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(2016) 12 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 27180 of 2015 (O/M)

Dr. Ramesh Kumar Patnaik — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:
Constitution of India, 1950 — Article 14
Punjab Civil Services Rules (Volume II) — Rule 6.19-C

Citation : (2017) 1 SCT 730

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : Mr. Vivek Aggarwal and Mr. Lalit Rishi, Advocates, for the Petitioner; Mr. R.P. Singh, Additional A.G. Haryana, for the Respondent; Mr. Mahesh Dheer, Advocate, for the Respondent No. 5 and 6

Final Decision : Allowed

Judgement

Kuldip Singh J. (Oral) - The petitioner retired as a Civil Surgeon, Ambala, on 30.4.2001 on attaining the age of superannuation. While fixing his pension, the Non Practicing Allowance (in short ''NPA'') was taken into account while calculating the average emoluments of last 10 months. Accordingly, his pension was fixed at Rs. 7,598/-, which was later on revised to Rs. 7,674/- i.e. basic pay at Rs. 16,300/- plus Rs. 900/- NPA plus Rs. 200/- special pay etc. In the meanwhile, on receipt of report of the 6th Central Pay Commission, which was followed by the Haryana Government and the new Haryana Civil Services (Revised Pay) Rules, 2008, were promulgated by the Haryana Government, in which they were given revised pay scales with effect from 1.1.2006. Accordingly, in place of pay scale of Rs. 14300-400- 18300, from which the petitioner retired, was revised to the corresponding pay band/scale of Rs. 37,400-67,000 and the grade pay of Rs. 8,700/-. Thereafter, the Haryana Government notified the Haryana Civil Services (Revised Pension) Part-I Rules, 2009, wherein the NPA for counting the pensionary benefits was not taken into consideration. Subsequently, the Haryana Government issued the notification dated 26.4.2006 (Annexure-

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P-7), in which it was decided that the HCMS doctors retiring after 18.4.2006, the Non Practicing Allowance will be treated as a part of the pay within the meaning of Rule 6.19-C of Punjab Civil Services Rules, Volume-II and will be counted for pensionary benefits. In case of HCMS doctors, who have already retired between 7.12.2001 to 17.4.2006, the Non Practicing Allowance will be admissible prospectively i.e. 18.4.2006 onwards. The said instructions (Annexure-P-7) were followed by another instructions dated 20.7.2009 (Annexure-P-9), in which, while referring to the earlier two instructions i.e. dated 26.4.2006 (Annexure-P-7) and dated 15.9.2006, it was decided that in case of the doctors, who retired between 1.4.2001 to 6.12.2001, the NPA will be treated as a part of the pension. However, the benefit will be notional from 1.4.2001 and the actual benefit will be admissible prospectively i.e. from the date of issuance of these instructions. In pursuance to the said instructions dated 20.7.2009 (Annexure-P-9), the pension of the petitioner was revised, vide order dated 17.3.2012 (Annexure-P-10), stating that the benefit of NPA on account of fixation of pension was erroneously given to the petitioner in the month of December, 2010, with effect from 1.10.2006 and the arrears of the revised pension has been accordingly revised. Now, CPPC have rectified the data and the excess pension arrears amounting to Rs. 5,41,021/- worked out with effect from 1.1.2006, are recoverable, stating that the pension disbursing authority is not authorised to sanction/revision of NPA, for which the pensioner will have to approach the pension sanctioning authority through his department. It also comes out that the petitioner had earlier approached this Court by way of filing CWP No. 6416 of 2012, which was disposed of by this Court on 21.7.2014 (Annexure-P-11), directing the respondents to consider the representation of the petitioner and pass a speaking order thereon. Accordingly, the speaking order dated 23.12.2014 (Annexure-P-13) was passed, whereby the claim of the petitioner was rejected, holding as under :-

" Accordingly, I, Ramniwas, IAS, Additional Chief Secretary to Government Haryana, Health Department, Haryana, Chandigarh, do hereby reject the claim of the petitioner to add twenty five percent of Non Practicing Allowance in his revised pension as claimed by him in his representation dated 11.8.2014. Further in terms of letter dated 20.7.2009, benefit of NPA for calculating Pension is to be given to those retirees who have retired between 1.4.2001 to 6.12.2001, on notional basis and actual benefit is to be given with effect from issuance of those instructions, whereas Dr. Ramesh Kumar Patnaik, Civil Surgeon (Retired), i.e. the petitioner is getting the actual benefit of NPA in Pension from 1.5.2001 as he was retired on 30.4.2001 after attaining the age of superannuation. Pension Disbursing Authority i.e. concerned bank is hereby directed to take necessary action after adopting the due procedure. I pass the speaking order accordingly."

2. In the reply, the respondents have taken the stand that the petitioner is not covered under the provisions of instructions dated 26.4.2006 (Annexure-P-7) as these are applicable to the doctors, who have already retired from Government service between 7.12.2001 to 17.4.2006. The NPA was to be counted for revision

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of pension notionally and the actual benefit was admissible prospectively i.e. from 18.4.2006 onwards. The petitioner retired from service on 30.4.2001. Hence, the petitioner is not entitled to the benefit of instructions dated 26.4.2006. It was further stated that the case of the petitioner is covered under F.D. instructions dated 20.7.2009 (Annexure-P-9), which provides for counting the NPA for pensionary benefits to the doctors, who retired between 1.4.2001 to 6.12.2001. Therefore, he is entitled to notional benefit from 1.4.2001 and actual benefit is admissible prospectively i.e. from the date of issuance of those instructions i.e. 20.7.2009.

3. I have heard the learned counsels for the parties and have also carefully gone through the file.

4. The factual position at the time of retirement of the petitioner is not disputed. When the petitioner retied from service, the NPA was treated as a part of the pay and the pension was accordingly fixed. The controversy arose when the recommendations of the report of 6th Central Pay Commission were implemented by the Haryana Government, in which the NPA was not treated as a part of the pay and the pension was accordingly fixed. The said recommendations were applicable with effect from 1.1.2006. It appears that there was some resentment and the controversy was addressed by the Government for the first time by issuing instructions dated 24.6.2006 (Annexure-P-7), vide which it was decided that the HCMS doctors, who retired with effect from 18.4.2006 onwards, the NPA will be treated as a part of the pay within the meaning of Rule 6.19-C of the Punjab Civil Services Rules, Volume-II and will be counted for pensionary benefits. Regarding the doctors, who retired between 7.12.2001 to 17.4.2006, the NPA will be admissible prospectively i.e. from 18.4.2006. Here it is reminded that the 6th Central Pay Commission report became applicable with effect from 1.1.2006. It comes out that apparently to address further grievance, instructions dated 20.7.2009 (Annexure-P-9) were issued, which is reproduced as under :-

" I am directed to refer to the department letter No. 1/52/2005-2 pension dated 26.4.2006 and 15.9.2006 on the subject cited above to say that the matter regarding counting of Non Practicing Allowance for pensionary benefit for the Doctors retired between 1.4.2001 to 6.12.2001 has been under consideration of the State Government. Now after due consideration it has been decided to allow the counting of NPA for pensionary benefit to Doctors (eligible to NPA) who retired during 1.4.2001 to 6.12.2001. The benefit will be notional from 1.4.2001 and actual benefit will be admissible prospectively i.e. from the date of issue of these instructions. This benefit will also be made available to Doctors (eligible for NPA) who retired from elsewhere in the State Government during the above said period."

5. The controversy is regarding the date of applicability of these instructions. In the instructions, while stating that the notional benefit will be allowed from 1.4.2001, it was stated that actual benefit will be admissible from the date of issuance of ''these instructions''. According to the petitioner, since ''these

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instructions'' are in continuation of the earlier instructions dated 26.4.2006 (Annexure-P-7), therefore, it would mean that the actual benefit is admissible from the date i.e. 18.4.2006, whereas according to the State, the words ''these instructions'' means the instructions dated 20.7.2009 (Annexure-P-9) and in that case, the benefit will be admissible from 20.7.2009. Therefore, to interpret the words ''these instructions'' one has to look into both the instructions dated 26.4.2006 (Annexure-P-7) and instructions dated 20.7.2009 (Annexure-P-9). Vide instructions dated 26.4.2006 (Annexure-P-7), the benefit was released to the doctors, who have retired from service between 7.12.2001 to 17.4.2006 and after the issuance of instructions dated 20.7.2009 (Annexure-P-9), the benefit was released to the doctors, who retired from service between 1.4.2001 to 6.12.2001. After considering both the instructions jointly, I am of the view that since the Government had decided to restore the earlier position i.e. treating NPA as a part of the pay, therefore, apparently, while reading both the instructions together, it comes out that what was undone by the 6th Central Pay Commission report was sought to be restored i.e. treating NPA as a part of the pay. Therefore, it has to be read that the instructions dated 20.7.2009 (Annexure-P-9) were in continuation of the earlier instructions dated 26.4.2006 (Annexure-P-7) and though the notional benefit was available from 1.4.2001, but the actual benefit of NPA, treating as a part of the pay, was released from 18.4.2006 onwards, though the report of the 6th Central Pay Commission became applicable with effect from 1.1.2006.

6. It is to be noticed here that in the judgment of the Hon''ble Supreme Court of India in Civil Appeal Nos. 10640-46 of 2013 along with other connected matters, titled as K.C. Bajaj and others v. Union of India and others, decided on 27.11.2013, it has held that the NPA is a part of the pay. It was treated as a part of the pay at the time of the retirement of the petitioner. Therefore, apparently, vide instructions dated 26.4.2006 (Annexure-P-7), the anomaly arisen out of the 6th Central Pay Commission report was sought to be removed. The matter was also considered by this Court in CWP No. 7848 of 2002, titled as Dr. G.S. Narula and others Versus State of Haryana and another, decided on 6.4.2016, wherein the matter regarding taking the Non Practicing Allowance into account for calculating the pension of the HCMS doctors, who retired from service between 7.12.2001 to 17.4.2006, was considered and it was held that the Non Practicing Allowance is to be treated as a part of the pay for the doctors, who retired between 7.12.2001 to 17.4.2006. The said petition was filed in the year 2002 and the present instructions dated 26.4.2006 (Annexure-P-7) and another instructions dated 20.7.2009 (Annexure-P-9) were issued thereafter. Therefore, it is held that for the petitioner, who retired during the period 1.4.2001 to 6.12.2001, the notional benefit is to be released from 1.4.2001 and the actual benefit will be admissible prospectively i.e. from the date of issuance of earlier instructions dated 26.4.2006 (Annexure-P-7) and not from the subsequent instructions dated 20.7.2009 (Annexure-P-9) as the instructions dated 20.7.2009 (Annexure-P-9) are in continuation of the instructions dated 26.4.2006

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(Annexure-P-7) and sought to remove the anomaly i.e. withdrawal of the benefit of NPA as a part of the pay for the purpose of pensionary benefits. As such, the impugned order dated 17.3.2012 (Annexure-P-10) as well as the speaking order dated 23.12.2014 (Annexure-P-13), so far as contrary to the said findings, are hereby quashed. It is held that the petitioner is entitled to the counting of Non Practicing Allowance as a part of the pay notionally from 1.4.2001 and actual benefit is to be released to him from 18.4.2006 onwards. Accordingly, the pension of the petitioner is to be re-calculated. After calculating the pension in terms of the above noted order, the excess payment recovered from the petitioner shall be refunded to him with the same rate of interest, which was recovered from the petitioner, while the remaining payment, if any, can be retained by the department.

The present writ petition is accordingly allowed.

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