

Before Mehinder Singh Sullar, J.

R.N. SRIVASTAVA,—Petitioner

versus

**HARYANA STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION LIMITED, PANCHKULA,—Respondent**

C.W.P. No. 18358 of 2001

17th February, 2011

Constitution of India, 1950—Art. 226—Haryana State Supply and Marketing Cooperative Service (Common Cadre) Rules, 1969 (substituted by 1988 Rules)—Petitioner retired after rendering more than 12 years service on attaining age of superannuation—Claim for retiral benefits—Denial of on ground that petitioner not entitled to retiral benefits as per 1988 Rules—As per appointment letter terms and conditions of service governed by provisions of 1969 Rules—Whether petitioner is entitled to retiral benefits admissible to him under 1969 Rules—Held, yes—Subsequently amended 1988 Rules cannot be made applicable retrospectively adversely affecting valuable and legal rights of petitioner—Petition allowed.

Held, that the petitioner is entitled to the retiral benefits to be calculated as per 1969 Rules in view of his appointment letter. Meaning thereby, the 1988 Rules cannot be made applicable retrospectively, adversely affecting the valuable and legal rights of the petitioner. This matter is not *res integra* and is well settled. Therefore, the petitioner is entitled to all the retiral benefits admissible to him under 1969 Rules and the respondent-federation cannot legally be permitted to deny the same to him in the garb of subsequently amended 1988 Rules adversely affecting his valuable and legal rights.

(Paras 12 and 15)

K.G. Chaudhary, Advocate, *for the petitioner.*

Girish Agnihotri, Senior Advocate with Vijay Pal, Advocate *for the respondent.*

MEHINDER SINGH SULLAR, J.

(1) Succinctly, the facts, which need a necessary mention for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, are that the petitioner was appointed on the post of Development Officer (Storage), by virtue of appointment letter dated 2nd March, 1983 (Annexure P-1) by the Haryana State Cooperative Supply and Marketing Federation Limited, Chandigarh-respondent (for brevity "respondent-federation"). As per appointment letter, other terms and conditions of the service will be governed by the provisions of The Haryana State Supply and Marketing Cooperative Services (Common Cadre) Rules, 1969 (for brevity '1969 Rules'). He, after rendering the service of more than 12 years, retired from the service with effect from 30th April, 1995, on attaining the age of superannuation. The petitioner earlier claimed that as the respondent-federation did not release his retiral benefits, so he filed the CWP No. 10221 of 1997 which was allowed by this Court, by means of order dated 20th January, 1998 (Annexure P-2), the operative part of which is as under—

"We direct that the amount of Rs. 85,006.00 deposited by the respondents be released to the petitioner forthwith. For the remaining amount, if any, due subsequently, the petitioner shall be competent to approach the respondents for the same. The petitioner is also entitled to interest @ 18% from the date the amount became due to him which shall be deposited by the respondents within a week from today. The respondents have also the option to send the interest money direct to the petitioner.

With these observations, we allow this petition with costs which are quantified at Rs. 5,000.

The respondents are entitled to recover any loss occurred to them from the officer/official concerned due to lapse on their behalf."

(2) According to the petitioner that in spite of the aforesaid direction, the respondent-federation did not release the amount of the retiral benefits in his favour as per the 1969 Rules. He made a detailed representation to

the respondent federation in this regard, but no action was taken. Petitioner was again compelled to file another writ petition No. 15373 of 1999, in which, respondent federation was directed to dispose of his representation of the petitioner by this Court, by virtue of another order dated 2nd November, 1999 (Annexure P-3). The respondent-federation decided the representation and negatived his claim, by way of impugned order dated 6th June, 2000 (Annexure P-4) in this connection.

(3) The petitioner still did not feel satisfied and preferred the instant writ petition, challenging the impugned order (Annexure P-4), invoking the provisions of Articles 226 and 227 of the Constitution of India.

(4) The case set up by the petitioner, in brief, insofar as relevant, was that as per appointment letter (Annexure P-1), his other terms and conditions of service were governed by provisions of 1969 Rules, but the respondent-federation did not calculate his retiral benefits of gratuity and amount in lieu of leave encashment etc. as per 1969 Rules.

(5) Levelling a variety of allegations and narrating the sequence of events, in all, the petitioner claimed that he is entitled to his retiral benefits as per 1969 Rules, which were illegally denied to him by the respondent-federation in the garb of 1988 Rules. On the basis of aforesaid allegations, the petitioner claimed his retiral benefits as per 1969 Rules and sought the quashment of impugned order (Annexure P-4) in the manner indicated hereinabove.

(6) The respondent-federation contested the claim of the petitioner and filed the written statement, *inter alia*, pleading certain preliminary objections of, maintainability of the writ petition, *locus standi* and cause of action of the petitioner. It was admitted that the other terms and conditions of service of the petitioner were governed by 1969 Rules, as per appointment letter (Annexure P-1). However, it was averred that subsequently The Haryana State Supply and Marketing Cooperative Services (Common Cadre) Rules, 1988 (for brevity '1988 Rules') came into force on 12th July, 1988 and as the service conditions of the petitioner were governed by 1988 Rules, therefore, all the retiral benefits have been calculated and released to the petitioner in view of the 1988 Rules. It will not be out of place to

mention here that the respondent-federation has stoutly denied the entitlement of petitioner under 1969 Rules and all other allegations contained in the writ petition and prayed for its dismissal. That is how, I am seized of the matter.

(7) Having heard the learned counsel for the parties, having gone through the record with their valuable assistance, relevant law and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted in this context.

(8) *Ex facie*, the main argument of the learned counsel for the respondent-federation that since the 1969 Rules, have already been substituted by the 1988 Rules, so, the petitioner is not entitled to claim the amount of gratuity and leave encashment on the basis of 1969 Rules, is neither tenable nor the observations of Hon'ble Apex Court in case **The Government of Andhra Pradesh and Ors. versus Syed Yousuddin Ahmed (1)** are at all applicable to the facts of the present case, wherein under the Family Welfare Programme an incentive was granted to the government employees of Andhra Pradesh, by means of Administrative Order stating therein that advance increments sanctioned for undergone sterilization operation in the lower post or higher post shall continue to be available as 'personal pay'. On the peculiar facts and in the circumstances of that case, it was observed that such incentive granted by the Administrative Instructions, cannot be treated as a part of emoluments under the statutory provisions of Rule 31 of the Pension Rules, so that the respondent can claim inclusion of such amount, for determining his pension. For the purpose of Rule 31 of the Pension Rules 'emoluments' of government servant would mean the pay, which he is drawing as defined under Rule 9(21)(a)(i) of the Fundamental Rules and personal pay administratively granted by the government would not form part of pay for the purpose of inclusion of pension.

(9) Possibly, no one can dispute with regard to the aforesaid observations, but to me, the same would not come to the rescue of the respondent-federation in the present controversy.

(10) As is evident from the record, petitioner claimed that he is entitled to amount of leave encashment and gratuity, as per 1969 Rules,

while according to the respondent-federation, he is entitled to the retiral benefits, as per 1988 Rules. It is not a matter of dispute that other terms and conditions of service of the petitioner were governed by the 1969 Rules, in view of appointment letter (Annexure P-1) and 1988 Rules have adversely affected the terms and conditions of his service, as regards the calculation of amount in lieu of leave encashment and gratuity etc. are concerned. Thus, the controversy boils down to a narrow compass in this regard.

(11) Above being the position on record, now the short and significant question, though important, that arises for determination in this petition is, as to whether the 1969 Rules or 1988 Rules will be applicable to the case of the petitioner ?

(12) Having regard to the rival contentions of the learned counsel for the parties, to my mind, the petitioner is entitled to the retiral benefits to be calculated, as per 1969 Rules in view of his appointment letter (Annexure P-1). Meaning thereby, the 1988 Rules cannot be made applicable retrospectively, adversely affecting the valuable and legal rights of the petitioner. This matter is not res-integra and is well settled.

(13) An identical question arose before the Hon'ble Apex Court in case **BCPP Mazdoor Sangh and another versus N.T.P.C. and others**, (2). Having interpreted the service conditions viz-a-viz Article 14 of the Constitution, it was ruled that "the Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity or pre-decisional hearing and the same would amount to arbitrary and violative of Article 14 of the Constitution."

(14) Sequelly, Hon'ble Supreme Court in case **H.L. Trehan and others versus Union of India and others**, (3) observed as under :—

".....It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by

(2) 2008 (1) R.S.J. 107

(3) 1989 (1) S.C.C. 764

giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends the rules of natural justice."

(15) In this manner, the ratio of the law laid down by Hon'ble Apex Court in the aforesaid judgments "*mutatis mutandis*" is applicable to the facts of the present case and is the complete answer to the problem in hand. Therefore, it is held that the petitioner is entitled to all the retiral benefits admissible to him under 1969 Rules and the respondent-federation cannot legally be permitted to deny the same to him in the garb of subsequently amended 1988 Rules adversely affecting his valuable and legal rights.

(16) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

(17) In the light of the aforesaid reasons, the instant writ petition is accepted with costs of Rs. 10,000. Consequently, the impugned order (Annexure P-4) is hereby set aside. The respondent-federation is directed to calculate all the retiral benefits of the petitioner as per 1969 Rules and to make payment to him within a period of three months positively, from the date of receipt of a certified copy of this order, failing which he (petitioner) would be entitled to penal interest at the rate of 18% per annum, by way of compensation on the balance amount of retiral benefits in this relevant connection.