IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 7376 of 2023.

Date of Decision : 22nd March, 2024.

H.P. Secretariat & other Affiliated Pensioners Welfare Association **...Petitioner.**

Versus

State of H.P. & Ors. ....**Respondents.**

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Sanjay Kumar Sharma, Advocate.

For the Respondents: Mr. Y.P.S. Dhaulta, Addl. A.G., Mr. Aman Deep Sharma and Mr. L.N. Sharma, Addl. Advocates General for respondents No.1 to 4.
Mr. Vikrant Thakur, Advocate, for respondent No.5.

Satyen Vaidya, Judge.

By way of instant petition, the petitioner-association has prayed for following substantive reliefs:-

> *"(1) That keeping in view of the submission made hereinabove, that the present writ petition may kindly be allowed and the respondents may kindly be directed to release the arrears of members of association as per Annexure P-3 of pay/pension*

[1] Whether reporters of the local papers may be allowed to see the judgment?

from 01.01.2016 till the actual payment is made along with 9% interest.

(b) That the respondents may kindly be further directed to revised gratuity (Death Cum Retirement Gratuity) of the members of the association as per Annexure P-3, revised leave encashment, commutation of revised pension revisable from time to time along with rate of @ 9% rate of interest interest per annum, to be covered from the official who was responsible for delay in releasing the due and admissible claim of the members of the petitioner society."

2. Petitioner herein is an Association of the retired employees of the H.P. Secretariat and H.P. Public Service Commission and is registered under the Registration of Himachal Pradesh Societies Act, 2006. The members of the petitioner association were retired in between 2016 to 2021 from the respective departments as detailed in Annexure P-3.

3. Government of Himachal Pradesh notified Himachal Pradesh Civil Services (Revised Pay) Rules, 2022 vide notification dated 3rd January, 2022, whereby, the revision of pay came into force w.e.f. 01.01.2016. State Government also issued office memorandum dated 25th

February, 2022, whereby Rules regulating pension, retirements/death/Service Gratuity and Family Pension under the C.C.S.(Pension) Rules 1972 and the Commutation of Pension under the CCS (Commutation of Pension) Rules, 1981, were revised/modified.

4. The members of the petitioner association also became entitled to the benefit of revision of pay w.e.f. 01.01.2016 in terms of Himachal Pradesh Civil Services (Revised Pay) Rules, 2022 and for revised gratuity, leave encashment and commutation on pensionary benefits in terms of office memorandum dated 25th February, 2022.

5. Since, the members of the petitioner association till date has received only partial amount out of the due and admissible amount in terms of aforesaid revisions, it has approached this Court for directions as noticed above.

6. Respondents have filed the reply. They have not denied the claim of petitioner-association. The financial constraints and lack of resources have been put up as defence for non payment of amount due to members of the petitioner association. It has been submitted that the State Government is in the process of gradually wiping out its

liability towards the payment of dues of its employees on account of revision of pay scales as also modification in the Rules regulating pension, retirements/death/Service Gratuity and Family Pension under the C.C.S.(Pension) Rules 1972 and the Commutation of Pension under the CCS (Commutation of Pension) Rules, 1981.

7. I have heard learned counsel for the parties and have also gone through the record carefully.

8. In view of the admission made by respondents, there is no difficulty or impediment in granting the prayers made in the petition. The only question that remains to be answered is whether the pensionary and allied benefits as envisaged under Revised Pay Rules, 2022 and office memorandum dated 25th February, 2022, can be withheld by the State Government for indeterminate period on the pretext of lack of resources. The questions needs to be answered in negative for the simple reason that once legally vested right accrues to a serving or retired government employee, the same cannot be denied or even withheld that too for an indefinite period. Further more, the pensionary benefits including gratuity, leave encashment and commutation enure

as security to a retired government employee, who has toiled for substantial part of his life by rendering public service at the cost of his flesh and blood with the hope and under a promise to secure his and his family's future after retirement. More often than not, the retiral benefits to a retired government employee are the only source of bread and butter. Once, the government has announced the grant of aforesaid benefits to its employees, the same can neither be subsequently denied nor delayed for indeterminate period more particularly on the pretext of financial constraints. The State Government is under legal obligation to fulfill its promise.

9. Recently, in ***Punjab State Cooperative Agricultural Development Bank Limited vs. Registrar Cooperative Societies and others, (2022)4 SCC 363,*** the Hon'ble Supreme Court has observed as under:-

> *"57. In our view, non availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is*

> *being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfill the rights of the employees in protecting the vested rights accrued in their favour."*

10. In identical fact situations, on earlier occasions also an Hon'ble coordinate bench of this Court in CWP No. 6611 of 2023, titled as Surinder Singh vs. State of H.P. & Anr., decided on 19th September, 2023 and CWP No. 5651 of 2023, titled as Dr. Sunil Kumar Chandel & Ors. vs. State of H.P. & Ors, decided on 26th September, 2023, has negated the contention raised by State Government and the directions have been issued to the State Government to pay the due and permissible amounts to the petitioners in terms of Revised Pay Rules, 2022 and OM dated 25th February, 2022, within six weeks from the date of passing of judgment along with interest @ 6% per annum.

11. This Court does not find any reason to take a view different than the one taken by a coordinate bench of this Court while deciding aforesaid CWP Nos. 6611 of 2023 and 5611 of 2023.

12. Accordingly, the instant petition is allowed and the respondents are directed to pay the balance of due and permissible amount to the members of petitioner-association in terms of Himachal Pradesh Civil Services (Revised Pay) Rules, 2022, and office memorandum dated 25th February, 2022, whereby Rules regulating pension, retirements/death/Service Gratuity and Family Pension under the C.C.S.(Pension) Rules 1972 and the Commutation of Pension under the CCS (Commutation of Pension) Rules, 1981 were modified, alongwith interest @ 6% per annum within six weeks from the date of passing of this judgment. Petition stands disposed of accordingly.

13. Pending applications, if any, also stand disposed of.

(Satyen Vaidya)
Judge

22nd March, 2024.
(jai)