

**SUPREME COURT OF INDIA**

U.T. Chandigarh

Vs

Gurcharan Singh

C.A.No.9873 of 2013

(Anil R. Dave and Dipak Misra, JJ.)

01.11.2013

**JUDGMENT**

**Anil R. Dave, J.**

1. Leave granted.

2. Being aggrieved by the Judgment delivered in Civil Writ Petition No.7006-CAT of 2003 dated 20th March, 2008 by the High Court of Punjab and Haryana at Chandigarh, this appeal has been filed by the employer - Union Territory of Chandigarh and others.

3. The facts giving rise to the present litigation in a nut-shell are as under:

The respondent was appointed as a Clerk by the appellant Chandigarh Transport Undertaking on the quota reserved for ex-servicemen. The respondent had rendered his services to the Indian Army as a Combatant Clerk upto 31st January, 1990, till the date when he was discharged from the Indian Army.

Upon his appointment as a Clerk under an office order dated 2 nd September, 1992, his pay had been fixed and he was paid his salary accordingly. Only when he retired in 1997, it was brought to the notice of the employer, on getting an audit query that his salary had

been wrongly fixed under the order dated 2nd September, 1992. The mistake committed in pay fixation had been rectified by an order dated 13th October, 1998.

4. Being aggrieved by the re-fixation of his pay, the respondent had made several representations but as no change was effected by the appellant- employer in the pay so re-fixed, the respondent had approached the Central Administrative Tribunal (hereinafter referred to as ' the Tribunal') by filing Original Application No.975/CH/2000. The said OA had been dismissed by the Tribunal by an order dated 4th January, 2002. Being aggrieved by the order rejecting the aforesaid O.A., the respondent-employee had approached the High Court by filing the aforesaid petition which has been allowed by an order dated 20th March, 2008 and being aggrieved by the said order and judgment, this appeal has been filed by the employer.

5. The learned counsel for the appellant had explained the circumstances, in which the appellant was constrained to re-fix pay of the respondent so as to rectify the mistake committed while passing the pay fixation order dated 2nd September, 1992. The learned counsel had taken us through the relevant regulations with regard to pay fixation of re-employed pensioners and had taken us through the provisions of the Central Civil Services (Fixation of pay of Re-employed Pensioners) Orders, 1986 (hereinafter referred to as 'the Orders') under which pay of the respondent ought to have been fixed.

6. The learned counsel for the appellant had submitted that there were several different notifications and orders in relation to the pay fixation of re-employed pensioners, including ex-servicemen. So as to see that all the orders are available at one place, the orders had been compiled and notified in 1986 so that pay of the re-employed pensioners can be fixed only upon looking at the provisions of the compilation of the Orders instead of looking at several different orders or notifications which had been issued from time to time. Thus, according to the learned counsel, a comprehensive compilation of all the relevant orders, which had been issued from time to time and which were operative in 1996 was duly considered for the purpose of re-fixation of the pay of the respondent.

7. As the respondent had been given appointment on 15 th April, 1990 as a Clerk on a post reserved for the ex-servicemen, the provisions of the Orders were to be looked into for the purpose of pay fixation of the respondent. The learned counsel had further submitted that while fixing the pay on 2nd September, 1992, the appellant did not look into the certain provisions of the Orders and an option exercised by the respondent in relation to his pay fixation and therefore, incorrect pay had been fixed under the order dated 2nd September, 1992. By virtue of the said pay fixation, the respondent was given benefit of his past services rendered to the Indian Army and accordingly, he was also given increments which he would have got in the Indian Army. As a result thereof, the respondent's pay was fixed in a higher scale than what he ought to have been allowed. As a matter of fact, as per the provisions of Order 4 of the Orders, the respondent could not have been given benefit of his earlier services in the process of fixing his pay. Order 4 of

the Orders, being relevant for the purpose, has been reproduced herein-below:

“4. Fixation of pay of re-employed pensioners.

a) Re-employed pensioners shall be allowed to draw pay only in prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of the post held by them prior to retirement shall be given.

b) i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scales of pay of the re-employed post.

ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scales in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scales of the re-employed post. Similarly, if the minimum of the scales of the pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum of the scales of pay of the re-employed post. However, in all these cases, non ignorable part of the pension and pension equivalent of retirement benefits shall be reduced from the pay so fixed.

c) The re-employed pensioner will be in addition to pay as fixed under para (b) above shall be permitted to draw separately and pension sanctioned to him and to retain any other form of retirement benefits.

d) In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent.

(i) In the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of Civilians who held posts below Group (A) posts at the time of their retirement benefits shall be ignored.

(ii) In the case of service officers belonging to the Defence Forces and Civilian Pensioners who hold Group ‘A’ posts at the time of their retirement, the first Rs.500/- of the pension and pension equivalent of retirement benefits shall be ignored.”

8. The respondent had been given an option whereby he had opted for the minimum scale of pay, which was paid to the Clerk and therefore, his pay had been rightly fixed as per the option read with Order 4(a) of the Rules. The learned counsel had further submitted that while allowing the writ petition, the High Court had not considered the aforesaid

facts at all. The High Court did not look into the fact that an option had been given to the respondent-employee and his pay had been fixed only as per the option exercised by him and as per the provisions of Order 4 of the Orders. It had, therefore, been submitted that the view taken by the Tribunal, confirming re-fixation of pay was correct and the High Court ought not to have disturbed the same by allowing the writ petition. It was, therefore, submitted that the order dated 20th March, 2009 of the High Court should be quashed by allowing the appeal.

9. On the other hand, the learned counsel appearing for the respondent- employee had at the first instance submitted that the respondent was not having a copy of the option and he was not aware about the option so exercised. He had submitted that the pay had rightly been fixed by the order dated 2nd September, 1992 and it ought not to have been re-fixed to the prejudice of the employee after six years. He had, therefore, submitted that the view taken by the High Court was correct. He had further submitted that perhaps the respondent might have to make some payment to the appellant- employer as according to the employer, the respondent had been paid more salary on account of incorrect pay fixation. He had also submitted that recovering the salary so paid would be unjust and therefore, in any case, nothing should be recovered from the respondent-employee.

10. Upon hearing the learned counsel and upon perusal of the option form dated 18-7-1990, in our opinion, the High Court was in error while allowing the petition because it is clearly revealed from the option form that the respondent had agreed to get his pay fixed as per the minimum of pay in the pay-scale of the Clerk, the post to which he had been re-employed. It is pertinent to note that the respondent has been getting regular pension from the Indian Army for his past services rendered to the Indian Army. As per the provisions of the Orders and as per the option exercised by the respondent, service rendered by the respondent to the Indian Army cannot be taken into account for the purposes of his pay fixation as the respondent would be getting his pension and there would not be any deduction from his pension or his salary on account of the pension received by him from the Indian Army. If nothing has been deducted from the pension of the respondent upon being re-employed and as the respondent would continue to get his pension and other benefits from the Army for his past services, in our opinion, the High Court was not right while permitting the respondent to get his higher pay fixed by taking into account the services rendered by the respondent to the Indian Army. Even from sound common sense, it can be seen that for the past service rendered to the Indian Army, the respondent is getting pension and other perquisites which a retired or discharged soldier is entitled to even after being re-employed. The respondent would, therefore, not have any right to get any further advantage in the nature of higher salary or a higher pay scale, especially when nothing from his salary was being deducted on account of his getting pension or perquisites from the earlier employer.

11. In view of the a fore stated position, in our opinion, the Tribunal was absolutely right in coming to the conclusion that the pay fixation under the order dated 13th October, 1998 was correct because a mistake was committed in the earlier pay fixation under the order

dated 2nd September, 1992.

12. Though a submission had been made on behalf of the respondent that no amount should be recovered from the salary paid to the respondent, the said submission can not be accepted because if any amount had been paid due to mistake, the mistake must be rectified and the amount so paid in pursuance of the mistake must be recovered. It might also happen that the employer might have to pay some amount to the respondent as a result of some mistake and in such an event, even the appellant might have to pay to the respondent. Be that as it may, upon settlement of the account, whatever amount has to be paid to the respondent employee or to the appellant employer shall be paid and the account shall be adjusted accordingly.

13. For the a fore stated reasons, we are of the view that the High Court was not correct in allowing the writ petition. We quash and set aside the order passed by the High Court so as to restore the order passed by the Tribunal and give effect to the pay fixation order dated 13th October, 1998. The appeal stands disposed of as allowed with no order as to costs.