(2010) 07 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : LPA No. 515 of 2002

Naubat Singh Panwar and Others	APPELLANT
Vs	
State of Haryana and Another	RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:
Constitution of India, 1950 — Article 226, 309, 87

Citation : (2013) 3 SCT 295

Hon'ble Judges : M.M. Kumar, J;A.N. Jindal, J

Bench : Division Bench

Advocate : Harbhagwan Singh and Manoj Nagrath, for the Appellant; Mamta Singhal Talwar, AAG Haryana, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant appeal filed under Clause X of the Letters Patent is directed against the judgment dated 21.12.2001 passed by the learned Single Judge of this Court in C.W.P. No. 4679 of 2001 declining the claim of former Law Officers who have superannuated from the office of the Advocate General, Haryana. In the writ petition filed under Article 226 of the Constitution, three former Law Officers had prayed for inclusion of Non Practising Allowance (for brevity ''the N.P.A.'') as part of the basic pay for the purposes of payment of pension as was done by the respondents before revision of their pension. Brief facts of the case which have led to the filing of the instant appeal are that the appellants had worked on the post of Senior Deputy Advocate General, Haryana, Assistant Advocate General, Haryana and Assistant Advocate General, Haryana respectively in the office of the Advocate General, Haryana. They retired from service on 31.08.1981, 31.12.1981 and 31.01.1995 respectively. It is pertinent to mention that appellant No. 1 had sought premature retirement. All of them were getting N.P.A. Appellant No. 1 used to get Rs. 700/- as N.P.A. while appellant Nos. 2 and 3 used to be paid Rs. 500/- each. After retirement, N.P.A. was being treated as Special Pay within the meaning of Rule 2.52(b) of the

Punjab Civil Service Rules, Volume 1 Part 1. Accordingly, their pension used to be calculated after merging N.P.A. to their basic pay. All the appellants have been drawing pension on that basis since their retirement even after the revision of pension from time to time.

2. However, the State of Haryana in order to grant relief to pensioners, decided to revise pension by issuing two set of instructions on 13.01.2000 in respect of pre-1986 pensioners and another set of instructions dated 18.01.2000 in respect of pre-1996 pensioners. The grievance made by the appellants is that in accordance with the instructions, they submitted their applications on the prescribed forms to the Advocate General, Haryana who included N.P.A. in the basic pay of all the appellants. The pension admissible to them was calculated by adding component of N.P.A. It is alleged that Accountant General, arbitrarily and without any reason component of N.P.A. for the purposes of calculating their pension and worked out the same merely on the basis of notional basic pay, which resulted reduction of their pension to the extent of Rs. 350/- in the case of appellant No. 1 and Rs. 250 each in the case of appellant Nos. 2 & 3. According to the appellants, N.P.A. was to be treated as special pay as it is a part of the basic pay and for the purpose of pension, it should have been taken into consideration.

3. The stand of the respondents in their joint written statements before the learned Single Judge was that instructions dated 13.01.2000 relate to pensioners who retired prior to 1986 and the other set of instructions dated 18.01.2000 related to pensioners who retired prior to 1996. The instructions dated 13.01.2000 postulate that while fixing pension in the case of pensioners who retired prior to 01.01.1986 their notional pension was to be fixed in the revised scale of 1986. Accordingly, the revised notional pension in respect of appellant Nos. 1 and 2 was fixed in the scale prevalent after 01.01.1986. The element of N.P.A. was also taken into account. In the case of appellant No. 3, who had retired on 30.01.1995, revised pay scale was implemented and while calculating his pension, the N.P.A. was also taken into account. However, after coming into operation of 1996 scales, the State Government desired that all the pre-1996 pensioners should also be given certain benefits in their pension because no benefit of new scales were given to them. It was with the aforesaid object and view that the instructions dated 18.01.2000 were issued stipulating that the minimum of the pay scales of pre-1996 retiree was not to be less than 50% of the minimum of the pay scales introduced w.e.f. 01.01.1996 for the post last held by the appellants. Accordingly, it has been urged by the respondents that the question of inclusion of N.P.A. did not arise. The learned Single Judge has opined that once the instructions dated 18.01.2000 has extended the benefit to pensioners who had retired prior to 01.01.1996 by ensuring that their pension was not less than 50% of the minimum of the pay scales introduced from 01.01.1996 for the last post held by them, then inclusion of N.P.A. would amount to granting double benefit as they were given benefit prior to 01.01.1996. The view of the learned Single Judge is discernible from the following extracts from

his judgment, which reads thus:

.......every one of us know that the grades of the employees are revised from time to time and last time grades were revised with effect from 01.01.1986. Every revision of pay scales has to be interpreted in its own circle. If the petitioners were given the benefit of NPA in the scales of 1986. It is not necessary that they must get the benefit of NPA after coming into operation the scales which were enforced with effect from 1.1.1996 because the Government had changed the rates of pension and has given the benefit by stating that minimum pension of pre-1996 retirees will not be less than 50% of the minimum of the pay scales which were introduced with effect from 1.1.1996 for the post last held by the pensioner. The petitioners in these circumstances, cannot be benefited doubly. They were given the benefit of NPA prior to 1.1.1996 and the NPA was considered as part of their pay but after 1.1.1996 as NPA was not considered the part of their pay hence the benefit of it could not be granted to the petitioners.

(emphasis added)

4. The argument that it constitutes special pay within the meaning of Rule 2.52 was rejected by holding that special pay is different than the N.P.A. within the meaning of Rule 2.52, and it has never been treated as special pay. Both the special pay and N.P.A. cannot be treated as substitute or same for the purpose of Rule 2.52.

5. Mr. Harbhagwan Singh, learned Senior counsel appearing for the appellants has placed heavy reliance on a Division Bench of this Court rendered in the case of J.S. Yadav v. The State of Haryana and others 2002 (1) SLR 244 and argued that special pay was considered as part of the basic pay. According to the learned counsel for the appellants, the Division Bench added special pay to the basic pay and N.P.A. cannot be treated different pay. In that regard, he has also placed reliance on Rule 2.52 and argued that special pay in that case was granted in lieu of arduous nature of duties and the Division Bench held it to be part of the basic pay for the purpose of calculation of pension. By invoking ratio of the Division Bench judgment in J.S. Yadav''s case (supra), it has been submitted that a bare reading of Rule 2.44(a) read with Rule 2.52 would lead to a conclusion that N.P.A. is required to be regarded as special pay.

6. Ms. Mamta Singhal Talwar, learned State counsel has placed reliance on both set of instructions dated 13.01.2000 and 18.01.2000 (Annexure P1 and P2) which are applicable to pre-1986 retirees and pre-1996 retirees. According to the learned State counsel, a perusal of instructions would show that revision of pension was ordered by merging retiring pension, superannuation pension, compensation pension and invalid pension. According to her, once the retiring pension itself has included the component of N.P.A. by imposing maximum saving of 50% of the minimum of the pay scales introduced w.e.f. 01.01.1996 for the post last held by a pensioner, then to say that component of N.P.A. should

further be added over and above, will obviously be anomalous. She has supported the view taken by the learned Single Judge that N.P.A. is sought to be claimed twice and double benefit would not be permissible.

7. After hearing learned counsel for the parties and perusing the instructions dated 09.03.1998 in juxtaposition with instructions dated 13.01.2000 (Annexure P1) and 18.01.2000 (Annexure P2), we are of the considered view that the opinion expressed by the learned Single Judge is consistent with the Rules and Instructions. The instructions dated 13.1.2000, which are applicable to the pensioners, who have retired before 1986 i.e. appellant Nos. 1 and 2, which postulates as under:

Subject:- IMPLEMENTATION OF GOVERNMENT''S DECISION ON PENSION & FAMILY PENSION RELATED MATYTERS - REVISION OF PENSION OF PRE-1986 PENSIONERS/FAMILY PENSIONERS.

The undersigned is directed to state that in continuation of instructions contained in this department''s Notification No. 1/2(8)/98-2 FR II (Part I, II & III) dated 9th March, 1998 the Governor of Haryana is pleased to decide that the pension/ family pension of all pre-1986 pensioners/family pensioners who were in receipt of family pension or the following types of pension as on 1.1.1986 under Punjab C.S.R. Vol. II as amended from time to time w.e.f. 1.1.1996 will be revised/ consolidated in the manner indicated in the succeeding paragraphs:-

i) Retiring Pension

ii) Superannuation Pension

iii) Compensation Pension

iv) Invalid Pension

------In all such cases pay fixed on notional basis on the first occasion shall be treated as ''pay'' for the purpose of emoluments for re-fixation of pay in the revised scale of pay on the second occasion and other elements like DA/Adhoc, DA/Additional DA'' IR, etc., if any based on this notional pay shall be taken into account. In the same manner pay on notional basis shall be fixed on subsequent occasions. The last occasion shall be fixation of pay in the scale introduced by the Haryana Government vide Finance Department''s Notification No. G.S.R. 39/ Const./Art. 309 /87 dated 29.4.1987 and made effective from 1.1.1986-------

8. The above extracts would show in unequivocal terms that retiring pension has been taken into account which according to the case set up by the appellants themselves included the component of N.P.A. Accordingly, the pension has been consolidated by adding retiring pension and other components. The fixation of pay has been clarified and the element of DA/Additional D.A., interim relief etc. have also been taken into account.

9. Likewise, in respect of those pensioners, who retired before 1.1.1996, the pension has to be revised/consolidated w.e.f. 01.01.1996 in accordance with

para 5 of the notification dated 09.03.1998 which postulates that the emolument of pension are not to be less than 50% of the minimum pay scale introduced w.e.f. 01.01.1996 for the post last held by a pensioner. Para 5 of the instructions dated 09.03.1998 is reproduced here under for facility of reference:

5. Consolidated Pension/Family Pension: The pension/family pension of existing pre-1996 pensioners/family pensioners will be consolidated with effect from 1.1.1996 by adding together:-

(i) The existing pension/family pension.

(ii) Dearness Relief upto CPI 1510, that is 148% 111% and 96% of basic pension as admissible by this department letter No. 1/2(73)-FR-IV 873 dated 17.7.1996.

(iii) Interim relief I

(iv) Interim relief II

(v) Fitment weightage at the rate of 40% of the existing pension/family pension.

10. A perusal of the aforesaid para of the instruction would show that over and above the pension in respect of Government employee retired between 01.01.1986 to 31.12.1995 the existing pension, which has already been consolidated w.e.f. 01.01.1996 is not to be less than 50% of the minimum pay scale introduced from 01.01.1996 for the post last held by a pensioner. Para 5 of the instruction makes it absolutely clear that the existing pension/family pension is to the consolidated w.e.f. 1.1.1996. The existing pension already included the element of N.P.A. and it cannot be added once again. The appellant No. 3 admittedly was drawing pension with added element of N.P.A. upto 31.12.1995. Therefore, as on 01.01.1996 the component of N.P.A. included in the pension as already calculated w.e.f. 01.01.1996. In any case, the amount of pension in their case was not to be less than 50% of the minimum of the pay scales introduced for his post from 01.01.1996. Therefore, by adding component of N.P.A., over and above, the minimum would amount to granting of double benefit of the N.P.A., which stood already granted to all the appellants. Hence their claim lacks sub-stance and is, thus, liable to be rejected.

11. The argument of Mr. Harbhagwan Singh, learned Senior counsel is based on Division Bench Judgment in J.S. Yadav''s case (supra) has not impressed us because in that case, the component of special pay has been considered as part of the pay by virtue of Rule 2.44(a) read with Rule 2.52. Moreover, the view taken in the aforesaid judgment is that the executing instructions could not have amended proviso to Article 309 of the Constitution. The Division Bench (of which one of us M.M. Kumar, J. was a member) proceeded to hold as under:

A perusal of the definition of expression pay as given in Rule 2.44(a)(i) of the CSR makes it absolutely clear that the element of special pay has to be added to the pay and it cannot be excluded and treated differently than the pay. This view is supported by the judgment in the case of Union of India (UOI) and Others Vs.

L.V. Vishwanathan, . Once this is the conclusion then the appellants would be entitled to dearness allowance on the total amount of pay by adding the special pay as well. As a logical corollary, it must be held that they would also be entitled to revised pensionary benefits.

12. It is, thus, obvious that the element of pay was considered to be part of the basic pay. It could not have been excluded for the purposes of calculation of pension, especially when the admission was made for calculation of special pay by issuing executing instructions. However, in the present case, the controversy is entirely different and as far as our findings are concerned that N.P.A. stood already included in the fixation of pension of appellant Nos. 1 and 2 retirees as on 01.01.1986 and in respect of appellant No. 3 retiree as on 01.01.1996. Therefore, the Division Bench judgment has no application to the facts of the present case and we have no hesitation to reject the arguments of the learned counsel for the appellants. Accordingly, the appeal fails and the same is dismissed.

