(2016) 08 P&H CK 0298

In the Punjab And Haryana At Chandigarh

Case No : CM No. 12931 of 2015 and CM No. 6828 of 2015 in/and CWP No. 4519 of 2009 (O&M)

P.L. Garg	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Citation : (2017) 1 SCT 412

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : Parupkar Singh Ghuman, Addl. A.G., Punjab, for the Respondents; Ashok Sharma Nabhewale, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Kuldip Singh, J. (Oral)—CM No. 12931 of 2015

Prayer in this application filed under Order 6, Rule 17 read with Section 151 CPC is for amendment of the writ petition.

Heard. The application is allowed and the amended petition is taken on record.

CM No. 6828 of 2015

This Court vide order dated 01.05.2012 adjourned the main CWP No. 4519 of 2009 sine die and ordered to list the same after the decision of SLP No 25856 of 2008 titled as State of Punjab v. Gian Singh.

Learned counsel for the applicant-petitioner states that the present case was tagged with bunch of cases and therefore, it could not be heard and is kept pending.

In the application there is also a prayer for stay of deduction of Rs. 7,233/-.

In view of the above, the main case is taken on board today for hearing. Learned counsel for the parties are ready to address arguments.

CWP No. 4519 of 2009

Brief facts of the present case are that the petitioner was working as PCMS Doctor. He retired from service on 31.03.2006 on attaining the age of superannuation. The short controversy in the present case is that as per notification of the Government dated 29.07.2003 (Annexure P-1) for the commuted value of the pension the formula 6.21 was applied. Later on the Government issued another notification dated 31.10.2006 (Annexure P-3) wherein the said formula was revised to 10.46. The perusal of the notification dated 31.10.2006 (Annexure P-3) shows that this was made applicable to the cases of retirement arising on or after 31.10.2006. Since, the petitioner had retired from the service before the said date, therefore, he could not avail the benefit of notification dated 31.10.2006 (Annexure P-3). However, the petitioner submitted an application dated 14.12.2006 (Annexure P-4) seeking commutation of pension on the formula of 10.46. The extract from the application, which would indicate the exact request of the petitioner, are reproduced is under: -

"Punjab Government vide its order No. 3/13/2001- 3FPPC/6587 dated 31.10.2006 has revised the formula of Commutation of Pension to the original one which existed before 01.08.2003 and as such has restored the original benefit w.e.f. 31.10.2006 by reducing the discount rate from 8% to 4.75%.

I hereby opt for commutation of 40% of my pension at the revised discount rate of 4.75% under Rule 11.2 (2) of Punjab Civil Services Rule Vol. II.

The commutation value as calculated at the restored discount rate of 4.75% is as under: -

18084 X 40% = 7233.6 X 10.46 = 75663.456 X 12 = 9,07,961/- (Rupees Nine lakh seven thousand nine hundred and sixty one)

The commutation at the discount rate of 4.75 may be done and the amount given to me. The requisite Performa dully filled is enclosed."

2. The authorities after considering the request and without informing the petitioner that he is not entitled to the benefit of new pension formula 10.46, rather commuted the pension @ 6.21 and issued the order dated (Annexure P-7) whereby commutation value of the pension was fixed as Rs. 5,39,004/- and the amount was accordingly deposited in the account of the petitioner on 24.01.2007. The petitioner then shot a letter dated 20.03.2007 to the office Accountant General (AE) Punjab requesting that he had given option of payment of pension with multiplier of 10.46 for a sum of Rs. 9,07,961/- but the same was not allowed therefore, either he should be given the amount Rs. 9,07,0961/- as a commuted value as per his option or the earlier sanction of the commuted pension may kindly be reversed. Vide letter dated 30.07.2007 (Annex-ure P-11), the office of the Accountant General (AE) Punjab informed the petitioner that the office has already commuted authorised commutation on 24.01.2007. He was further informed that his conditional application was received on 16.03.2007

which could not be acceded to as per Rule 11.7 of the Punjab CSR Volume II. In another letter dated 16.01.2008 (Annexure P-17), of the office of Accountant General (AE), the same stand has been taken as in letter dated 30.07.2007 (Annexure P-11). In this way, the request of the petitioner was declined. The petitioner prayer of the petitioner is that either he should be allowed commuted pension as per the formula of 10.46 or the entry of commuted value of pension should be reversed and he should be paid full pension.

3. I have heard learned counsel for the parties.

4. The perusal of the contents of the application of the petitioner reproduced above, clearly shows that the it was a conditional application for commuting the value of the pension with the condition that he should be allowed the benefit of notification 30.10.2006 (Annexure P-3). Even the petitioner has given the commutation as per formula of 10.46. In such circumstances, either the Accountant General (AE) Punjab office should have declined the same stating that he is not entitled to the benefit of formula of 10.46 or should have asked him as to whether he is willing for commutation of pension as per old formula of 6.21. In fact, without seeking further direction/clarification from the petitioner, the said conditional application was processed as if the petitioner is seeking the commutation of pension under the old formula of 6.21 and accordingly, the sanction was granted and the amount was credited in the account of the petitioner.

5. In this way, the office of the Accountant General (AE), Punjab erred in granting the sanction on the conditional application of the petitioner. The amount was deposited in the account of the petitioner. Thereafter, he approached the office of Accountant General (AE), Punjab for either allowing him to commutation of the pension on the formula 10.46 or reverse the entry. The request for reversal of the entry was decline.

6. After considering the above noted facts, I am of the view that the order commuting the pension @ 6.21 was without any valid request from the petitioner, therefore, without any valid request, the commutation order is illegal and liable to be set aside. The net result will be that the petitioner shall deposit back the commuted value of pension with the office of Accountant General (AE), Punjab along with the interest at the same rate charged by the office of Accountant General (AE), Punjab in case of commuted value of pension. On the deposit of said amount along with the above noted interest, the entry of commuted value of pension shall be reversed and the petitioner shall be paid full pension. The arrears of the pension deducted from the petitioner shall also be refunded with at the same rate of interest as paid by the petitioner while depositing the same.

7. The petition is accordingly allowed.