
(2021) 06 SHI CK 0143
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 1200 Of 2020

Dr. Ved Parkash Sharma & Anr

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 28-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 14

Fundamental Rules, Vol I — Rule 9 (21)(a)(ii), (21)(a)(i)

Citation : (2021) 06 SHI CK 0143

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : S.P. Chatterji, Ajay Viadya, Hemant Vaid, Vikrant Chandel

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. The writ petitioners herein are one Dr. Ved Parkash Sharma, and, one Dr. Chander Kanta Sharma. Dr. Ved Parkash Sharma, superannuated from

service on 2.12.1997, whereas, Dr. Chander Kanta Sharma, also superannuated from service on 2.12.1997. During the tenure of their services, both

were in receipt of Non Practicing Allowance (NPA). The grant of NPA was in terms of Fundamental Rule ((21)(a)(i) read with Fundamental Rule 9

(21(a)(ii), and, Rules whereof, read as under:-

â??F.R.9. Unless there be something repugnant in the subject or context, the terms defined in this Chapter are used in the rules in the sense here

explained:-

(21)(a) â??Payâ?? means the amount drawn monthly by a government servant as:-

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, special pay and personal pay;

(ii) any other emoluments which may be specially classed as pay by the President.â??

2. The grievance(s) as ventilated by the petitioners, in the extant writ petition are with respect of a notification, borne in Annexure A-2, made on 28th

July, 1998, wherethrough, though benefits of 25% NPA of basic pay, for the purpose of calculating retiral benefits including revised pension w.e.f.

1.9.1997, became bestowed, yet became restricted only to the serving as well as to those doctors who retired on and after 1.9.1997 and 1.1.2006, and

hence it became denied to the petitioners, who are pre 1.9.1997/2.12.1997 and pre 2006 retirees. Consequently, the writ petitioners, pray for the afore

Annexure A-2, and, of Annexure A-5, rather making the afore restrictions, being quashed and set aside. Moreover, the writ petitioners also cast a

challenge upon the notifications respectively made on 31.8.1989, on 14.10.2009, and, on 21.05.2013, as respectively embodied in Annexure A-3,

Annexure A-6 and Annexure A-7, wherethrough, the benefit(s) of component of 25% NPA as a part of basic pay, for the purpose of calculating

retiral benefits, has been denied to those retirees, whose superannuation occurred w.e.f. 2.12.1997 and 1.1.2006.

3. The afore grievances as ventilated in the writ petition, and, in respect whereof, a mandamus for theirs being quashed and set aside, is, asked, for

being pronounced by this Court, is not longer res integra, and/or is covered by a verdict made by a co-ordinate Bench of this Court, in a case titled as

Dr. D.R. Barwal (now deceased) through his legal representatives Smt. Usha Barwal & others vs. State of H.P. & Others, bearing CWPOA No.

1184 of 2020, decided on 04.05.2021. Consequently, the stand in opposition to the writ claim as reared by the State of Himachal Pradesh does not

carry any profound weight, and, nor is legally sustainable.

3. In addition, the vigour of the verdict (supra), rendered by a coordinate Bench of this Court, is reinforced, by dependence being made by it , upon, a

verdict rendered by this Court in CWP No. 4961, titled as Keshav Singh vs. State

of H.P. and others, decided on 13th June, 2012, the relevant paragraphs whereof read(s) as under:-

â??.....13. As already stated above, earlier the NPA was allowed only to the Ayurvedic Doctors, but thereafter respondent-State took a conscious decision to extend it to Veterinary Doctors on and with effect from 1.4.1997. Thereafter there was a revision of pay scales, as indicated in the letter dated 10.6.2005, supra, but this enhancement of 25% NPA was kept as a separate entity and was not counted/taken into account for any other purpose like calculation of allowances etc. as indicated therein. Vide Office Memorandum dated 7.7.2007 quoted above, it was conveyed that the reckoning of DP for the purpose of calculation of NPA in respect of Veterinary Doctors and reckoning of element of enhanced NPA at the rate of 25% of pay for calculation of all allowances/benefits in respect of Veterinary Doctors was allowed w.e.f. 1.7.2007, as mentioned therein and the upper limit for basic pay plus NPA plus DP of the Doctors was kept Rs. 38,500/- per month from that date. To my mind this Office Memorandum does not make any distinction to such employees retiring prior to 1.7.2007 or thereafter. Rather its careful perusal would reveal that the enhancement of 25% NPA of Veterinary Doctors would be taken into account for calculation of all allowances, DP and retirement benefits to retirees who would even retire on and with effect from 1.7.2007. Therefore, this is an upward revision of the existing benefit from the date mentioned above. No arrears are involved to the retiree doctors prior to 1.7.2007 because to that extent the scheme is prospective. All the pensioners whenever they retire, in my opinion, are covered by the liberalized pension scheme because the scheme for payment of pension to a pensioner is governed by 1972 Pension Rules. Thus, the date of retirement appears to be wholly irrelevant. As stated supra, the Office Memorandum dated 7.7.2007 is operative from the date mentioned therein and would bring under its umbrella all existing pensioners who even retired subsequent to 1.7.2007, but in case of the retirees prior to the specified date aforesaid their pension would be computed afresh in view of the liberalized scheme and would become payable in future commencing from specified date and no arrears would be payable prior to it, which would take care of the grievance of retrospectively, making a marginal difference in the case of past pensioners because their emoluments are

not revised and these stood already granted to them, as per the Office Memorandum issued in the year 2005 quoted above.

14. The interpretation of any other decision of the State Government as ventilated by the learned Additional Advocate General, qua the Office Memorandum dated 7.7.2007, that it is applicable only to the retirees on and w.e.f.1.7.2007, is introducing a mischief and is vulnerable as denying equality and introducing an arbitrary fortuitous circumstance to a homogenous class, which can easily be severed being arbitrary and discriminatory.

18. It is well settled that whenever a classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of classification, by striking down words of limitation, the resultant effect may be of enlarging the class, that is, what is called reading down the measures.

19. Non-contributory pension under 1972 Rules is a State obligation. It is an item of expenditure voted year to year depending upon the number of pensioners and the estimated expenditure. Now when the liberalized pension scheme was introduced, it is justifiably assumed that the government servants would retire from the next day of the coming into operation of the scheme and the burden will have to be computed as imposed by the liberalized scheme. Even the government has been granting since nearly a decade temporary increases from time to time to pensioners. Therefore, there will be a marginal difference as the old pensioners are on the way out and their number is fast decreasing. This number will keep on dwindling. Therefore, the financial burden is no ground which could detract the government from covering pre 2007 pensioners.

20. In *V. Kasturi v. Managing Director, State Bank of India, Bombay and another*, : (1998) 8 SCC 30, the Supreme Court observed that if the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to

the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was

conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners

came into force. It was observed that the line of decisions tracing their roots to the ratio of Nakaras case (supra), would cover this category of cases.

21. In my opinion, the object sought to be achieved by the Office Memorandum dated 7.7.2007 is not to create a class within a class, but to ensure

that the benefit of pension was made available to all persons of the same class equally. The decision of the State Government as projected or to hold

otherwise would cause violation to the provisions of Article 14 of the Constitution. It is well settled law that when there is a clear violation of a statute

or a constitutional provision or there is arbitrariness in the 'Wednesbury sense', the Court has every right to interfere even with the policy decisions. â??

4. A reading of the afore extracted relevant paragraphs, does graphically pronounce, that within the homogeneous classes of pensioners, no arbitrary

fixing of any cut off date, for any relevant purpose, inasmuch, as, the adding onto or addition of any NPA, in the basic pay, being restricted to retirees,

whose superannuation occurred on or within the interregnum commencing from 1.9.1997, and upto 2006, can assume any tinge of constitutional

validity, and, nor would stand the constitutional touchstone of Article 14 of the Constitution of India.

5. In summa, the writ reliefs are allowed, and, the impugned notifications are quashed and set aside. The respondents are directed to make additions of

non practicing allowances, upon, the salaries/pension received by the writ petitioners, and, appertaining to the period commencing from 1.9.1997, and,

thereafter they are directed to make recalculations or revise the pension or family pension, vis-a-vis, the writ petitioners. Moreover, the all apposite

arrears shall be liquidated to the writ petitioners, within a period of four months from today, and, any failure on the part of the respondents to do so,

shall cause entailment, upon all the monetary benefits accurable to the petitioners, hence levying thereon(s) of simple interest at the rate of 6%

commencing from today. All pending applications also stand disposed of.