

(2011) 04 P&H CK 0165

In the Punjab And Haryana At Chandigarh

Case No : CWP No's. 14413 of 1989 and 3566 of 1990

Ram Nath Chandok and Others

APPELLANT

Vs

State of Punjab and Others
 Sudesh Kumar (A.C.T)
and Others Vs State of Punjab and Another

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2012) 166 PLR 118

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.

1 This batch of writ petitions is at the instance of various employees who have undergone a terminal method of family planning by vasectomy or sterilization after two or three surviving children and who have by such a process availed of a special pay. The Punjab Government had offered dearness allowance to such employees as per the pattern adopted by the Government of India from time to time and such pattern continued to include special pay for the purpose of grant of DA. The Petitioners, who, therefore, enjoyed the benefit of special incentive for undergoing family planning were obtaining the benefit of computation of DA on the basis of pay plus the Special Pay.

2 However, on the basis of recommendation of the 4th Central Pay Commission, 1986 w.e.f. 1.1.1986, the scales of pay had been revised and even the pattern of grant of DA had undergone a change. Under the revised pattern, as per the decision contained in the Government of India, Ministry of Finance Department, Memorandum dated 21.11.1986, the DA was admissible only on the basic pay as defined in FR-9(21)(b)(i). Drawing a parity to the aforesaid FR in the Punjab Government Rules 2.44(a)(i), Punjab Civil Services Rules, Vol.I Part I, the Government of Punjab sought to review its own method of computation of DA to

be dependent on the basic pay, which would exclude the Special Pay or incentive granted for family planning. After the 4th Central Pay Commission, the Punjab Government had also granted a revision of pay scales w.e.f. 1.1.1986 pursuant to the 3rd Punjab Pay Commission. The decision to exclude the Special Pay and Personal Pay from the component of pay in working out dearness allowance had been communicated to all the Heads of the Department. It was this communication dated 21.08.1988, which is the subject of challenge in this writ petition.

3. The personal pay or special pay are defined in para 2.47 as follows:

2.47 Personal pay means additional pay granted to Government employee-

(a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure; or

(b) in exceptional circumstances, on other personal considerations.

Note: No case will be entertained which is not of an entirely exceptional character; and in submitting cases for the grant of personal pay, this should be carefully borne in mind."

In the context of the incentive paid to the employees for family planning, it must be understood that the personal pay or special pay was to be treated as an exceptional circumstance on personal considerations. Para 2.44 (a) of Punjab Civil Services Rules defines pay and in the context of Civil Services Rules, it has three components defined as under:

2.44(a) "Pay" means the amount drawn monthly by a Government employee as-

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 two which he is entitled by reason of his position in a cadre; and

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

(iii) any other emoluments which may be specially classed as pay by the competent authority.

4. In the impugned instructions, the reference has been made only to 2.44(a)(i) but the Clause 2(ii) with reference to special and personal pay still continued to remain in the rules and they have not been ordered to be deleted. The instructions making a definition of the pay to exclude special pay but Clause 2(ii) specifically makes reference to special pay and personal pay as going to explain the expression "pay". I cannot find a justification for exclusion of special pay, for a government instruction cannot act in violation of the Rules without the process of amending the Rules themselves.

5. The writ petition has been filed in November 1989 and the CWP No. 14413 of

1989 -5-Government has not even filed the written statement. Even apart from a reference to the aforesaid Rules, the learned Counsel appearing for the Petitioners makes a reference to the decision of this Court in Radhe Krishan Sharma v. State of Haryana 1993(1) SCT 58 that dealt with Rule 2.44 and explained cryptically that a special pay had to be included to "pay" for computing pension. In this case, it is not merely for the issue of pension, it is for computation of DA. The withdrawal of the monetary benefit by removing the component of special pay granted on the basis of incentives provided for participation of employees in family planning scheme was unjustified. The impugned instructions are quashed. The Respondents shall calculate the monetary benefit that would accrue by reworking the dearness allowance on the basis of pay that would include the special pay as well and this exercise shall be undertaken and completed within a period of 12 weeks from the date of receipt of copy of order and the benefits to be released to the Petitioners. If, in the meanwhile, all the Petitioners have been superannuated, the benefit shall accrue to them not merely for the component of DA, which had been reduced but it should also be applied for the terminal benefits to the extent to which they have bearing in such reckoning.

6. The writ petitions are allowed on the above terms.