
(1968) 07 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 559 of 1963

Basant Lal Malhotra

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 31-07-1968

Acts Referred:

Constitution of India, 1950 — Article 234, 309
Punjab Civil Services Rules — Rule 4.2

Citation : AIR 1969 P&H 178 : (1969) 2 ILR (P&H) 292

Hon'ble Judges : P.C. Jain, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : H.L. Sarin, A.L. Bahri and A.L. Bahal, for the Appellant; I.S. Saini, for A.G., for the Respondent

Judgement

P.C. Jain, J.—This is a petition filed by Basant Lal Malhotra, retired Additional District and Sessions Judge Under Articles 226 and 227 of the Constitution of India for issuance of writ of mandamus or any other appropriate writ, direction or order directing respondents Nos. 1 and 2 to refix the pension of the petitioner by allowing him the benefit of rule 4.2 of the Punjab Civil Services Rules (Volume II).

2. The facts as alleged in the petition are that the petitioner was recruited or enlisted to the P. C. S. (Judicial Cadre) as a result of the competitive examination held by the Lahore High Court in the year 1935 and thereafter having been declared medically fit and having passed the departmental examination in the higher standard and having undergone the prescribed course of six months revenue and judicial training: the petitioner was appointed as a Subordinate Judge in October, 1938. The petitioner on acquiring superannuation at the age of 55 years eventually retired from service in April, 1962. As Additional District and Sessions Judge.

According to the petitioner, the provisions as contained in rule 4.2 of the Punjab Civil Services Rules (Volume II) marked a distinction between the cases of officers recruited to the services before 11th of September, 1937, and of those

recruited after the said date in the matter relating to the condonation of a period not exceeding five years for the purposes of pension and on the interpretation of this rule the petitioner claimed that his actual period of 23 years and 6 months " service be counted for the purposes fixation of pension as 28 years and 6 months . For this purpose, the petitioner moved the Punjab Government through the Registrar, Punjab High Court in the year 1956 to obtain the confirmation for his being entitled to the benefit of five years period of service for the purposes of fixation of pension. In due course, respondent No. 1 (State of Punjab) vide its letter dated 25th of June, 1956 sent a reply to the effect that the petitioner would not be entitled to the benefit of the said rule because he had been appointed to the P. C. S. (Judicial Branch) after 11th of September , 1937.

It was further alleged that a representation was also made to the Accountant General , Punjab at Simla , as also to the State of Punjab, but again he was informed that as he was appointed after the 11th of September , 1937, he would not be entitled to the benefit for rule 4.2 of the Pension Rules referred to above. According to the petitioner, absolutely wrong interpretation has been put on rule 4.2 as respondents 1 and 2 are confusing the expression "recruitment" with the expression "appointment ". According to the petitioner, the very fact that a candidate on recruitment to the P. C. S. (Judicial Branch) under the rules was required to produce a certificate of medical fitness and to undergo six months' revenue and judicial training receiving a stipend of Rs. 80/- P. M. and to pass a departmental examination in higher standard as conditions precedent to his appointment in service, was indicative of the vast difference between the terms "recruited" and "appointed" Respondents 1 and 2 in utter disregard to the difference between the said two terms have declared the petitioner as disentitled to the benefit of rule 4.2 and this action of respondents is unwarranted and clear breach of the fundamental rules governing the pension and conditions of service of the petitioner.

3. In the joint written statement filed on behalf of respondents 1 and 2, it was emphatically asserted that the petitioner joined service as Subordinate Judge on 4th of October, 1938 , i.e., after the crucial date of 11th of September 1937 and as such he could not claim to have been recruited to the post or service earlier than 4th of October , 1938, even though he got training for the period from 12th of March, 1937 to 2nd of August, 1937, and from 1st of September, 1937 to 10th of October, 1937. For purposes of rule 4.2, no distinction could be drawn between the expression " recruitment" and "appointment".

4. Earlier this matter came up for hearing on 25th of November , 1966, before P. D. Sharma, J. and considering the importance of the matter, it was desired that the matter be placed before a larger Bench . It is under these circumstances that the matter has been placed before us.

5. Mr. H. L. Sarin, the learned counsel for the petitioner, submitted that there was a marked distinction between the term "recruited" and "appointed" and that being so the petitioner should be considered as recruited to the P. C. S. (Judicial

Branch) . prior to the 11th September , 1937, and was entitled to the benefit of rule 4.2 of the Punjab Civil Services Rules (Volume II).

6. On the other hand, the learned counsel appearing on behalf of the State, contended that there was no difference between the two words "recruitment" and "appointment". According to him, the word "recruited" used in rule 4.2 was synonymous with the word "appointed" and that the petitioner should be deemed to have been recruited or appointed on the 4th of October, 1938, and not entitled to the benefit of rule 4.2.

7. On the above mentioned contentions of the learned counsel for the parties, the only point which requires determination is whether the petitioner was recruited before 11th of September 1937, or after this date to the P. C. S. (Judicial Branch) and was entitled to the benefit of rule 4.2 for the Punjab Civil Services Rules (Volume II), In this case, there is no dispute between the parties on the following facts: The petitioner was born on 3rd of April , 1907 , and was born on 3rd of April 1907, and was nominated as a candidate for appointment in P. C. S. (Judicial Branch) on 26th of March, 1936 He was declared medically fit by the Standing Medical Board Lahore on 4th of April, 1936. He received administrative training at Lahore from 12th of March , 1937 to 11th of June, 1937 and revenue training from 12th of June, 1937 to 2nd of August, 1937, and from 1st of September , 1937 to 10th of October , 1937, on payment of a stipend of Rs. 80/- P. M. It is further not disputed by the learned Counsel appearing on behalf of the state that in case the petitioner is deemed to be recruited before the 11th of September, 1937, he is entitled to the benefit of rule 4.2.

8. After considering the respective merits of the contentions of the learned counsel and the rules ;in Chapter 22 of the Rules and Orders for the Punjab High Court , Volume I, relating to appointment, etc of the Subordinate Judges, and rule 4.2 of the Civil Services Rules, I find that there is force in the contention of the learned Counsel for the petitioner. Here, it is necessary to reproduce (an extract from the Punjab Government Gazette , Part I), Home Gazette Notification No. 3010-G- 51/1-6094 dated 26th October , 1951, rule 4.2 of the Punjab Civil Services Rules, and rules 6 and 7 in Part "D" of Chapter 22 of the Rules and Orders of the Punjab High Court, Volume I.

"No. 3010 -G-51/1-6094: In supersession of the rules published with Punjab Government notification No, 24019 dated the 16th October, 1923, as subsequently amended and in exercise of the powers conferred by Article 234 read with the proviso to Article 309 of the Constitution of India, the following rules are made after consultation with the State Public Service Commission and the High Court of Punjab providing for the appointment of persons as Subordinate Judges in the Punjab Civil Service (Judicial Branch) and regulating the recruitment and the conditions of service of persons appointed thereto."

"Rule 4.2 Government Servants, subject to the provisions of rule 1.2 who were recruited on or before 11th September , 1937 , to any of the services or posts

specified in the schedule below, at an age exceeding 25 years may add to their service qualifying for superannuation pensions (but not for any other class of pension) the actual period, not exceeding five years, by which their age at recruitment exceeding twenty-five years to Departments or posts other than those given in the Schedule below. No Government Servant can claim the benefit of this rule unless his actual qualifying service at the time he quits Government service is not less than ten years."

"Rule 6, Part "D" , Chapter 22:

On completing the Department Examination mentioned in rule 5 above ,each candidate shall undergo such periods of training as are required of him before he can be appointed as a subordinate Judge."

"Rule 7, Part "D" , Chapter 22.

Whenever it shall appear to the Judges that a vacancy or vacancies in the cadre of the Judicial Branch of th Punjab Civil Service should be filled, they will make a selection from the High Court register in the order in which the names have been entered in the register under R. 1 above. The names or name of the selected candidates will be forwarded to Government for appointment as Subordinate Judges under Article 234 of the Constitution of India. Every Subordinate Judges shall at first be appointed on probation for not less than one year".

9. Rules in Chapter 22 provide for the appointment of persons as Subordinate Judges in the Punjab Civil Service (Judicial Branch) and regulate the recruitment and the conditions of service of persons appointed thereto as is clear from the gazette notification reproduced above. From the reading of the gazette notification and rules made there under in Chapter 22, it is evident that a clear distinction is being drawn between the words "recruitment" and "appointment" . Before actual appointment is ordered, a candidate has to undergo such periods of training as are required of him under rule 6 reproduced above. After the formalities are completed as provided under rules up to Part "C" , the appointment takes place under Part "D" , The appointment to the post of a Subordinate Judge is made whenever a vacancy occurs in the cadre of the Judicial Branch and when the same is required to be filled, selection is made out of those persons who are recruited for this purpose and whose names exist in the register kept by the High Court ., The dictionary meaning of the word "recruit " is "fresh supply" of number of persons either as additional to the previous number or to make up for the decrease". So "recruitment" is only for the purpose of making up the deficiency which occurs in the cadre while "appointment" means an actual act of posting a person to a particular office.

10. After giving my thoughtful consideration to all th relevant provisions of the subject, I am led to an irresistible conclusion that the terms "recruitment " and "appointment" are not synonymous and connote different meanings. The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment and not actual appointment or posting in service while

"appointment" means an actual act of posting a person to a particular office. In this view of the matter, the word "recruitment" existing in rule 4.2 of the Punjab Civil Service Rules, Volume II, does not mean actual appointment and the petitioner should be deemed to have been recruited on the 26th of March, 1936.

11. Accordingly I hold that the petitioner was recruited before 11th of September, 1937, and is legally entitled to the benefits of rule 4.2 of the Punjab Civil Services Rules, Volume II.

12. For the aforesaid reasons, this petition is allowed and respondents 1 and 2 are directed to refix the pension of the petitioner by allowing him the benefit of rule 4.2 In the circumstances of the case, there will be no order as to costs.

D.K. Mahajan, J.

13. I agree.

14. Petition allowed.