

(2016) 08 P&H CK 0297

High Court Of Punjab And Haryana At Chandigarh

Case No: LPA No. 352 of 2014 (O&M), CWP No. 6597 of 2014 (O&M), CWP No. 6699 of 2014 (O&M), CWP No. 6759 of 2014 (O&M), CWP No. 7048 of 2014 (O&M), CWP No. 7383 of 2014 (O&M), CWP No. 7644 of 2014 (O&M), CWP No. 12608 of 2014 (O&M), LPA No. 1380 of 2015 (O&M), CWP

State of Punjab

APPELLANT

Vs

A.P. Sharma

RESPONDENT

Date of Decision: Aug. 31, 2016

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2017) 1 SCT 322

Hon'ble Judges: Surya Kant and Sudip Ahluwalia, JJ.

Bench: Division Bench

Advocate: C.M. Chopra, Advocate, for the Respondent No.1; Rajesh Bhardwaj, Addl. A.G., Punjab., Sunny Singla for Vikas Chatrath, Ajay Bansal, Aneeru Thakur, R.K. Arora, J.P. Rana, Saurabh Arora, Advocates, for the Petitioners; J.S. Toor, Advocate, for the Responden

Final Decision: Disposed Off

Judgement

Surya Kant, J. (Oral)—This order shall dispose of the above-captioned cases as the points in issue in the LPAs preferred by State of Punjab as well as in the connected writ petitions wherein the petitioners are seeking the same relief as has been granted by learned Single Judge to the respondents in the appeal, are identical in nature.

2. The first question which requires determination is whether the State of Punjab vide memo dated 15.12.2011 (P-4) removed the anomalies in pay-scales of various posts in Department of Finance or it was merely a case of up gradation/further revision of pay-scale? The second issue is whether the respondents or the writ-petitioners in connected cases who are pre-01.01.2006 retirees, are entitled to seek re-fixation of their pension as per the revised/upgraded pay-scale,

prospectively from the date of such up gradation in favour of their in-service counterparts?

3. Before noticing the bare facts required to be referred to for correct appreciation of the controversies, it will be profitable to re-state the settled principle that wherever the competent authority detects an anomaly in pay fixation and decides to remove it, such correctional steps shall relate back to the date when the anomaly had crept in. But where the competent authority decides to further revise or upgrade the existing pay structure, it is within the inherent discretion of the authority to restrict such benefit prospectively or to grant retrospectively from a cut-off date which has some rationality with reference to the object sought to be achieved.

4. The facts are extracted from the lead case i.e. LPA No.352 of 2014. The respondent-writ petitioners served in the Finance and Accounts/Audit Wings of the Finance Department and they held the posts of Joint Controller (F&A), Deputy Controller (F&A) and Assistant Controller (F&A) etc. at the time of their retirement. They retired before 01.01.2006.

5. The pay-scale of its employees were revised by Government of Punjab on the recommendations of 5th Punjab Pay Commission w.e.f. 01.01.2006 by formulating Statutory Rules under proviso to Article 309 of the Constitution notified on 27.05.2009.

6. The State Government also decided to implement the recommendations of the 5th Punjab Pay Commission qua the retirees and to revise the pension of pre-01.01.2006 pensioners/family pensioners/recipients of extraordinary pension and issued the circular dated 17.08.2009 (P-2) for the aforesaid purpose, followed by notification and memo dated 22.02.2010 (P-3). The respondents were granted revised pension as per para 4 of the circular dated 17.08.2009.

7. On 15.12.2011, the Government of Punjab, Department of Finance issued the circular (P-4) for the revision of pay-scales of certain categories of posts. It is recited in the circular that the scales of pay of the posts mentioned therein "shall stand further revised as under with effect from the 1st December, 2011." Para 3 of the circular reads as under:-

"3. The pay in the above mentioned revised scales effective from the 1st December, 2012, shall be fixed prospectively and there shall be no element, whatsoever, of retrospectively [sic.retrospectivity] in this regard and there will be no questions of payment of arrears or of fixation of pay on notional basis from any previous date."

(emphasis by us)

8. The above-stated circular admittedly granted higher pay-scale for the posts of Joint Controller (F&A), Deputy Controller (F&A) and Assistant Controller (F&A) etc., namely, the posts held by the respondents before their retirement.

9. Since the benefit of revised pay-scales was made effective from 01.12.2012 with a further rider that there shall be no element, whatsoever, of retrospectivity, and no arrear shall be paid, hence the benefit of higher revised pay-scales was not extended towards re-fixation of pension of the retirees, who held such posts before 01.12.2012 or prior thereto.

10. The respondents thus approached this Court claiming that the above-stated circular dated 15.12.2011 issued to remove the anomaly in the pay-scale of Joint Controller (F&A), Deputy Controller (F&A) and Assistant Controller (F&A) etc. must relate back to the date when the "anomaly" occurred. The State of Punjab claimed that it was a case of "further revision" of pay-scale with prospective effect hence the retirees were not entitled to its benefit. However, in their written statement, the averment made by the writ petitioners to the effect that the Anomaly Committee detected anomaly in the pay-scale of the above-stated posts in the Finance Department and that a conscious decision was taken to remove such anomaly was not controverted. Admittedly, learned Single Judge proceeded on the premise that it was a case of anomaly which was removed by the circular dated 15.12.2011 and has held that once the anomaly has been removed and a higher pay-scale was granted, the retirees are also entitled to the reflection of its benefit in the fixation of their pension though prospectively from the same date when the higher pay-scale was granted to the in-service incumbents.

11. It is in this background that two questions formulated at the outset have arisen for consideration.

12. The litmus test, thus, would be to find out whether it was a case of removal of pay anomaly or of grant of higher pay-scale by way of a conscious decision as then only the effect of such decision can be determined. In its quest to find out the answer, this Court on 02.03.2015 directed the Chief Secretary to explain the cause of upward revision in pay for the posts in Finance Department and whether such upward revision was granted to other categories of employees also as there was a reference made to Cabinet Sub-Committee which examined the claims before issuance of the subject circular. The records of that Sub-Committee were also directed to be produced.

13. In deference to those directions, the Chief Secretary, Government of Punjab has filed a comprehensive affidavit dated 21.10.2015 and it would be useful to extract its relevant part, which reads as follows:-

"3. That as informed by the Department of Finance, after the implementation of the recommendations of the 5th Punjab Pay Commission, 379 representations were received from various Employees Associations regarding revision of their pay scales (Annexure A-1).

4. XXXX XXXX

5. That to examine the demands raised by the Employees' Associations, the Punjab Government appointed a Cabinet Sub Committee consisting of three Ministers namely Sh. Tikshan Sud, Local Government and Industries and Commerce Minister, Dr. Upinderjit Kaur, Finance and Planning Minister, S. Adesh Partap Singh Kairon, Food and Supplies Minister with Principal Secretary Finance as its Convener constituted vide Ends. No.1/281/2011-3 Cabinet/6383 dated 25.10.2011 (Annexure A-2). Eight Meetings of this Cabinet Sub Committee were held. The record of these meetings of the Cabinet Sub Committee is annexed at Annexure A-3.

6. That on the basis of these recommendations, 292 categories of employees of different departments of the State were given the revised pay scales, the details of which are enclosed as Annexure A-4.

7. XXXX XXXX

8. That as per record of Finance Department, the Cabinet Sub Committee received 354 representations/claims, out of which 55 were considered and accepted. 123 claims were considered and partially accepted. In 114 cases, suo moto relief as indicated in para 7 above was given.

9. XXXX XXXX

10. That the recommendations of Cabinet Sub committee were implemented w.e.f. 01.12.2011 in accordance with the recommendations. These recommendations were not applicable to pre-01.12.2011 retirees and also include other private respondents, who are pre-01.01.2006."

14. It may be seen from the contents of the affidavit that no sooner the recommendations of 5th Punjab Pay Commission were given effect, 379 representations from various Employees Associations regarding revision of their pay-scales were received and to examine those demands, a Cabinet Sub Committee comprising three Ministers of the State of Punjab was constituted. That Sub Committee accepted those recommendations in respect of 292 categories of employees and eventually those recommendations were accepted fully or in part resulting into issuance of circulars like dated 15.12.2011 (in respect of the posts of the Department of Finance).

15. The Chief Secretary, Punjab has also placed on record the notifications constituting the Ministers' Sub Committee as well as its recommendations for the pay revision of employees of different Departments.

16. While examining such recommendations the issue that further arose for consideration was to find out the basis on which the Ministers' Sub Committee made its recommendations for upward revision of payscales of hundreds of categories of employees. It is at this juncture that learned counsel for the parties have brought on record the report of the Pay Anomalies Committee dated 14.11.2011 duly published by the Government of Punjab. The Financial

Commissioner (Revenue) was the Chairman of the Pay Anomalies Committee and it was consisting senior administrative functionaries of the State Government. The Pay Anomalies Committee dealt with department-wise and at serial No.40, it considered the claims of Department of Treasuries and Accounts. The recommendations made by the Pay Anomalies Committee in the context of the posts held by the respondents are as follows:-

"2.40.1 The initial benefit of enhanced pay scale given to the Section Officer (SAS), on account of qualifying a rigorous departmental examination, gets neutralised on promotion as Assistant Controller (F&A) because the pay scale of the Superintendents Grade-I who are promoted from amongst the Senior Assistants and Superintendents Grade II, is also equal to the pay scale of Assistant Controller (F&A). Therefore, in order to remove this anomalous situation, it is recommended that an enhanced pay scale of 10300-34800+5400 Grade Pay may be granted to Assistant Controller (F&A).

2.40.2 It is further recommended that an enhanced pay scale of 10300-34800+5400 Grade Pay may be granted to the District Treasury Officer because of its historic parity with the Assistant Controller (F&A).

2.40.3 As a corollary to the above noted recommendations, contained in paras 2.40.1 and 2.40.2 above, an enhanced pay scale of 15600-39100+6000 Grade Pay, is recommended for the Deputy Controller (F&A) because it is a promotional post from the cadres of Assistant Controller (F&A) and District Treasury Officer.

2.40.4 It is considered not justified to recommend higher scales of pay for the Section Officer, Joint Controller (F&A), Additional Controller (F&A) and other categories of posts as no anomaly has been found in the pay scales thereof."

17. The above-stated report of the Pay Anomalies Committee was then put up before the Ministers' Sub Committee for further consideration, who vide its own report (A-2) appended with the affidavit of the Chief Secretary, made the following recommendations for up gradation of the pay-scales of Joint Controller (F&A), Deputy Controller (F&A), Assistant Controller (F&A):-

"(i) The Pay scale of Rs. 10300-34800+5000 Grade Pay to Section Officer (S.A.S.), 15600-39100+5400 Grade Pay to the Assistant Controller (Finance & Accounts), 15600- 39100+6600 Grade Pay to the Deputy Controller (Finance & Accounts) and 15600+39100+7800 Grade Pay to the Joint Controller (Finance & Accounts) will be granted. Treasury Officer will be given the Pay scale of 10300-34800+5000 Grade Pay and the District Treasury Officer shall be granted the pay scale of 15600-39100+5400 Grade Pay. This decision will be effective from 01.12.2011."

18. The recommendations of the Ministers' Sub Committee were duly accepted and the circular dated 15.12.2011 (P-4) revising the payscales of various posts in the Department of Finance w.e.f. 01.12.2012, was issued.

19. It may thus be seen that the genesis of the revision of pay scales of Joint Controller (F&A), Deputy Controller (F&A) and Assistant Controller (F&A) (and some other posts) in the Department of Finance as well as other Departments lies in the report of the Pay Anomalies Committee, which was published on 14.11.2011.

20. The purpose and object of the constitution of the Pay Anomalies Committee is well explained in the Preface of the Report authored by the Financial Commissioner (Revenue) and it says as follows:-

"In view of these circumstances, the State Government thought it fit to redress the genuine grievances of its employees in an appropriate way and hence constituted this Committee to examine the pay anomalies, if any, in the recommendations of the Fifth Punjab Pay Commission and Government decisions taken thereon."

21. If the very purpose of constituting the Pay Anomalies Committee was to redress the grievances of employees in an appropriate way and to examine the issues of pay anomalies, the recommendations made by it deserves to be appreciated with reference to these objects of its constitution. In other words, wherever the Pay Anomalies Committee recommended a different higher pay structure, it was with a view to remove the existing anomalies and to rationalise the pay-scales. In the matter of the Department of Treasuries and Accounts, the Pay Anomalies Committee expressly noticed the cause of anomaly and recommended higher pay structure so as to remove the anomalous situation.

22. These very recommendations were accorded approval by the Ministers" Sub Committee culminating into final circular dated 15.12.2011. If one reads para No.3 of the said circular in conjunction with the recommendations made by the Pay Anomalies Committee, it is not difficult to understand as to why the circular expressly restricts the benefit of higher pay-scale notionally without granting any arrears of pay? The competent authority was conscious of the fact that it is a case of removal of pay anomaly which must be removed from the date it occurred but to obviate the additional financial burden on the State Exchequer, a decision was taken to remove such anomalies with prospective effect only.

23. In the light of the above discussion, we have no reason to doubt that it was not a case where the State Government at its own decided to grant higher pay-scales to the incumbents of certain posts. It was not a voluntary exercise undertaken by the State for further revision of pay scales. It was in the compelling circumstances that there were numerous representations received from different sections of employees against the recommendations of the 5th Punjab Pay Commission Report that the State Government firstly constituted Anomalies Committee, followed by Ministers Sub Committee. The object of the entire exercise was to eliminate heart-burning, discrimination, discrepancy, or anomalous situations, which had occurred while granting the benefit of pay revision under the recommendations of Pay Commission. It was thus essentially a case of removal of pay anomaly though

done notionally from the date it originally occurred. Actual benefit has been restricted prospectively w.e.f. 01.12.2012.

24. Learned Additional A.G., Punjab contends and rightly so that the Pay Anomalies Committee found no anomaly in the pay-scale of Joint Controller (F&A) and, therefore, the order of learned Single Judge to that extent is contrary to the record in view of Para 2.40.4 of the report dated 14.11.2011, reproduced above.

25. However, if examined minutely, the recommendations made by the Pay Anomalies Committee in para No.2.40.3 to grant higher payscale to the post of Deputy Controller (F&A) could not have been given effect unless the pay-scale of Joint Controller (F&A) was also upgraded, for the pay-scale of higher post could not be equivalent or lower than the feeder post of Deputy Controller (F&A).

26. Likewise, the contention that the Ministers' Sub Committee was constituted only to address the grievances of Employees' Union and not to remove pay anomalies need not to detain us for long. It cannot possibly be disputed and has been specifically stated in the Preface of the report of Pay Anomalies Committee that the grievances of the Employees' Union was against the report of the 5th Punjab Pay Commission. Thus the "grievance", which was to be addressed by the Ministers' Sub Committee pertained to the pay-scales which necessarily included the anomaly, if any, in such pay-scales.

27. There may thus be no room to doubt that the object of the Pay Anomalies Committee as well as the Ministers' Sub Committee was to identify the anomalous situations, if any, which had arisen on the implementation of the 5th Punjab Pay Commission and to iron out those creases. This is what precisely has been done by the Ministers' Sub Committee, who recommended re-modulation and up gradation in payscales of various posts in different Departments.

28. Since such alterations were to be made from the date of occurrence of the anomalous situation and such a recourse would have burdened the State Exchequer with heavy financial liability that the Ministers' Sub Committee in its wisdom took a decision to remove anomalies, prospectively. As no challenge has been laid to the cut-off date, no fault can be found with the same which has been applied uniformly in respect of all categories of employees.

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:-

"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-rata if the qualifying service of the person falls short of 33 years."

(emphasis by us)

30. The subsequent circular dated 22.02.2010 though modifies the earlier circular dated 17.08.2009 but to the advantage of the retirees. Para 2 of the circular dated 22.10.2010 reads as under:-

"The Governor of Punjab is pleased to decide further that the benefit of fixation of revised pension envisaged in para 4.2 of the aforesaid letter will be available for fixation of family pension also subject to the condition that the revised family pension, in no case, shall be lower than thirty percent of the initial pay shown in column 8 of the Schedule of the Punjab Civil Services (Revised Pay) Rules, 2009, against relevant Pay Band and Grade Pay corresponding to the pre-revised scale of pay in which the pensioner/deceased employee had last worked."

31. As a cumulative effect of the two circulars referred to above, it stands crystalized that the amount of pension in the case of pre- 01.01.2006 retirees is not static and is flexible and fluctuating depending upon the pay-scale of the posts held by them while in service. In other words as and when there would be a revision of pay-scale of the posts occupied by them, their pension would also be favourably re-fixed so as to ensure that it is not less than 50% of initial pay of the posts held by them. To say it differently if the initial pay of the posts of Joint Controller (F&A), Deputy Controller (F&A) or Assistant Controller (F&A) is enhanced in the year 2012, it will also benefit the pre-01.01.2006 retirees as their pension cannot be less than 50% of such initial pay.

32. At this stage, we may also deal with the contention raised on behalf of the appellant-State that the Government notification-cum-circular dated 15.12.2011 granting higher pay-scales cannot be applied retrospectively. The expression "retrospective" connotes a definite meaning in law. It creates a deeming fiction of assumed existence of something which actually never existed at that particular point of time. The law would still presume that such a thing existed at that point of time and its consequence must flow on such assumption. The expression "Retrospective" is neither synonymous nor identical to the concept of "retroactive". The phrase "retroactive" is applied to give effect to a quasi judicial or administrative order though passed prospectively but has its antedated effects. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Ed., 2005) the expression "retroactive" has been defined as "Acting backward; affecting what is past". Where the decision-making authority consciously decides not to give effect to a decision retrospectively but if it is bound to affect the antecedents of such decisions, it is held to have "retroactive

effect" but where the competent authority itself decides to give effect to its decision from a back date, such decision becomes "retrospective".

33. In somewhat similar circumstances, the Hon^{ble} Supreme Court in **D.S. Nakara and others v. Union of India and others (1983) 1 SCC 305** observed that "It must be remembered that pension is relatable to qualifying service. It has correlation to the average emoluments and the length of service. Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing...".

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.

36. As a result of the above discussion, it is held that the circular dated 15.12.2011 is retroactive in nature and the benefit of fixation of higher pay of various categories of employees is bound to have its positive effect on the pension of pre-01.01.2006 retirees.

37. For the reasons afore-stated, we do not find any merit in this appeal, which is, accordingly, dismissed.

38. As regard to the connected writ petitions, we have not gone into the merits of the individual claims. Those writ petitions are disposed of in terms of the decision in the lead case with a direction to the authorities to verify the claim of each petitioner and if found covered vide this judgment, let the consequential benefits be granted to them as well.

39. The needful shall be done within a period of six months from the date of receipt of certified copy of this order.