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Surat Singh. Vs. U.O.i and ors

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Court : Jammu and Kashmir

Decided On : May-15-2012

Judge : Hon'ble Mr. Justice J. P. Singh

Appellant : Surat Singh.

Respondent : U.O.i and ors

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. SWP No. 454 OF 200.Surat Singh. Petitioners U.O.I and ors Respondent !Mr. J.P.Gandhi, Advocate ^Mr. Sandeep Sharma, Advocate vice Mr. W.S.Nargal,CGSC Honble Mr. Justice J.

P. Singh, Judge. Date:

15. 05.2012 :

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After his retirement on superannuation as Noncommissioned Officer of the Indian Navy, the petitioner served the Power Development Department of the State Government from July 1997 to February 2006 as Junior Engineer, on re-employment. His Claim to Dearness Relief on Pension from Navy was declined on the ground that his pay having not been fixed at the minimum of the pay scale during his re-employment, he was disentitled to the Dearness Relief on Pension.

According to the respondents, the pay of the petitioner having been fixed allowing him the benefit of eight increments, he was not entitled to Dearness Relief on Pension because in terms of the Office Memorandum, it was available 2 only to those re-employed officers whose pay was fixed in the minimum of the pay scale. I have heard learned counsel for the parties and considered their submissions. To deal with the issue that falls for consideration in the Petition as to whether or not the petitioner was entitled to Dearness Relief on Pension from Indian Navy, regard needs to be had to the provisions of Clause 3 of Government of Indias Office Memorandum dated 2nd July, 1999, which provides for Dearness relief on Pension in terms of the recommendations of the 5th Central Pay Commission and SRO 7.of 1992 published vide Notification dated March 30, 1992 whereby the Jammu and Kashmir Civil Services (Revised Pay) Rules, 1992 came into force on the first day of April, 1990. These read thus: Office Memorandum No. 45/73/97-P & PW(G), Government of India. Third Floor, Lok Nayak Bhavan. Khan Market, New Delhi-110003. Date :

2. d July, 1999. OFFICE MEMORA_DUM Subject: Recommendations of the 5th Central Pay Commission- Payment of Dearness, Relief to re-employed pensions and employed family pensioners-Decision regarding. ***** In terms of the existing orders, Dearness Relief to pensioners and family pensioners is to remain suspended during the period a pensioner/family pensioner is re-employed/employed under the Central or State Government or in a statutory Corporation/Company/Body/Bank under them in India or abroad. These orders are also applicable to pensioners and family pensioners permanently absorbed in a Statutory Corporation/ Company/Body/Bank under the Central or State Government.

2. In paragraph 39.21 of their Report, the 5th Central Pay Commission had recommended that Dearness Relief should be paid to employed family pensioners and re-employed pensioners in 3 cases where their pay is fixed at the minimum of the pay scale of the post of re-employment ignoring the entire pension, and that, in other case of re-employment, Dearness Relief shall be payable on pay plus the non-ignorable portion of pension as was the case at present. The commission had further recommended in paragraph 141.12 that, with a view to maintaining the

original value of the pension, the payment of Dearness Relief should not be suspended where pay is fixed at the minimum of the pay scale during employment/re-employment of a family pensioner/pensioner.

3. These recommendations have been considered and accepted by the Government. The President is accordingly pleased to decide as follows:- (a) In so far as re-employed pensioners are concerned, the entire pension admissible is to be ignored at present only in the case of those civilian pensioners who held posts below Group A and those ex-servicemen who held posts below the ranks of Commissioned Officers at the time of their retirement. Their pay, on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed. Such civilian pensioners will consequently be entitled to Dearness Relief on their pension in terms of the recommendations of the 5th Central Pay Commission at the rates applicable from time to time. The Jammu and Kashmir Civil Services (Revised Pay) Rules, 1992. GOVERNMENT OF JAMMU AND KASHMIR FINANCE DEPARTMENT Notification Dated Jammu, the 30th March, 1992. SRO 75.In exercise of the powers conferred by proviso to section 124 of the Constitution of Jammu and Kashmir the Governor is pleased to make the following rules; namely:-- SHORT TITLE AND COMMENCEMENT:

1. These rules shall be called the Jammu and Kashmir Civil Services (Revised Pay) Rules, 1992.

2. They shall be deemed to have come into force on the first day of April, 1990 . INITIAL HIGHER STARTING SALARY/ADVANCE INCREMENT(S) FOR HIGHER QUALIFICATION.

8. The existing provisions of Rule (10) and Rule (12) of the Jammu and Kashmir Civil Service (Revised Pay) Rules, 1987, relating to the benefit of higher starting salary/advance increment(s) for higher qualification, in respect of all Departments, except to the extent of the posts of Police Constables and Junior Engineers, as provided in rule 9 (d) and (f), shall remain inoperative temporarily for fresh recruits till such time as fresh orders are issued in this behalf by the Government. SPECIAL TREATMENT FOR CERTAIN POSTS:

9. (a) Drivers: All the Drivers in the existing pay scale of Rs.800-1500 and Rs.900-1830 shall be placed in the revised pay scale of Rs.950

1500. and Rs.1200-2040 respectively. The new appointments shall be made in the pay scale of Rs.800-15-1010-EB-20-1150 and such appointees shall be placed in the scale of Rs.950-1500 after five years of service. (b) Patwaries: All the Patwaries in the existing pay scale of Rs.900-1830 will be placed in the pay scale of Rs.1200-2040. Fresh appointment to the post of Patwaries will initially be made in the pay scale of Rs.950-1500 and they will be placed in the pay scale of Rs.1200-2040 after putting in eight years of service in the scale of Rs.950-1500. (c) Medical Assistants: The provisions of (b) above will apply in the case of Medical Assistants also mutatis mutandis. (d) Police Constables: The Police Constables in the existing pay scale of Rs.800-1500 will be placed in the revised scale of Rs.950-1500. But the fresh recruitment to the post of Constables will be made in the pay scale of Rs.825-15-900-EB- 20-1200. The persons possessing minimum qualification of Matriculation will be given a higher start of Rs.855/- in the said scale. Such Constables appointed in the pay scale of Rs.825-1200 will be placed in the scale of Rs.950-1500 after completing five years of service. (e) Teachers: All the teachers carrying the existing pay scale of Rs.900-1830 will be placed in the revised pay scale of Rs.1200-2040. For future recruitment the pay scale of Rs.1200- 2040 will be available for Graduate teachers. The Under-graduate teachers will initially be recruited in the pay scale of Rs.950-1500 and will be placed in the pay scale of Rs.1200-2040 after completing eight years of service in the pay scale of Rs.950-1500. (f) Junior Engineers : All Junior Engineers, presently in the scale of Rs.1300-2550, will be placed in the revised pay scale of Rs.1760-3200. The fresh recruitment to the posts of Junior Engineers (both Diploma and Degree Holders) will be made in the pay scale of Rs.1400-40-1800-EB- 50-2300 and they will be placed in the higher revised pay scale of Rs.1760-3200 after putting in eight years of service in the former pay scale. The Degree Holders will be entitled to eight advance increments on their initial appointment in the pay scale of Rs.1400- 2300. . 5 Perusal of the Jammu and Kashmir Civil Services (Revised Pay) Rules, 1992 indicates that although a Junior Engineer is appointed in the pay scale of Rs.1400-2300 yet because of the operation of Rule 9(f) of the Rules referred to herein above, such Junior Engineer who possesses

the qualification of Bachelor in Engineering, additionally becomes entitled to the benefits of eight advance increments. This entitlement does not in anyway change his pay scale and all that he gets, in terms of the Rule, is the benefit of eight additional increments which would not fall within the definition of the expression pay appearing in Clause 3 (a) of the Office Memorandum. The concept of pay means the amount drawn monthly by a Government Servant as the pay, other than the special pay or pay granted in view of his personal qualification, which is sanctioned in terms of the rules in force, for a post held by him substantively or in officiating capacity. The increments allowable to a Degree Holder Junior Engineer, having not been notified or classified as salary or pay as such, which does not partake the character of special pay or personal pay, the increments drawn by such Junior Engineer would not, therefore, affect in any way his initial pay of Rs.1400. The grant of increments to an employee does not change the complexion of his pay scale and in this view of 6 the matter, the pay scale of the petitioner continuing to be that of Rs.1400-2300, he was entitled to the benefit of Dearness Relief in terms of the Office Memorandum, which has been erroneously denied to him. While deciding on the petitioners entitlement or otherwise to Dearness Relief, the respondents have not taken into account the effect of the Jammu and Kashmir Civil Services (Revised Pay) Rules, 1992 particularly Rule 9(f) thereof and have, thus, erred in holding that his pay was not fixed in the minimum of the pay scale admissible to him under the Revised Pay Rules. The decision of the respondents denying the petitioner the Dearness Relief, without considering the provisions of the Revised Pay Rules cannot, therefore, be sustained. This Petition accordingly succeeds and is, therefore, allowed. A direction shall issue to the respondents to consider allowance of Dearness Relief on Pension to the petitioner in terms of Office Memorandum Dated July 02, 1999, in view of what has been said above, for passing appropriate orders in this behalf within three months. (J.P. Singh) Judge Jammu:

15. 05.2012 Pawan Chopra

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