Administrative Tribunals Act, 1985.

Their applications were dismissed by the Tribunal vide order dated 5.10.2001 and the said order was set aside by the Division Bench of the Delhi High Court in CWP No.7322/2001 by holding that there was no justification to exclude the element of NPA for the purpose of calculating the pension in the O.M. Dated 29.10.1999. The judgment of the Delhi High Court was upheld by the Supreme Court and during the pendency of the SLP, on an advice given by Attorney General of India, the Prime Minister accorded his approval for acceptance of the order of the Delhi High Court in Dr. K.C. Garg's case and other connected matters by filing special leave petitions, which were converted into Civil Appeal Nos.1972-1974/2003 and the same were withdrawn vide order dated 13.5.2005, despite the fact that the Prime Minister had accorded approval to withdraw the O.M. dated 29.10.1999, the petitioners were not extended the benefit of calculation of pension after adding NPA. The relief was sought to be denied to them on the basis of judgment in the case of Col. B. J. Akkara (Retd.) v. Government of India and others (2006) 11 SCC 709. Confusion arose while implementing the decision of the Delhi High Court judgment and the Ministry issued clarification dated 11.09.2001 that the NPA granted to medical officers does not form part of the scale. The Supreme Court clarified that the clarification issued by the Ministry of Defence vide circular dated 11.9.2001 could be equated with O.M. dated 29.10.1999, which had the effect of modifying the decision of the President without his approval. Once the O.M. dated 29.10.1999 had been withdrawn by the Prime Minister after accorded his approval of the Delhi High Court in Col. B. J. Akkara's (Retd.) case (supra) and the SLPs were withdrawn on 13.05.2005, the petitioner as per O.M. dated 07.04.1998 issued by department of Ministry of Personnel (Public Grievances and Pension), Department of Pension and Pensions' Welfare and Circular dated 7.6.1999, for all intents and purposes the NPA shall count as pay for all service benefits including retirement benefits. The judgment in the case of Col B. J. Akkara's (Retd.) case (supra) could not be applied while granting the said benefit to the doctors who were serving in Central Health Services, the Railways and other departments of the Government. The SLP was allowed and the respondents were directed to re-calculate the pension payable admissible to the appellants by adding the element of NPA.

9. After perusing the judgment of the Supreme Court in K.C. Bajaj and others case (supra), the benefit of NPA has been extended to the doctors for the purpose of calculating the pensionary benefits on the recommendation of the 5th Central Pay Commission. The stand taken by the respondent(s) in the present case that the Haryana Government has broadly followed the central pattern for fixing the pension of the petitioners, who were doctors. During the pendency of this petition, vide notification dated 26.04.2006, a conscious decision has further been taken to include the NPA as part of pay within the meaning of Rule 6.19(c) of the Punjab C.S.R. Volume II on a pensionary benefit. Hence, the necessary benefits have already been granted to the petitioners but w.e.f. 18.04.2006. In view of the judgment of the Supreme Court in K.C. Bajaj and others (supra) case, the grant of NPA as per the O.M. dated 07.04.1998, has been extended to

the doctors as per the 5th pay recommendation. Following the said judgment, the present writ petition is allowed. The instructions dated 07.12.2001 (Annexure P-2) is set aside and the petitioners are held entitled to get their pension after counting the NPA w.e.f. 07.12.2001 to 17.04.2006. The instructions dated 26.04.2006 (Annexure P-5) are accordingly modified to the above said extent.