(2020) 02 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10801 Of 2015 (O&M)

S.P.S. Madan And Others — APPELLANT

Vs

Punjab Agricultural University, Ludhiana And Another — RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

Citation : (2020) 02 P&H CK 0030

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : R.K. Chopra, Gaurav Sharma, Deepak Agnihotri

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J

The prayer in the present petition is for directing the respondents to fix the pension of the petitioners equivalent to 50% of the minimum of pay in the

pay band plus grade pay as per the fitment table i.e. 50% of Rs.40890+10000=Rs.50890/- which comes out to be Rs.25445 w.e.f. 01.01.2006 in view

of the judgment rendered by Division Bench of this Court in the case of R.K. Aggarwal and others Vs. State of Haryana and others, CWP No.19641

of 2009, decided on 21.12.2012 with a further prayer to re-fix the pension of the petitioners and to grant all the consequential benefits to the

petitioners.

In pursuance to the last order of this Court dated 05.02.2020, affidavit filed on behalf of the respondents in Court is taken on record. Copy given to

learned counsel for the petitioners.

Reply has been filed. As per the preliminary objections as well as per the contentions of learned counsel for the respondents the Government of

Punjab, vide letter dated 30.12.2010, had notified the classification regarding para 4.2 of the notification dated 17.08.2009 and 22.02.2010. Hence, the

instructions dated 30.12.2010 superseded the earlier instructions. Further, the pension of the petitioners has already stands fixed on the basis of these

instructions of State of Punjab as per Annexure R-2.

While distinguishing the judgment rendered by the Division Bench of this Court in the case of R.K. Aggarwal (supra), learned counsel for the

respondents further argued that the same pertains to the State of Haryana, whereas, the respondents/University is bound by the instructions of the

State of Punjab.

The arguments raised by learned counsel for the respondents cannot be sustained in view of the following:

a) Annexure R-5 is the notification dated 17.09.2009. As per the said notification itself, issued by the State of Punjab is the relevant fitment tables

issued by Ministry of Human Resource Development (Department of Higher Education), Govt. of India vide No.F.3-1/2009-U.I. Dated 04.06.2009

endorsed by Ministry of Agriculture Govt. of India vide F.No.1 (1)/2009. Per.IV dated 16.06.2009 for fixation of pay of the existing incumbents, who

were in position as on 01.01.2006 in various categories of posts as indicated in the tables provided in Annexure R-5. Clause 5 of the said notification

further shows that the revised pay scales were applicable to the teachers and equivalent cadres of the Punjab Agricultural University, Ludhiana. Thus,

the State of Punjab has already issued the notification. No further approval was required.

b) The said pay scale, which is 50% of minimum of the pay in the pay band was adopted by the respondents/University, which is evident from letter

dated 30.09.2009, placed on record Annexure P-4, which was further ordered to be implemented vide letter dated 01.11.2010, by the Comptroller,

Punjab Agricultural University addressed to All Deans/Directors/Officers of the University as per para 4.2 of the notification (Annexure P-5), which

was circulated by Punjab Government Finance Department (Finance Pension Policy & Coordination) notification dated 17.08.2009.

Further, as per corrigendum dated 20/24.11.2009, placed on record as Annexure P-3, the revised pension was not to be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired instead of

50% of the minimum of the pay of the pay band plus grade pay corresponding to the pre-revised pay scale from which the petitioners had retired.

Today, an affidavit dated 05.02.2020 has also been filed in the Court, where it is admitted that the said pay scale is already being paid to retirees after

01.01.2006.

Thus, it is evident from the above that the Punjab Agricultural University has already adopted the said pay scale and has also implemented it qua all

the retirees after 01.01.2006. Thus, the only question that remains to be decided before this Court is as to whether the same are liable to be paid to all

retirees prior to 01.01.2006 or not. However, the said issue is no more res-integra in view of the judgment rendered in the case of R.K. Aggarwal

(supra), wherein it was held as under:-.

â??26. It is for the aforesaid reasons, we remark that there is no need to go into the legal nuances. Simple solution is to give effect to the resolution

dated 29.08.2008 whereby recommendations of the 6th Central Pay Commission were accepted with certain modifications. We find force in the

submission of learned counsel for the petitioners that subsequent OMs dated 03.10.2008 and 14.10.2008 were not in consonance with that resolution.

Once we find that this resolution ensures that â??the fixation of pension will be subject to the provision that the revised pension, in no case, shall be

lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from

which the pensioner had retiredâ?, this would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding

to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the

minimum of the pay in the band and the grade pay thereon. As a result, all these petitions succeed and mandamus is issued to the respondents to refix

the pension of the petitioners accordingly within a period of two months and pay the arrears of pension within two months. In case, the arrears are not

paid within a period of two months, it will also carry interest @ 9% w.e.f. 01.03.2013. There shall, however, be no order as to cost.â??

The said principle would apply even to the case in hand. A number of similar writ petitions were further disposed of, vide order dated 17.02.2014,

passed in CWP No.15479 of 2012 titled as Debi Singh Deswal and others Vs. State of Haryana and others and other connected writ petitions by

holding as under:-

â??In this view of the matter, we dispose of all the writ petitions in terms of the order passed in R.K. Aggarwal's case supra. The order passed be

implemented qua the petitioners, who retired before 01.01.2006 and also qua others who are similarly situated but have not filed petitions so as to avoid

unnecessary litigation.â??

Moreover, the Division Bench of this Court in the case of State of Punjab and others Vs. A.P. Sharma and others, 2017 (1) S.C.T. 322, LPA No.352

of 2014, decided on 31.08.2016, upheld the judgment rendered by learned Single Bench of this Court, vide which, the pay scale was granted to pre-

01.01.2006 retirees as well and the said judgment pertained to the State of Punjab. The Division Bench in the case of State of Punjab and others Vs.

A.P. Sharma and others, observed in para Nos.29, 34 and 35 as under:-

â??(29) Having held so, the only question with which we are left is whether the respondents who are pre- 01.01.2006 retirees are entitled to the

benefit of higher pay-scale granted to the posts manned by them while in service, when such up-gradation has been made prospectively from a date

much after their retirement? This issue has been answered by the learned Single Judge for two reasons. Firstly, it has been held that the pre-

01.01.2006 retirees are entitled to pension as per Para 4.2 of the circular dated 17.08.2009, which reads as follows:-

â??4.2 The fixation of Pension will be subject to the provisions that the revised pension, in no case, shall be lower than fifty percent of the minimum

of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. This will be reduced

pro-data if the qualifying service of the person falls short of 33 years.â??

(emphasis by us)

(34) In the case in hand though the circular dated 15.12.2011 (P-4) is 'prospective' in nature but by virtue of Para 4.2 of the circular dated 17.08.2009

read with Para 2 of circular dated 22.02.2010, such prospective decision has a retroactive effect on the antecedents, namely, the pension amount of pre-01.01.2006 retirees. As the object and purpose of all the circulars is to grant benefits and as such these are to be classified as beneficial

subordinate legislation, they are to be given effect liberally and widely. Pre-01.01.2006 retirees, therefore, are entitled to re-fixation of their pension as

per the circular dated 15.12.2011 but without any retrospective effect, namely, only from the date when the competent authority made it effective

w.e.f. 01.12.2011.

(35) Para 3 of the circular dated 15.12.2011 cannot take away the effect and implications of Para 4.2 of the circular dated 17.08.2009 or of Para 2 of

the later circular dated 22.02.2010 as both the circulars are meant for re-fixation of pension of pre-01.01.2006 retirees. The circular dated 15.12.2011

neither modifies nor supersedes the previous circulars. Those circulars independently cover and govern their own field of fixation of pension of pre-

01.01.2006 retirees.â??

In view of the above, this Court is satisfied that the case of the petitioners is squarely covered by the judgment rendered in the case of R.K. Aggarwal

(supra).

Accordingly, the present writ petition is allowed in the same terms. As a result, the present petition succeed and mandamus is issued to the

respondents to re-fix the pension of the petitioners accordingly within a period of two months and pay the arrears of pension within two months

thereafter alongwith 6% interest. In case the same is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the

date of expiry of two months.

