

(1996) 02 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11180 of 1994

The Haryana Government

Retired Officers Welfare

Association (Regd.)

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision: Feb. 27, 1996

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (1996) 113 PLR 797

Hon'ble Judges: Jawahar Lal Gupta, J

Bench: Single Bench

Advocate: W.R. Dua, for the Appellant; Jaswant Singh and Ritu Bahri, AAG, for the Respondent

Judgement

Jawahar Lal Gupta, J.

The Haryana Government Retired Officers Welfare Association (Registered), is the petitioner. It complains that the order dated November 3, 1988 and the notification dated January 31, 1992 issued by the State of Haryana by which a new method for fixation of family pension has been prescribed, are arbitrary and unfair. Is it so? A few facts may be briefly noticed.

2. The petitioner-Association has been formed with the object of looking after the interests of the retired Civil servants in the State of Haryana. It alleges that on the recommendation of the Pay Commission, the State Government had revised the pay scales of the employees with effect from April 1, 1979. In pursuance to the recommendations of the Commission, orders for liberalisation in the matter of pensionary benefits were issued on March 19, 1981. A formula for determination of family pension was prescribed. Prior to April 1, 1979, the rate of family pension ranged from Rs. 60/- to Rs. 250/- per month. However, with effect from April 1, 1979, it was decided that "the revised rate of family pension would be 50% of the pension

either already drawn or what the employee would have drawn, had he superannuated after full qualifying service at the pay drawn on the date of death while in service subject to a minimum of Rs. 125/- per month and a maximum of Rs. 500/- per month." It was further provided that "in the event of both husband and wife being Government employees, the maximum family pension admissible to their children will be Rs. 1000/- per month."

3. The State Government again revised the pay scales with effect from January 1, 1986. The recommendations of the Pay Commission in regard to the pensionary benefits were also considered. Decision Regarding liberalisation of pensionary benefits on the recommendation of the Commission were circulated vide letter dated November 3, 1988. The rates of family pension as mentioned in the order dated March 19, 1981 were revised with effect from January 1, 1986 as follows :-

"Basic pay per month	Rate of family pension per month inclusive of dearness relief upto average CPI 608
(i) Not exceeding Rs. 1500/-	30 percent of basic pay subject to a minimum of Rs. 300/-
(ii) Exceeding Rs. 1500/-but not exceeding Rs. 3000/-	20 per cent of basic pay subject to a minimum of Rs. 450/-
(iii) Exceeding Rs. 3000/-	15 per cent of basic pay subject to a minimum of Rs. 600/- and a maximum of Rs. 1250/-

These will be inclusive of dearness relief upto a average CPI 608."

4. These changes were incorporated in the Punjab Civil Service Rules, Volume II vide notification dated January 31, 1992. A copy of this notification is at Annexure P-4 with the writ petition.

5. The petitioner alleges that the family pension admissible in case of the employees who have retired after January 1, 1986 and were drawing basic pay between Rs. 1501/- per month to Rs. 7060/- per month has been drastically reduced. It illustrates this by pointing out that the family pension admissible to a person who retired on December 31, 1985 with a basic pay of Rs. 840/- would be Rs. 454/-. However, on revision of pay scale with effect from January 1, 1986, the basic pay would rise from Rs. 840/- to Rs. 1720/-. His family pension would, however, get reduced. Similarly, a person who was drawing a basic pay of Rs. 1500/- per month on December 31, 1985, would have got a family pension of Rs. 794/-. However, on revision of pay scale, his salary gets enhanced to Rs. 2900/- per mensem but the family pension gets reduced to Rs. 580/-. In this manner, the loss continues to progressively increase.

6. The petitioner-Association filed various representations. However, vide order dated May 4, 1994 a copy of which has been produced as Annexure P-12 with the writ petition, the State Government conveyed that "it was not been possible. to

agree to the demand in question." Consequently, it has approached this court through the present writ petition. It alleges that the family pension which is admissible to the widow/legal heir of a deceased employee cannot be reduced in an inflationary era. It further points that the action is discriminatory and arbitrary.

7. In the written statement filed on behalf of the respondents, the factual position has not been disputed. It has, however, been pleaded that "the State Government has inherent administrative power to make/frame the Pension/Family Pension Policy from time to time and the petitioners are drawing their pension from the date of applicability of the policy. The Govt. Policy may be more beneficial to some retirees than the others."

8. Counsel for the parties have been heard.

9. The short question that arises for consideration is - Have the respondents acted arbitrarily in fixing the rate of family pension ?

10. Admittedly, with effect from April 1, 1979, the widow or the legal heirs of a deceased employee were entitled to the grant of family pension at the rate of 50% of the admissible pension. This means that if an employee was getting a pension of Rs. 450/- on his death, the widow would have got Rs. 225/- per month for sustaining herself. By the revised formula, it has been laid down that if an employee was drawing basic pay of Rs. 1500/- per mensem at the time of his death or retirement, the family pension shall be admissible to him at the rate of 30% viz. Rs. 450/-. However, if he was drawing basic pay exceeding Rs. 1500/- say Rs. 2250/-, the family pension is admissible to him at the rate of 20% viz. Rs. 450/-. On further increase in salary from Rs. 3001/- onwards, the rate of family pension gets reduced to 15%. It is, thus, clear that the amount of family pension admissible to the employees/officers, whose basic pay ranges from Rs. 1501/- P.M. to Rs. 7060/- P.M. has been reduced.

11. Ms. Bahri, learned counsel for the respondents submitted that the reduction in the rate of family pension is marginal. It may be so. The fact remains that there is a loss. Not only that. The order dated November 3, 1988 has been made effective from January 1, 1986. Similarly, even the notification dated January 31, 1992 has substituted the rate of family pension with effect from January 1, 1986. Thus, there is a retrospective decrease in the rate of family pension. As a consequence, even the amount which has already been paid, becomes recoverable. The position that emerges is that the rate of family pension admissible to an employee has been retrospectively reduced.

12. It is true that it is the prerogative of the Government to fix the rate of family pension. It is also true that the paucity of funds may compel the Government to reduce the payments to the employees. However, it is equally clear that keeping in view the continuous increase in prices and the rise in cost of living, the Government has allowed substantial increase in salaries. Factually, inflation is a fact of life. If on account of the increase in prices, the Government thinks it necessary to allow

salaries at a higher rate, it would not be just and fair to reduce the family pension admissible to the employees. Still further, the loss is admittedly confined to the persons who are drawing basic pay from Rs. 1501/- to Rs. 7060/-. In the circumstances of the case, there appears to be no justification.

13. Accordingly, the question as posed above is answered in the affirmative. It is held that the action of the respondents is arbitrary and unfair. It is, consequently, violative of Articles 14 of the Constitution. The formula as fixed by the Government in respect of employees who were drawing pay exceeding Rs. 1500/- per month, is set aside. The Government is directed to re-fix the rate of family pension in a way that there is no reduction. The impugned orders are quashed to that extent. In the circumstances, there will be no order as to costs.