IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWPOA No. 6190 of 2020
Reserved on: 03.06.2025
Decided on: 02.07.2025

Parneet Kumar ...Petitioner

Versus

State of H.P. and others ...Respondents

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge

[1] *Whether approved for reporting?* ***Yes***

For the petitioner : Mr.Vinay Sharma, Advocate.

For the respondents: Mr. Hemant K. Verma, Dy. A.G., for respondents No. 1 and 2/State.
Ms. Ruchika Khachi, Advocate, vice Mr. C.D. Negi, Advocate, for respondent No.3.
Mr. Lokender Paul Thakur, Senior Panel Counsel, for respondent No.4.

Satyen Vaidya, Judge

The instant petition has been filed for the grant of following substantive reliefs:

> "i) That the office order of respondent No.4 dated 28.05.2018 vide letter No. Pension-5/2061560219/2018-19/189-91 is unjust to this extent that the pension of the applicant was withheld in May 2018 and give direction to respondent No.4 to release it immediately.

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

ii) That the respondents be further directed to calculate the length of service of applicant i.e. 30 years 2 months and 11 days instead 01.11.2002 to 31.05.2015 service which rendered with the respondent No.2-Department.

iii) That the respondents be directed to calculate the gratuity of the applicant w.e.f. 22.03.1985 to 31.05.2015 for 30 years amounting to Rs.5,36,940/-.

iv) That the respondents be also directed to pay the applicant arrears of pension plus increment and all other allowances which have not been paid till date with interest @ 18% per annum."

2. The petitioner was appointed as helper in the office of respondent No.3 on regular basis on 22.03.1985.

3. The petitioner was transferred to the State Social Women Welfare Department on secondment basis vide office order dated 15.11.2002. In compliance, the petitioner joined the office of District Programme Officer, Bilaspur on 22.11.2002 as Junior Assistant. The petitioner was absorbed permanently in the State Social Women Welfare Department on 26.02.2013.

4. The petitioner retired as Junior Assistant from the office of Child Development Project Officer, Kangra on 30.05.2015. Respondent No.4 issued PPO Order No. 1116132871 in favour of the petitioner and he was allowed to withdraw pension in the sum of Rs.8845/- per month. His gratuity was also sanctioned to the tune of Rs.5,36,940/-.

5. The petitioner was paid pension regularly till June, 2018, whereafter the same was stopped. In addition, the petitioner was paid a sum of Rs.2,35,500/- only as gratuity instead of the total calculated amount of Rs.5,36,940/-.

6. The petitioner is claiming right of pension under CCS (Pension) Rules, 1972 (for short, "1972 Rules") by calculating his entire service with 3rd respondent in addition to the service rendered with the Department as qualifying service. On the other hand, according to the respondents, the date of permanent absorption of the petitioner in respondent No.2 Department i.e. 26.02.2013 is the date of appointment of petitioner in the Department and thus, he would be governed by the Finance Department Notification

Memorandum dated 15.05.2003 and the provisions of H.P. Civil Services Contributory Pension Rules, 2006 notified by the Department of Finance (Pension) vide notification dated 17.08.2006.

7. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

8. The petitioner has made a specific averment in the petition to the effect that vide letter dated 04.11.1999 from 3rd respondent the options were invited from the employees of said organization under the Pension Scheme introduced vide Government of Himachal Pradesh Notification dated 29.10.1999. The petitioner had opted for the said Pension Scheme and since under the said Pension Scheme, the provisions of 1972 Rules were made applicable, thus, the petitioner is not barred from seeking benefit under the 1972 Rules.

9. In their reply submitted by respondents No. 1 and 2, it has been submitted that the Himachal Pradesh Corporate Sector Employees (Pension, Family Pension, Commutation of Pension and Gratuity) Scheme, 1999 (for short. “1999 Scheme) was repealed on 02.12.2004. Though,

the petitioner had opted under the aforesaid Pension Scheme but since he has superannuated on 30.05.2015, he was not entitled to be covered under the said Scheme. According to respondents said Scheme had remained in force only from 01.04.1999 to 02.12.2004.

10. Thus, there is no dispute on facts that the 1999 Scheme was adopted by 3rd respondent and petitioner was its member. It will be relevant to notice the relevant features of 1999 Scheme.

11. The 1999 scheme was notified by the State, Government, vide notification dated 29.10.1999 and was made applicable w.e.f. 01.04.1999, Clause 1(2) of the said scheme reads as under:-

> *"All pensionary benefits of the employees of the participating H.P. Corporate Sector shall be determined in accordance with the provisions laid down in Central Civil Services (Pension) Rules, 1972, the Central Civil Services (Commutation of Pension) Rules, 1981, as amended and adopted by the H.P. Government for the State Government employees save as otherwise provided in this scheme."*

12. The provisions of 1972 Rules were made inapplicable in the State of Himachal Pradesh to the

Government servants appointed after 15.05.2003 in pursuance to amendment carried in 1972 Rules vide Notification dated 15.05.2003. The State Government vide office memorandum dated 13.09.2006 had introduced the new Pension Scheme for the State Government Employees appointed after 15.05.2003 and such Scheme was made retrospective from 15.05.2003 itself. The Clause 2 (i) of Office Memorandum dated 13.09.2006 read as under:

> *"i) All the employees who entered into State Government service or in the service of an Autonomous Body set up by the State Government (satisfying the conditions laid down in para-4 of Government of India OM No. 28/10/84- PU dated 20th August, 1984, adopted by the State Government vide Office Memorandum No. Fin.(C) A(3)-17/76-II dated 5th July, 1996) on or before 14.05.2003 and who were governed by the old pension scheme under Central Civil Services (Pension) Rules, 1972 will continue to be governed by the same pension scheme and same rules for the purpose of counting of their past service under the said rules or under the Government of India OM No. 28/10/84- PU, dated 29th August, 1984, adopted by the State Government vide its Office Memorandum dated 5th July 1996 as amended from time to time, if such employees submit technical resignation on or after 15.05.2003 to take up new appointment in another Department of the State Government or an Autonomous Body set up by the State Government, in which the pension scheme under Central Civil Services (Pension) Rules, 1972*

already exists for the employees who entered into service on or before 14.05.2003."

13. By framing the 1999 Scheme the State Government had made all the provisions of CCS (Pension) Rules, 1972, applicable to the employees of participating Corporate Sector in the State as were applicable to the other State Government employees. As a necessary corollary, this amounted to compliance with Clause 2(i) of O.M. dated 13.09.2006, which required the employees under parent employer to be governed under Old Pension Scheme under CCS (Pension) Rules, 1972.

14. In the facts of the case in hand, petitioner also qualified other condition as he had been transferred to the borrowing employer through proper channel w.e.f. 15.11.2002 when the 1999 Scheme was still in force. His absorption was without any break in service and as such, all the requirements of technical resignation were met out. Even the absorption letter issued by second respondent in respect of petitioner contained one of the conditions as under:

"In the case of those employees who were appointed on or before 14.05.2003 on regular basis and were

> *governed by the CCS (Pension) Rules, 1972 in their parent organization then the above condition No.7 will not be applicable as they shall continue to be governed under aforesaid Rules for pensionary benefits."*

15. In light of what has been discussed above, the action of respondents denying the pensionary benefits to the petitioner under 1972 Rules, cannot be sustained. Additionally, it can be seen that during the pendency of this petition, the State Government has again made the 1972 Rules applicable even to those of its employees who were appointed after 15.05.2003. A notification to this effect has been issued by the State on 04.05.2023. As a sequel, vide Office Memorandum of the same date i.e. 04.05.2023, instructions/SOPs have also been issued. Clause (vii) of said Office Memorandum reads as under:-

> *"(vii) Employees, who were covered under the National Pension System (NPS) and have already retired/died, between the period 15.05.2003 to 31.03.2023 and who fulfil the eligibility criteria under the Central Civil Services (Pension) Rules, 1972, such retired employee and eligible family member of deceased employee, shall be entitled to pension from prospective date i.e. with effect from 01.04.2023, on exercising an option for the same on the prescribed format at Annexure II and submission of an undertaking at Annexure III, subject to deposit of the*

> *Government contribution and dividend/return, till the date of withdrawal, to the State Government. The amount of Government contribution and dividend/return shall be deposited under the Receipt Head "0071- Contribution and Recoveries towards pension and other retirement benefit, 01-Civil,101-Subscritptions and Contributions, 03-Accumulated Pension Wealth in respect of National Pension System Subscribers and 04- Accumulated dividend on Government Contribution of National Pension System employees converted into Old Pension Scheme."*

16. In light of such development, the petitioner in this petition has, otherwise, become entitled to the pensionary benefits under 1972 Rules, subject, however, to the condition that he will be entitled to pension w.e.f. 01.04.2023. However, as the petitioner has already been held to be entitled to benefits to Clause 2(i) of Office Memorandum dated 13.09.2006, he would be entitled to the pensionary benefits under 1972 Rules, immediately from the date next to his respective date of superannuation.

17. In result, the petition is allowed. The petitioner is held entitled to the pensionary benefits under CCS (Pension) Rules, 1972 from the date immediately following the date of his retirement. The office order dated 28.5.2018 issued by respondent No.4 is quashed and set-aside. The

respondents are directed to calculate the length of service of petitioner w.e.f. 01.11.2002 to 31.5.2015 for the purpose of gratuity and the balance gratuity from the total amount of Rs.5,36,940/- be released in favour of the applicant. The entire exercise shall be completed within eight weeks from the date of passing of this judgment including the disbursal of actual benefits to the petitioner, failing which, the respondents shall be liable to pay interest @ 9% per annum.

18. The petition stands disposed of in above terms, so also the pending application(s), if any.

2nd July, 2025.
(GR)

(Satyen Vaidya)
Judge