

(2021) 09 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 14 Of 2019

Rameshwar Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 09-09-2021

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 3(o), 9, (21)(a)(i)

Citation : (2021) 09 SHI CK 0021

Hon'ble Judges : Ravi Malimath, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ajay Kumar, Gautam Sood, Ashok Sharma, Ranjan Sharma, Vikas Rathore, R.P. Singh, Seema Sharma, Balram Sharma, J.L. Bhardwaj

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. The appellant retired as a District & Sessions Judge. He filed a writ petition seeking direction to the respondents to fix his pension by multiplying the pension amount of Rs. 18,632/- by a factor of 3.07 without deducting dearness pay from Rs. 18,632/-. His writ petition was dismissed. Aggrieved, he has filed the instant appeal.

Parties are referred to hereinafter as they were before the learned writ Court.

2. Facts.

2(i) Petitioner superannuated as District and Sessions Judge on 31.5.2005. At the time of retirement, he was drawing basic pay of Rs 24,850/- per month in Super Time Scale of Rs. 22850-24850.

2(ii) Petitioner's pension was initially fixed at Rs. 12125/-w.e.f. 1.6.2005 by taking his average emoluments at Rs. 24250/- per month.

2(iii) On 8.8.2005, State of Himachal Pradesh merged 50% of the dearness relief

equivalent to 50% of present pension of its employees and pensioners with their pension w.e.f. 1.4.2004.

2(iv) On 20.10.2005 respondent-State issued a letter for fixing pension of retired Judicial Officers as per Karnataka model in accordance with directions of Hon'ble Supreme Court.

2(v) In compliance to the communication dated 20.10.2005 respondent No. 3 moved the State for revising the petitioner's pension. Respondent No. 2 on 17.4.2006 revised petitioner's pension from Rs.12125/- to Rs. 18,263/- on the basis of average emoluments of Rs. 36525/- (Rs. 24,350 + 12,175/- D.P.) w.e.f. 1.6.2005.

2(vi) In view of computation of one increment granted to the petitioner at the time of release of selection grade/super time scale, his pension was again revised on 6.2.2007 by respondent No. 2 from Rs. 18,263/- to Rs. 18,632/- w.e.f. 1.6.2005 by taking his average emoluments as Rs. 37,275/- (Rs. 24,850+ 12,425 D.P.).

2(vii) Hon'ble Apex Court vide order dated 8.10.2012 passed in I.A. No. 5 of 2009 in I.A. No. 244 in W.P.(C) No. 1022/1989 accepted the prayer of Andhra Pradesh retired Judges association to revise the existing pension of all past pensioners who had retired after 1.1.1996 but before 31.12.2005 by raising the same by a factor of 3.07 subject to minimum of 50% of revised pay scale of their respective post. On 14.7.2016, the Apex Court directed that but for States of Telangana and Andhra Pradesh, all States including State of Himachal Pradesh shall implement the order. In compliance thereto, the respondent-State issued general direction vide O.M. dated 11.1.2017. Under this O.M., the pension of Himachal Pradesh Judicial Officers retired between 1.7.1996 to 31.12.2005 was to be revised by raising the same by 3.07 times w.e.f. 1.1.2006.

2(viii) Pension of petitioner stood revised by the State as per Karnataka model from Rs. 12,125/- to Rs. 18,263/- and later to Rs. 18,632/-. Petitioner's case is that this figure of Rs. 18,632/- which should have been multiplied by 3.07 for fixing his revised pension as per government O.M. dated 11.1.2017. However, respondent No. 4 has multiplied Rs. 12,175/- by 3.07 times and thus fixed petitioner's pension at Rs. 37,378/-. This order was reviewed on 9.8.2017. The revised pension of the petitioner was fixed at Rs. 38,145/- i.e. (Rs. 12,425 X3.07=Rs. 38,145).

3. Petitioner filed a writ petition praying for a direction to the State to revise his pension by treating Rs. 18,632/- as his basic pension and to multiply it by 3.07 times. His prayer was turned down by the learned Single Judge. Learned Single Judge did not find favour with the contentions of the petitioner. The pension of the petitioner was found to be fixed in accordance with the applicable rules, directions, orders and office memorandums. His writ petition was dismissed. Aggrieved, the petitioner has preferred the instant appeal.

4. Contentions.

We have heard Mr. Ajay Kumar, learned Senior Counsel for the appellant and Mr. Ashok Sharma, learned Advocate General and gone through the record. Stand of petitioner.

4(i) Learned Senior Counsel for the petitioner submitted that the pension of the petitioner was Rs. 18,632/-. Factor of 3.07 was to be applied to this figure and not to Rs. 12,425/-.

4(ii) There was no reason to exclude 50% of D.P. from the existing pension of petitioner. His existing pension was fixed as per government order dated 20.10.2005 on Karnataka model in accordance with the Apex Court direction.

4(iii) In accordance with the respondent-State O.M. dated 11.1.2017, the existing pension i.e. Rs. 18,632/- was to be multiplied by 3.07 times.

4(iv) In view of the order passed by the Hon'ble Apex Court in I.A. Nos. 5/2009 and 339 & 336/2016 read with respondent government's order dated 11.1.2017, there should be no deduction from existing pension of the petitioner. Rules of State government with regard to quantum of pay and pension are not applicable to Judicial employees in so far as the same are in conflict with the directions of Hon'ble Supreme Court.

4(v) Once the basic pension of petitioner had become Rs. 18,632/- w.e.f. 1.6.2005 then it could not be reduced by 50% amount of D.P. for the purpose of multiplying by 3.07 times.

Stand of respondents-State.

4(vi) Petitioner retired on 31.5.2005 as District and Sessions Judge and was drawing monthly salary of Rs. 24,850/- in super time scale of Rs. 22,850/- to Rs. 24,850/-. His pension was initially fixed as Rs. 12,125/- plus dearness pension w.e.f. 1.6.2005.

4(vii) Vide office memorandum dated 8.8.2005, the State of Himachal Pradesh ordered merger of 50% dearness relief with basic pension w.e.f. 1.4.2004. Pension of petitioner was revised to Rs. 18,638 (Rs. 12,425+Rs. 6213) due to merger of 50% D.P. Office memorandum dated 11.1.2017 was issued by the State to revise pension of Judicial Officers as per direction dated 14.7.2016 of Hon'ble Apex Court. Accordingly, the pension of petitioner was fixed at Rs. 37,378/- by multiplying the basic pension Rs. 12,175/- as existing on 1.1.2006 by 3.07 times. On 10.8.2017 petitioner's pension was revised to Rs. 12,425 X 3.07 = Rs. 38,125/-. Petitioner's pension at Rs. 38,145/- was accordingly fixed. His basic pay of Rs. 12,425/- has been multiplied by 3.07 times and the amount so arrived has been fixed as revised basic pension w.e.f. 1.1.2006. According to the respondents petitioner's pension has been fixed in consonance with the direction of Hon'ble Apex Court as well as in accordance with the office memorandum. The entire position in the facts of instant case has been clarified

by the respondent/State in following tabulation:

Fixation of Pension of Pre-2006 Judicial Officers

A

B

C

Consolidated Pension/Family Pension as on 1.1.2006 as per Govt. O.M. dated 7.12.2010

Pension at 50% of minimum revised pay Rs. 70290-1540- 76450 a per Govt. O.M. dated 7.12.2010

imum revised pay Rs. 70290-1540- 76450 a per Govt. O.M. dated 7.12.2010
Fixation of Pension by factor 3.07 as per Hon'ble Apex Court Order dated 14.07.2016 & Govt. instruction dated 11.01.2017

1. Basic pension 12425

ii. Dearness 6213 Pension

iii. Dearness 4473 Relief @ 24% (on item 1&2 above)

iv. Fitment Weightage 4970 @ 40% of the Basic Pension (at Sr. No. 1)

Pension @ 50% of 35145 Minimum Pay Rs. 70290

Basic Pension Rs. $12425 \times 3.07 = 38145$

Revised Pension 28081

35145

38145

NOTE-1 Dearness Pension is part of Dearness Relief converted into Dearness Pension. Hence same is not to be treated as part of Basic Pension for revision of Pension by factor 3.07. Moreover, Dearness pension is already included in Part B of formulation above.

NOTE-2 Emoluments for purpose of fixation of pension as per Rule 33 of CCS (Pension) Rules, 1972, means Basic Pay as defined in Rule 9(21)(a)(i) of Fundamental Rules and Supplementary Rules.

NOTE-3 In case total Pension Rs 18638 (Basic Pension=12425 plus DP=6213, which has effect of merger of 50% Dearness Relief as Dearness Pension) is revised by factor 3.07 then revised pension will be Rs. 52219 which will be much higher than the pension of serving District & Sessions Judge fixed at R. 38225 (i.e. 50% of Highest Pay of Rs. 76450) at the time of superannuation from service as of now.

5. Observations.

5(i) Petitioner retired as District and Sessions Judge from Higher Judicial Services on 31.5.2005.

5(ii) Petitioner was drawing basic pay of Rs. 24,850/- per month in the super time scale of Rs. 22850-24850. His pension was fixed at Rs. 12,125/- w.e.f. 1.6.2005 by taking his average monthly emoluments of Rs. 24,250/-.

5(iii) On 8.8.2005, State of Himachal Pradesh issued an office memorandum. This was issued in compliance to the directions dated 17.1.2005 of the Hon'ble Supreme Court delivered in WP (C) 1022/1989, All India Judges Association and others v. Union of India & others on the Karnataka model. Vide office memorandum dated 8.8.2005 State of Himachal Pradesh ordered merger of dearness relief equal to 50% of pension with pension w.e.f. 1.4.2004. This was to be shown distinctly as Dearness Pension.

5(iv) State of Himachal Pradesh fixed pension of retired Judicial Officers as per Karnataka model vide office memorandum dated 20.10.2005. In terms of this memorandum, last pay drawn was to be taken as emoluments for the purpose of pension. The CCS (Pension) Rules 1972 as applicable in the State was to continue to apply for calculation of pension. Basic pension was to mean as under:

"(ii) The 'Basic Pension'/ 'Basic Family Pension' referred in (c) (I) (a) to (d) above means, the basic pension/ basic family pension of the pensioner concerned fixed immediately on retirement/death with reference to the emoluments/last pay reckoned for the purpose of calculation of Pension/Family Pension.

(iii) Interim Relief of forty percent of basic pension/Family pension sanctioned vide notification No. Home-B(E)3-1/90- VI dated 18.12.1998.

The consolidated revised pension calculated above shall not be less than 50% of the minimum of the revised pay of the post held by the Judicial Officer at the time of retirement who have put in full qualifying service at the time of retirement. In respect of Judicial Officers who have put in less than the full qualifying service, there shall be proportionate reduction."

Thus basic pension was to be the one fixed immediately on retirement with reference to last pay drawn for the purpose of calculation of pension/family pension. Accordingly, on 17.4.2006, a revised certificate was issued to the petitioner. His pension was revised from Rs. 12,125/- to Rs. 18,263/- on the basis of revised average emoluments i.e. Rs. 36,525/- (Rs. 24350+1275 D.P.). This revision was carried out on the basis of office memorandum dated 20.10.2005. One more increment admissible to the petitioner was added and his pension was revised once again on 6.2.2007 from Rs. 18,263/- to Rs. 18,632/- (Rs. 24850+12425 D.P.).

5(v) I.A. No. 5 of 2009 was moved in I.A. No. 244 in WP(C) 1022/1989 before the Hon'ble Apex Court with following prayers:-

"(i) the existing pensions of all past pensioners who retired after 1.1.1996 and the pensioners whose pensions were consolidated as per Karnataka model shall be raised by 3.07 times on par with the other pensioners subject to minimum of 50% of the revised pay scale of pay of their respective post;

(ii) and in the alternative, consolidation of the existing pensions of the above section of pensioners as per the methodology adopted by the Central Government in pursuance of recommendations of the VIth Central Pay Commission in para 4.1 of the O.M.F. No.38/37/08 P & PW(A) Government of India dated 1.9.2008."

While considering the prayer in the applications, the following order was issued on 8.10.2012:-

"IA No.5 of 2009 in I.A. No.244 in WP(c) No.1022/1989

The applicants in this IA are judicial officers who retired after January 01, 1996, but prior to January 2006. They are aggrieved by the recommendation of Justice Padmanabhan Committee, as contained in paragraph 31 of its report. Paragraph 31 of the recommendations of the Committee, insofar as it is relevant, is as under:-

"Pare 31: The recommendations of the First National Judicial Pay Commission with respect to past pensioners are given in paragraph 23.18 which are as under: 1) The revised pension of the retired judicial officers should be 50% of the minimum of the post held at the time of retirement, as revised from time to time. Xx xx xx" Mr. P.P. Rao, learned senior advocate appearing for the applicants, pointed out that the Padmanabhan Committee, apparently due to oversight, fixed the revised pension of the concerned judicial officers at 50% of the minimum of the post held at the time of retirement, as revised from time to time. Consequently, as a result of the revision, the concerned judicial officers are getting as pension an amount which is lower than what they earlier received before revision. The grievance of the applicants appears to be justified and it is significant to note that both the High Court of Andhra Pradesh and the State Government of Andhra Pradesh, in their respective responses, have supported the case of the applicants. Mr. A.T.M. Sampath, learned amicus curiae, also submitted that there was evidently some error in the recommendation of the One Man Committee. We accordingly, accept the prayer of the applicants and allow this IA in terms of prayer clause (i) of the application. I.A. No.5 stands disposed of."

Subsequently, in I.A. 339 & 336/2016, following was observed by the apex Court on 14.7.2016:-

"After noting the above said order already passed by this Court on 8.10.2012 and also a G.O. issued by the State of Andhra Pradesh vide G.O. No.86 dated 19.7.2013 complying with the directions contained in the order dated 8.10.2012, we issued notice to all the State Governments as well as the High Courts in our

order dated 28.4.2016 and called for their response. Only three states have responded by filing reply affidavit, namely, Orissa, Himachal Pradesh and Tamil Nadu. While on behalf of State of Orissa, time of two weeks was sought for to file the Status Report, the State of Tamil Nadu after referring to the manner in which the pension is being dispensed to the retirees prior to 1.1.2006 ultimately submitted that the State will abide by the orders/directions to be issued by this Court. So far as the State of Himachal Pradesh is concerned, a peculiar stand is being taken to the effect that in the State of Himachal Pradesh a different pattern of pension is being adopted with reference to other State Government employees, which is being applied to Judicial Officers as well. Mr. Suryanarayana Singh, learned Additional Advocate General appearing for the State of Himachal Pradesh drew our attention to the said stand taken in the reply filed before us and sought for affirmation of the said position being followed by the State of Himachal Pradesh.

No other State Government has responded to our notice dated 28.4.2016 and filed any affidavit or reply. There is also no representation from any of the State Government opposing this application.

Having heard Mr. P.P. Rao, learned senior counsel for the applicant and Mr. Suryanarayana Singh, learned Additional Advocate General appearing for the State of Himachal Pradesh, at the very outset, we state that the issue as noted by us is already covered by the order of this Court dated 8.10.2012. Therefore, nothing more is to be ordered by us in this application except simply adopting the said order already issued.

The prayer in this application is for a direction to the State Governments except the States of Andhra Pradesh and Telengana to secure time-bound implementation and compliance of the order dated 8.10.2012 passed by this Court in IA No.5 of 2009 in I.A. No.244 in WP(c) No.1022/1989. Since, by our order dated 8.10.2012, the prayer as made in the said I.A. No.5 of 2009 in I.A. No.244 in WP(c) No.1022/1989, as extracted in the earlier part of this order, has already been passed, based on which the States of Andhra Pradesh and Telengana have passed orders and issued G.O., namely, G.O. No.86 dated 19.7.2013, we direct that all the other State Governments should follow the suit and pass appropriate notifications implementing the directions contained in our order dated 8.10.2012 in respect of their retirees between 1.1.1996 and 31.12.2005. Whatever arrears payable for the period from 1.1.2006 uptill this date shall be calculated and paid expeditiously and the future calculation of pension for future months should be made on that basis from the month of July, 2016. The arrears shall be paid within six months from the date of production of a copy of this order.

These I.As. shall stand allowed with the above directions."

5(vi) Pursuant to the order passed by the Hon'ble Apex Court, the State of Himachal Pradesh issued an office memorandum on 11.1.2017 for implementing

the direction issued by the Apex Court on 8.10.2012. The relevant part of the office memorandum reads as under:

"Now, therefore, in compliance to directions dated 14-07-2016 of the Hon'ble Supreme Court of India passed in I.A. No. 339 & 336 in WP No. 1022/1989, the Governor, Himachal Pradesh is pleased to implement the order dated 08-10-2012 of the Hon'ble Apex Court, passed in IA No. 5 of 2009 in I.A. No. 244 in writ petition (C) No. 1022/1989 in respect of H.P. State Judicial Officers as under:-

(i) The Pensions of the Himachal Pradesh Judicial Officers retired between the period 01-07-1996 to 31.12.2005 as fixed in terms of Government letter No. Fin (Pen) A (3)- 4/2005 dated 20th October 2005 will be revised by raising the same by 3.07 times, w.e.f. 01-01-2006.

Provided, above revised pension shall be subject to minimum of 50% of the revised pay scales applicable from 01-01-2006 corresponding to the prerevised pay scales from which such pensioners had retired/died in harness."

Respondent No. 4 issued order for multiplying the basic pension of the petitioner Rs. 12,175/- by a factor of 3.07. Revised pension of the petitioner was worked out at Rs. 37,378/- . It was later revised to Rs. 38,145/- by multiplying his basic pension Rs. 12,425/- by 3.07 times (taking into account an additional increment of the petitioner).

5(vii) Hon'ble Apex Court in its order dated 8.10.2012 has referred to the Karnataka Model. In the report of Second National Judicial Pay Commission (January 2020, pages 14,15) following pay structure for past pensioners was mentioned:

"The Karnataka model referred to in clause (I) of the prayer portion in I.A. No. 5/2009 was in respect of Judicial officers who retired or died while in service prior to 01.07.1996, as seen from the proceedings of the Government of Karnataka (Law Department) dated 04.02.2004. The relevant para in the proceedings of the Government of Karnataka dated 04.02.2004 is as follows:

PENSION STRUCTURE FOR THE PAST PENSIONERS:

(a) The revised pension/family pension of the Judicial Officers who have retired or died while in service prior to 01.07.1996 shall constitute the following:-

(i) Basic pension/family pension as on 01.07.1996.

(ii) DA as on 01.01.1996 sanctioned in GO No. FD (Spl) 35 PET 96 dated 8.5.1996.

(iii) The increase in pension/family pension sanctioned in GO No. FD (Spl) 22 PET 94 dated 29.6.1994 in respect of Judicial Officers who have retired prior to 1.1.1982 or died while in service prior to that date or after retirement.

(iv) Interim Relief of 40% of basic pension/family pension sanctioned in GO No. Law 1254 LAC 94 dated 22.4.1998.

The consolidated revised pension calculated above shall not be less than 50% of the minimum of the revised pay of the post held by the Judicial Officers at the time of retirement who have put in full qualifying service at the time of retirement. In respect of Judicial Officers who have put in less than the full qualifying service there shall be proportionate reduction.

(b) The Dearness Allowance shall be at the rates as are admissible to serving Judicial officers.

(c) The revision in pension shall come into effect from 01.07.1996 and will be applicable to Judicial officers who have retired or ceased to be in service due to death or retirement prior to 01.07.1996."

As per Karnataka Model revised pension comprises of various components. Basic pension/family pension, DA etc. are different components of revised pension. This model finds place in the proceedings of Government of Karnataka (Law department) dated 4.2.2004. It is pertinent to mention here that this date i.e. 4.2.2004 precedes the date of 1.4.2004 i.e. the date of merger of 50% of dearness allowance with basic pension by the State of Himachal Pradesh. Thus, the plea of the petitioner that basic pension was consolidated pension does not hold good.

Additionally in the order passed by the Hon'ble Apex Court on 8.10.2012 methodology referred to be adopted by Central government also excludes 50% merger of dearness relief for the purpose of fitment weightage. The office memorandum issued by Government of India in this regard on 1.9.2008 reads as under (relevant part only):-

"3.1 In these orders :

a. Existing pensioner or Existing Family pensioner means a pensioner who was drawing/entitled to pension/family pension on 31.12.2005.

b. Existing pension means the basic pension inclusive of commuted portion, if any, due on 31.12.2005. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability Pension under the CCS (Extraordinary Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.

c. Existing family pension means the basic family pension drawn on 31.12.2005 under the CCS (Pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.

4.1 The pension/family pension of existing pre- 2006 pensioners/family pensioner will be consolidated with effect from 1.1.2006 by adding together:-

i. The existing pension/family pension.

ii. Dearness Pension, where applicable

iii. Dearness Relief upto AICPI (IW) average index 536 (Base year 1982=100)

i.e. @ 24% of Basic Pension/Basic family pension plus dearness pension as admissible vide this Department's O.M. No. 42/2/2006-P&PW(G) dated 5.4.2006

iv. Fitment weightage @ 40% of the existing pension/family pension.

Where the existing pension in (i) above includes the effect of merger of 50% dearness relief w.e.f. 1.4.2004, the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness relief of 50% from the pension.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.2006."

It is amply clear from the above that the 'existing pension' means the 'basic pension', as the 'consolidated pension' comprises of basic pension+Dearness pension+Dearness Relief+ Fitment weightage which is to be re-calculated after excluding the merged dearness relief of 50% from the pension. Therefore, the 'consolidated pension' and the 'basic pension' are two entirely different concepts and cannot be treated the same as contended by the petitioner. Further, CCS Pension Rules clearly define that for the purpose of pension, the emoluments mean 'basic pay'. Relevant part of Rule 33 is extracted hereafter:-

"33. Emoluments

The expression 'emoluments' means basic pay as defined in Rule 9 (21) (a) (i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death ; and will also include non-practising allowance granted to medical officer in lieu of private practice."

Rule 3(o) of CCS Pension Rules defines the pension as under:-

"3(o) Pension includes gratuity except when the term pension is used in contradistinction to gratuity, but does not include dearness relief."

The above makes it much more clear that 'pension' does not include dearness relief.

5(viii) The State of Himachal Pradesh issued office memorandum on 14.10.2009 revising pension of pre-2006 pensioners. The relevant provision of this office memorandum reads as under:

"4.1 The pension / family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 01-01-2006 by adding together:-

(i) The existing pension/family pension

(ii) Dearness Pension, where applicable

(iii) Dearness Relief upto AICPI (IW) average index 536 (Base Year 1982=100)
i.e. @24% of Basic Pension/Basic family pension plus dearness pension as

admissible vide this department O.M. No. Fin(Pen)B(10)-6/98-I dated 23-6-2006.

(iv) Fitment weightage @40% of the existing pension/family pension.

Where the existing pension in (i) above includes the effect of merger of 50% of dearness relief w.e.f. 01-04-2004, the existing pension for the purpose of fitment weightage will be recalculated after excluding the merged dearness relief of 50% from the pension. The amount so arrived at will be regarded as consolidated pension/family pension with effect from 01-01-2006."

The above office memorandum also states the same.

The State government has clarified that emoluments for the purpose of fixation of pension means basic pension. Thus, the ground taken by the petitioner that provision of office memorandum dated 11.1.2017 provides a simple straight jacket formula having no variable factor is not correct. As discussed above, there is a clear cut difference between basic pension and consolidated pension. Clarifications have been given by the State government and the Central government for fitment that 50% dearness relief is to be excluded where 50% dearness relief has been merged earlier with the pension. This clearly indicates that whenever pension is referred, it refers to basic pension only unless defined otherwise.

Pension of petitioner has been correctly revised at Rs. 38,145/- per month by taking his basic pension as Rs. 12,425/- and multiplying it by a factor of 3.07. We find no merit in this appeal. The same is accordingly dismissed. Pending miscellaneous application(s), if any, shall also stand disposed off.