
(9) For the reasons mentioned above, the appeal is allowed. The order dated 16th September, 1996 passed by the learned Single Judge is set aside and the writ petition filed by respondent No. 1 is dismissed.

R.N.R.

Before V.K. Bali., J

BALWANT SINGH,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 16337 of 1997

The 30th November, 1999

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. II—Rls. 2.2(a), 3.17-A, 4.19(a) and 4.19(b)—Instructions dated 22nd November, 1991—Petitioner rendered service of more than 13 years in various Government departments—Petitioner tendered resignation with permission of the Health Department to join the Municipal Committee—Discharge from service of the M.C. during the period of probation—Petitioner entitled to post retiral benefits by virtue of instructions dated 22nd November, 1991—Claim of pension cannot be rejected only on the ground of delay—Writ allowed directing the respondents to determine the pension payable to the petitioner.

Held that, the petitioner joined Zila Parishad on 8th November, 1963 and continued to be the employee of the Zila Parishad upto 30th November, 1973. Thereafter he was absorbed in the Health Department and continued to be serving the said department upto 2nd February, 1977. He had resigned from Health Department with permission to take up an assignment in Municipal Committee, Shahbad Markanda. It is, thus, not a case where the petitioner might have resigned from service and would not be entitled to the grant of post retiral benefits. It is not disputed that by virtue of instructions dated 22nd November, 1991 the petitioner is entitled to post retiral benefits.

(Paras 11 and 15)

Further held that, the petitioner approached the authorities for the first time on 12th January, 1995 when he made representation but his claim was rejected on 10th July, 1997. So the petitioner lost no time in approaching this Court. That apart, claim of pension is a recurring cause of action and cannot be rejected on delay alone. The petitioner worked for a period of little less than 14 years in various

Government departments. The respondents are directed to determine the pension payable to him in accordance with the rules. The petitioner is bound to return the contributory provident fund, if any.

(Paras 16 and 17)

M.M. Kumar, Advocate with Satbir Singh, Advocate *for the Petitioner.*

Nitin Kumar, DAG, Punjab, *for the Respondents*

JUDGMENT

V.K. Bali, J. (Oral)

(1) Balwant Singh, by way of present petition under Articles 226 of the Constitution of India, seek issuance of a writ in the nature of *certiorari* so as to quash order Annexure P-6 dated 10th July, 1997,—*vide* which he was not allowed benefit of service rendered by him under the Zila Parishad for computing/calculating his pension and other retiral benefits.

(2) Brief facts giving rise to the present petition need a necessary mention. The petitioner came to be appointed as Sanitary Daroga on 8th November, 1963, in the officer of the Zila Parishad, Ambala, and it is his case that he worked as such there till 30th November, 1973. *Vide* Haryana Act No. 22 of 1973 all existing Zila Parishads were abolished and all liabilities including employees stood transferred to the Government of Haryana. Consequently, the petitioner was absorbed in the Health Department and posted as Sanitary Daroga on 1st December, 1973, in the office of the Chief Medical Officer, with all the benefits admissible to the Government employees. The service rendered by the petitioner in the Zila Parishad was, however, not qualified for pension as there was no provision made for grant of pension. However, the petitioner kept on working on the post of Sanitary Daroga as a permanent employee after his absorption up to 2nd February, 1977. Having put in three years continuous service thereat, he was constrained to submit his resignation to the Civil Surgeon, Civil Hospital, Ambala, respondent No. 3. It is the case of the petitioner that even at that stage there was no pension admissible to the petitioner. He tendered his resignation in the circumstances to enable him to join on the post of Sanitary Inspector, Municipal Committee, Mandi Dabwali, for which post he was selected. The resignation of the petitioner was accepted unconditionally,—*vide* letter dated 14th April, 1977, Annexure P-2, with effect from 3rd February, 1977. In the manner aforesaid, it is the case of the petitioner that he rendered service for a period of

13 years as permanent employee and was, thus, entitled to grant of pension and other post retiral benefits.

(3) The petitioner claims entitlement to pension on the basis of instructions dated 22nd November, 1991, which came into being pursuant to a judgment of this Court in extending the benefit of pension, gratuity and other retiral benefits. The petitioner thereafter made a number of requests to the concerned authorities to expedite grant of post retiral benefits to him, but when the same brought no tangible results and in fact when his representation was dismissed,—*vide* order Annexure P-6, the present writ petition came to be filed for the reliefs already mentioned.

(4) Pursuant to notice issued by this Court, the respondents have filed reply. It has *inter alia* been pleaded in the written statement filed on behalf of respondents 1 to 3 that the present writ petition is not maintainable as no fundamental/constitutional right of the petitioner has been infringed ; that the writ petition is barred by time ; that the petitioner had tendered resignation on 2nd February, 1977, which was accepted on 14th April, 1977 ; that the writ petition had been filed after a delay of 20 years. It is then pleaded that the petitioner is not entitled to any pensionary benefits as per rule 3.17-A of the Punjab Civil Services Rules, Volume-II (hereinafter referred to as “the Rules”) read with rule 4.19(a). The rules on which reliance, for negating the claim of the petitioner, is placed reads thus :—

“3.17A(d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19(a) of Punjab Civil Service Rules, Vol. II.

4.19 (a) Resignation from public service, dismissal or removal from it either under proviso (c) to Article 311(2) of the Constitution for over anti-national activities such as sabotage, espionage etc. or for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination, entails forfeiture of past service and no pension shall be granted in the aforementioned circumstances.”

(5) The case of the petitioner has also been opposed on the ground that the petitioner was a temporary employee of Health Department after his absorption in the Government service. The case of the petitioner is also contested on the ground that when the petitioner joined on the post of Sanitary Inspector after resignation, he had not sought

permission to join another department of the Government and, therefore, by virtue of Note below rule 4.19(b) of the Rules, the petitioner shall not be entitled to grant of any post retiral benefits.

(6) The petitioner has filed replication, controverting the pleadings made in the written statement.

(7) When the matter earlier came up for hearing before this Court on 13th August, 1999, Mr. M.M. Kumar, learned counsel representing the petitioner, during the course of arguments, sought an adjournment with a view to file an affidavit of the petitioner to the effect that he had tendered resignation with permission of the employer to join the new job. Additional affidavit has been filed, to which reply has been given by the State.

(8) The petitioner pleads in the additional affidavit that he was working on the post of Sanitary Daroga in the office of the Chief Medical Officer, Ambala. A post of Sanitary Inspector at Municipal Committee, Shahbad Markanda, was advertised in the newspaper. He was eligible and applied for the same through proper channel. His application was duly forwarded by the Chief Medical Officer, Ambala, to the Municipal Committee, Shahbad Markanda. On 21st January, 1977, he obtained 'No objection Certificate' from the Chief Medical Officer to the effect that he had no objection if the petitioner was selected as Sanitary Inspector. Copy of the certificate has been annexed with the additional affidavit as Annexure P-7. It has further been pleaded that after his appointment to the post of Sanitary Inspector, the petitioner duly informed the Chief Medical Officer, Ambala, before proceeding to join duty on 3rd February, 1977. The departure report was duly received by the office of the Chief Medical Officer, Ambala. Copy of the same has been annexed with the additional affidavit as Annexure P-8.

(9) In reply to this additional affidavit, it has been pleaded by the State that after submitting his resignation from the office of the Civil Surgeon, Ambala, the petitioner had joined the service of the Municipal Committee, Shahbad Markanda, as Sanitary Inspector, from where his services were terminated/discharged for grave misconduct. Copy of the resolution dated 31st March, 1978, passed by the Administrator, Municipal Committee, Shahbad, regarding dismissal of the petitioner, has been placed on record as Annexure R-IV/T. It is, thus, pleaded that the petitioner was dismissed from service and was not entitled to pensionary benefit as per rule 2.2(a) of the Rules. It is also pleaded that the certificate filed with the additional affidavit i.e. Annexure P-7 appears to be fabricated. The attested copy of the experience certificate issued by the Chief Medical Officer, Ambala, it is stated, contains a

different language. Copy of experience certificate earlier submitted by the petitioner has been annexed with the reply as Annexure R-V.

(10) After hearing the learned counsel representing the parties and going through the records of the case, the Court is of the view that the petitioner deserves the relief asked for by him in the present writ petition. Before, however, merits of the case, entitling the petitioner to pensionary benefits are considered, it will be better to clear the decks in so far as the plea of the respondent-State with regard to the dismissal of the petitioner for grave misconduct is concerned, inasmuch as if the petitioner was dismissed from service, as is the contention of the State, he may not be entitled to any post retiral benefits whatsoever. It may be recalled at this stage that it was the positive case of the petitioner that he was discharged from service during the period of probation. The order by which the petitioner was discharged from service, as is his contention, or dismissal from service, as is the contention of the State, has been annexed with the reply to the additional affidavit as Annexure R-IV/T. It is true that the earlier part of the order, Annexure R-IV/T does contain some adverse comments against the work and conduct of the petitioner, but in ultimate analysis it was observed that the work, conduct and behaviour of the petitioner was not satisfactory and, therefore, he should be discharged from service of the Municipal Committee. It has further been clearly mentioned that the petitioner is on probation. The order Annexure R-IV from its very perusal cannot be styled to be the one by which the petitioner might have been dismissed from service. The contention of the petitioner that he was asked to quit during the period of probation is, in fact, correct and in consonance with the order relied upon by the State i.e. Annexure R-IV.

(11) From the facts detailed above, it transpires that the petitioner joined Zila Parishad on 8th November, 1963 and continued to be the employee of the Zila Parishad upto 30th November, 1973. Thereafter he was absorbed in the Health Department and continued to be serving the said department upto 2nd February, 1977. A Division Bench of this Court in *Risal Singh and others v. The State of Haryana and others (I)*, held that the employees of the District Boards, Zila Parishads and Panchayat Samities were entitled to retirement benefits. While dealing with the facts of the case in Risal Singh's case it has further been observed that in case the petitioners were actually absorbed in the service of the State Government with effect from 26th November, 1973, and retired thereafter, they shall be entitled to retiral benefits in the same terms as has been done in the last memorandum dated 22nd November, 1991. It may be mentioned at this stage that prior in

point of time this Court had observed that employees of District Boards, Zila Parishads etc, who were absorbed in other Government employments, should be entitled to post retiral benefits. It is thereafter that instructions dated 22nd November, 1991 (Annexure R-3) came into being. It is not disputed that by virtue of these instructions the petitioner is entitled to post retiral benefits.

(12) The matter would have ended there, but inasmuch as the respondent-State has joined issue with the petitioner with regard to his joining the new department after resignation and permission, the said question has still to be determined.

(13) It may be recalled at this stage that the petitioner had sought an adjournment to substantiate that he had sought permission to join the new department when he resigned from the Health Department. In Annexure P-7 it has been mentioned that the petitioner was working as Sanitary Daroga with effect from 8th November, 1963, to 30th November, 1973, in Zila Parishad and from 1st December, 1973, to date in the Health Department and that he was a regular Haryana Government employee. It has further been stated that there was no objection if he was selected as Sanitary Inspector. This certificate was issued on 21st January, 1977. It may be reiterated at this stage that the petitioner joined as Sanitary Inspector in Municipal Committee, Shahbad Markanda, on 3rd February, 1977. The authenticity of this document has been disputed on the only ground that the language employed therein is different from the language used in Annexure R-V and, therefore, the petitioner must have procured certificate Annexure P-7.

(14) I find no merit in the contention of the learned State counsel. The document relied upon by the State is only an experience certificate, as would be clearly made out from Annexure R-V itself. It starts with bold words 'EXPERIENCE CERTIFICATE'. These words have been underlined and it is thereafter that it has been mentioned that the petitioner had worked as Sanitary Daroga from 8th November, 1963 to 30th November, 1973 under Zila Parishad and from 1st December, 1973, to 2nd February, 1977, under the Health Department. There is no difference between Annexure R-V and Annexure P-7 in so far as the experience of the petitioner either on the post of Sanitary Daroga or on the post of Sanitary Inspector in the Health Department is concerned. The difference is only with regard to 'No objection' of the petitioner joining as Sanitary Inspector. This difference ought to have been there inasmuch as Annexure R-V, as mentioned above, is only an experience certificate. The document Annexure R-V does not deal with regard to the petitioner having obtained a 'No objection certificate'

or not. Mr. Kumar, learned counsel representing the petitioner, has shown me original of Annexure P-7 and the same has been signed by the Chief Medical Officer, Ambala.

Rule 4.19(b) of the Rules reads :—

“4.19(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.”

(15) It is proved in the present case that the petitioner had resigned from Health Department with permission to take up an assignment in Municipal Committee, Shahbad Markanda. It is, thus, not a case where the petitioner might have resigned from service and would not be entitled to the grant of post retiral benefits. The matter is not *res integra*, inasmuch as rule 4.19(b) has been interpreted by this Court in *M.M. Lal Bareja v. State of Haryana and others*, (2). It has been held therein that pension is payable even to an employee who was holding temporary post in the State Government and Rules also comprehend grant of pension to a person who has resigned from service in order to take up another appointment and such resignation is not to be treated as resignation from public service.

(16) The last contention raised by Mr. Nitin Kumar, learned counsel representing the State, in opposing the prayer of the petitioner is with regard to the delay in filing the present petition. True, the petitioner approached the authorities for the first time on 12th January, 1995, when he made representation Annexure P-3 but his claim was rejected on 10th July, 1997. So the petitioner lost no time in approaching this Court. That apart, claim of pension is a recurring cause of action and cannot be rejected on delay alone. What I have observed above is supported from various judgments of this Court and Hon'ble Supreme Court. Reference may, however, be made only to *Mrs. Bimla Devi v. State of Haryana and others*, (3).

(17) In view of the discussion above, it thus transpires that the petitioner continuously worked from 8th November, 1963, to 2nd February, 1977, in various Government departments, reference whereof has been made above. In the manner aforesaid, the petitioner worked for a period of little less than 14 years. The respondents are directed to determine the pension payable to him in accordance with the rules. It requires to be mentioned that as per instructions Annexure R-3, the

(2) 1995 (1) A.I.J. 532

(3) 1991 (5) S.L.R. 682

petitioner is bound to return the contributory provident fund, if any. In view of the aforesaid instructions, the contributory provident fund, if any, made over to the petitioner has to be returned by him. If the same was paid to him, as Mr. Kumar is not sure about the factum of the petitioner having received the same, the same shall be returned by the petitioner. At this stage, Mr. Kumar has drawn my attention to the instructions, which in terms say that such an amount i.e. contributory provident fund, can be adjusted against gratuity. In these circumstances, the respondent-State shall deduct the amount, if any already paid to the petitioner, and make over the balance amount within six weeks from today.

(18) In the peculiar facts and circumstances of the case, the parties are left to bear their own costs.

R.N.R.

Before M.L. Singhal, J:

KRISHAN,—Petitioner

versus

THE STATE OF HARYANA AND ANOTHER,—Respondents

Criminal Misc. No. 16180-M of 1998

7th July, 1999

Indian Penal Code, 1860—Ss. 302/34 & 304—Code of Criminal Procedure, 1973—Ss. 432 & 433-A—Constitution of India, 1950—Arts. 72 & 161—Government instructions dated 28th September, 1988 and 4th February, 1993—Accused convicted & sentenced to imprisonment for life for dowry death—Heinous crime—Govt. rejecting the request of the petitioner for premature release—Accused's case for pre-mature release falls under para 2(a) of the 1993 instructions and not under para 2(c)—Instructions dated 28th September, 1988 do not apply—Accused not entitled to pre-mature release—Petition dismissed.

Held that, instructions dated 4th February, 1993 shall govern the case of the petitioner for premature release because the Court becomes functus officio after it has convicted and sentenced a person and after a person is sentenced, it is the duty of the executive Government to determine how sentence passed upon him is to be executed. Execution of the sentence passed upon him is the function of the executive Govt. Article 161 of the Constitution empowers the Governor of a State to grant pardons/reprieves/respites or remissions of punishment or to suspend, remit or commute the sentence of any