

# **SUPREME COURT OF INDIA**

State of Punjab

Vs.

Tarlok Chand

C.A. No. 6540 of 2014

(Dipak Misra and V. Gopala Gowda JJ.)

16.07.2014

## **ORDER**

1. Leave granted in all the special leave petitions. For the sake of clarity and convenience we shall advert to the facts in the appeal arising out of SLP(C) No. 13027 of 2011. The Respondents along with others invoked the writ jurisdiction of the High Court of Punjab and Haryana at Chandigarh in CWP No. 9909 of 2008 asserting, inter alia, that the decision taken by the State Government, Department of Irrigation, pertaining to refutation of pay of employees vide orders dated 07.01.2008 and 18.01.2008 whereby a direction was issued to the concerned Executive Engineer, to Ranjit Sagar Dam Project to refix the pay of the concerned employees in accordance with Punjab Civil Services Rules was erroneous. As per the said orders the Respondents who had availed the higher pay scale because of grant of certain special increments while they were working in the Work Charged Establishment under the project and that apart had also drawn the retrenchment increments were to be denied the said benefit as there was a wrong computation. The learned Single Judge adverted to the status of work charged employees and opined that the withdrawal of retrenchment increments was not justified. As far as grant of special increments from time to time to certain employees is concerned the writ court opined that there was no uniform policy and benefit of special increments was given on selective basis. Being of this view, the learned Single Judge directed as follows:

"In view of the above, the Respondents are not entitled to effect any recovery from the Petitioners either on account of retrenchment increments

or special increment allegedly erroneously given. However, the Respondents are entitled to re-fix the emoluments by reducing the special increment only. Consequently the pay of the Petitioners will be re-fixed and in case of those employees who have already retired from service, the retiral benefit shall be released within a period of two months. The Petitioners shall also be entitled to interest on the delayed payment of pension/retiral benefits at the statutory rate wherever admissible and at the rate of 6% on pension and other retiral benefits where statutory interest is not provided for. Any amount deducted from the retiral benefits or the salary of the Petitioners shall be refunded within the aforesaid period."

2. The aforesaid order was accepted by the State of Punjab. However, the Respondents preferred LPA No. 1161 of 2009 and the Division Bench referred to the concept of pay fixation and grant of power of the Chief Engineer to grant advance increments and eventually opined thus:

"A bare perusal of Rule 10.8 make it clear that the Chief Engineer has been clothed with the power to grant advance increments to the personnel borne on work-charged establishment, which could be granted even on initial appointment of the person against a post as well as during the course of his service. The Chief Engineer continues to enjoy this power till date. Therefore, we have no hesitation to hold that the benefit of special increments which was extended to various work-charged employees like the Petitioner-appellant, did not require any sanction from any authority before its release to work-charged employees because the Chief Engineer is fully competent. We further find that the circular dated 5.8.1968 issued by the State of Punjab converting grant of special increments to cash rewards to its employees could not have been made applicable to the Petitioner-appellants because prior to 1996 the Punjab Civil Services Rules Volume-1 Part-1 were not applicable to them and they were to be governed by the Departmental Financial Rules. At stated above, under Rule 10.8 of the Departmental Financial Rules, The Chief Engineer was fully empowered to grant special increment to a person borne on work-charged establishment. It is also well settled principle of law that the executive instructions cannot override the powers of the authorities conferred upon them under the

statutory Rules. Therefore, it is held that the Chief Engineer was competent to grant special increments under Rule 10.8 of the Departmental Financial Rules and the same could not have been withdrawn."

3. Being of this view the Division Bench allowed the appeal.

4. Mr. P.S. Patwalia learned Additional Solicitor General appearing for the State of Punjab has drawn our attention of Rule 2.44 of Punjab Civil Services Rules. The said rule reads as follows:

"[2.44. Pay means-

(a) The basic pay, that is the amount drawn monthly by a Government employee in the scale of pay of the post held by him, or to which he is entitled by reason of his position in a cadre; and

(b) includes any other emoluments which may specifically be classed as part of pay by the competent authority."

5. There is no dispute that at the time of fixation of pay when the employees are regularised the pay has to be fixed as per the postulates in the said rules. Rule 4.4 defines the fixation of pay at the time of regularisation. The Learned Counsel has drawn inspiration from 4.4 to bolster the stand that the Division Bench has taken into grave error in its appreciation of the Rule, despite the plain language employed therein. To appreciate the controversy in proper prospective we think it appropriate to reproduce the said Rule.

4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended--

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of Rule 4.13) than these attaching to such permanent post, he will draw as

initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference; and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay;

(iii) when appointment to the new post is made on his own request under Rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay. Note: The expression "if he holds a lien on a permanent post" occurring in this clause should be held to include the lien on a permanent post to which a Government employee is appointed in a provisional substantive capacity under Rule 3.14(d), and the expression "substantive pay in respect of the old post" occurring in it should be held to include his substantive pay in respect of that provisional substantive appointment. This clause should, therefore, be held to permit the substantive pay in respect of a provisional substantive appointment being taken into account in determining his initial pay in another post to which he is appointed. When the initial pay of a Government employee in a post is, thus fixed, it will not be affected even if during the tenure of his appointment to that post he reverts from his provisional appointment.

(b) If the conditions prescribed in Clause (a) are not fulfilled, he will draw as initial pay the minimum of the time-scale:

Provided both in cases covered by Clause (a) and in cases, other than cases of re-employment after resignation or removal or dismissal from the public service, covered by Clause (b), that if he either--

(1) has previously held substantively or officiated in--

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale;

or

(2) is appointed substantively to a tenure post on a time scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the competent authority under Rule 2.44 (a)(iii), which he drew on the last such occasion and he shall count for increments the period during which he drew that pay on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government employee in a temporary post has been inflated by the grant of premature increments in the pay which he would have drawn but for the grant of these increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post."

6. The learned Additional Solicitor General has submitted that the words used in the Rule are that while fixing the pay there are many exclusions like special pay, personal pay or emoluments, and simultaneously there is also an exclusion of grant of premature increment in the pay if by such grant the pay gets inflated. On a query being made, it is urged by him that the Chief Engineer who was the competent authority to grant premature increment/advance increment granted indiscriminately as a consequence of which many employees got more 15 to 20 increments hardly in 9 or 10 years of service apart from the regular yearly

increments. In that regard he would draw support from the reasons ascribed by the learned Single Judge in his order.

7. Mr. V.C. Mahajan learned senior counsel appearing for the Respondents submitted that when the Chief Engineer had the authority to grant special increments, taking into, consideration the various factors, he has granted and the pay was accordingly fixed, and, therefore, the same should not have been refixed for the purpose of grant of pension.

8. Having heard Learned Counsel for the parties and on the scrutiny of the rule we find that the Chief Engineer had the authority to grant special increments. The learned Single Judge has appreciated the situation and found it was done selectively. At the time of fixation of pay scale, as we have been apprised it is fixed by the Chief Engineer. Many incumbents had worked prior to regularisation for the period of 8 years and obtained 15 to 20 increments and that is why the Accountant General objected on the ground that there was no rationale in granting such premature/advance increments and, in fact, they had been granted in an arbitrary manner.

9. Be it stated, as far as the grant of retrenchment increment is concerned the same has attained finality and the employees shall be entitled to the same. As far as other regular increments are concerned every employee is definitely entitled to get the annual increments. But, as far as special increments are concerned the learned Single Judge has opined that it has been done in an inappropriate manner. Initially in the course of arguments there was a debate whether such kind of increments could be granted on rational basis or not, but on hearing further arguments, we have thought it appropriate to put the controversy to rest from all spectrums and accordingly we direct that all the Respondents shall get the annual increment for the years of service they have rendered prior to regularisation and that apart four special increments for the period they have served prior to regularisation. Be it clarified that the grant of retrenchment increment conveys that when they were out of service they would be granted by virtue of the order passed by the learned Single Judge. They have been granted that and hence, it would have come within the compartment of annual increment. Be it noted that if someone has got less than four increment he will not claim that he has a right to get four increments. The

grant of four special increments applies to those employees who have got more than four increments. At the cost of repetition let it be stated that the Respondents shall get their annual increment plus four special increments and the same shall be computed for the purpose of pay fixation and accordingly the increments received during the course of employment regular pay shall be fixed and on that foundation pension shall be re-fixed. Needless to say, there will be no recovery on any score. With the aforesaid modification in the judgment of the Division Bench all the appeals stand disposed of without any order as to costs.