

(1999) 11 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4962 of 1999

Buta Singh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 11 P&H CK 0038

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : G.S. Sandhu, for the Appellant; Amol Rattan Singh, for the Respondent

Judgement

1. Buta Singh (Retd,) Naib Tehsildar through present petition filed by him under Article 226 of the Constitution of India seeks writ in the nature of certiorari so as to quash order dated 26-5-1995 passed by the Financial Commissioner and Secretary to Government Haryana, Revenue Department, setting aside the order dated 29-12-1994 passed by the Commissioner, Ambala, and in consequence of setting aside the aforesaid order to uphold the order of Commissioner dated 29-12-1994. Petitioner further seeks writ in the nature of mandamus to count the time spent by him while undergoing training for the purposes of pension. The period for the training is said to be from 6-10-1938 to 30-1-1941.

2. Brief facts on which the relief(s) as spelled out above are sought to rest reveal that the petitioner was born at Wazirabad in District Gujranwala now forming part of Pakistan and was accepted as a Naib Tehsildar candidate on 6-10-1938 by the competent authority. He was deputed on training which he completed in the year 1941, to be precise, on 30-1-1941. After completing the training and passing departmental examination, he was appointed as Extra Naib Tehsildar, Thur, Girdawari Work, District Sialkot (now in Pakistan). After having put in about 30 years of service, he retired on 19-11-1971 at the age of 55 years on his request. He was, however, not granted pensionary benefits from 6-10-1938 when

he was accepted as Naib Tehsildar candidate and was sent on training. He made various representations to the authorities for granting him pensionary benefits for the period referred to above. One of his representations was accepted by the learned Commissioner. Ambala vide orders dated 29-12-1994. This order was, however, set aside by the Financial Commissioner vide impugned order dated 26-5-1995. It is in wake of these circumstances that the present writ petition has been filed.

3. Pursuant to notice issued in this case, respondents have contested the claim of the petitioner by filing written statement. It has, inter alia, been pleaded that the petitioner retired from service on 19-11-1971 and the present petition has been filed after 28 years and as such the same is liable to be dismissed on the ground of delay and laches. On merits, it is the case of the respondents that petitioner had claimed that his training period of Naib Tehsildar which he has undergone be counted as qualifying service which had to be verified on the basis of pay bills in view of Rule 4.12-A of Civil Service Rules and that the department has no record pertaining to the service graph of the petitioner for the period in question.

4. Mr. G. S. Sandhu, learned counsel representing the petitioner vehemently contends that in view of the provisions contained in Rule 4.12-A of C.S.R. Volume II, in respect of Class III and Class IV employees, who are required to undergo departmental training, such period has to be treated as qualifying service for pension. To appreciate the contention of Mr. Sandhu, it will be useful to reproduce the rule on which reliance has been, placed. The rule runs, thus :-

"4.12A. In respect of Class III and Class IV employees, who are required to undergo departmental training relating to jobs before they are put on regular employment, training period may be treated as qualifying service for pension, if the training is followed immediately by regular appointment. This benefit will be admissible to all such employees even if they are not given the scales of pay of the post but only a nominal allowance during the training."

5. The applicability of the rule in the case of the petitioner who was a Class III employee is not disputed. It is, however, with equal vehemence contended by the learned Assistant Advocate General, Punjab, that inasmuch as the service record of the petitioner for the relevant period is not available, it cannot be said whether he had undergone training or that any allowance during the training period was given to the petitioner or not. That being so, rule pressed into service would not apply. It is further the contention of the learned Counsel that the use of word may in the rule referred to above would leave it in the discretion of the Government to count training period for the purpose of pension or not.

6. Before I might proceed in this matter, it would be relevant that in paragraph 18 of the petition it has been pleaded that when the Commissioner was perusing the case of the petitioner, he had also examined few service books relating to Naib Tehsildes. The learned Commissioner had taken out the service book of one

Jai Kishan who was accepted as Naib Tehsildar candidate on 9-3-1939 and passed the Naib Tehsildar examination in the year 1941 was given the pensionary benefit w.e.f. 9-3-1939. This fact was also taken into consideration by the Commissioner, Ambala Division, Ambala. The petitioner remained on training as Naib Tehsildar from 6-10-1938 to 30-1-1941.

7. After hearing the learned Counsel for the parties and examining the records of the case, this Court is of the view that the petitioner deserves the relief as asked for, by him.

8. Dealing with the first objection raised by the State that the writ petition is belated and be dismissed on that count, suffice it to say that the petitioner concededly made several representations and so much so lone representation was actually accepted, which order later on was, however, set aside by higher authority it is not a case where the petitioner slept over his rights. That apart, claim of pension cannot be dismissed or rejected on delay alone, the cause being recurring one.

9. So far as the objection of State with regard to service record of the petitioner being not available is concerned, it requires to be mentioned here that during the arguments it could not be disputed that for the post on which the petitioner was appointed, undergoing training was a prerequisite. No one could at all be appointed if he had not successfully undergone the training and taken the departmental examination. It is the positive case of the petitioner that he had undergone training and there is no material to refute the said contention. Loss of record by the State cannot be pressed into service to the disadvantage of the petitioner. As mentioned above, if undergoing training for appointment to a job of Naib Tehsildar was a prerequisite, it is presumed that the petitioner must have undergone that training. Payment of stipend is another ground on which it is contended that the petitioner should be denied the relief as asked for by him. It is rather interesting to note that it is not even suggested that those who undergo training for ultimate absorption on the post of Naib Tehsildar either by virtue of rules or instructions are not paid any stipend. If that would have been, perhaps, the case of the respondent-State, the matter might have needed further examination. The use of word "may" in Rule 4.12A of C.S.R. Vol. II has to be read as "shall" as otherwise it would be the discretion of the Government in the same set of circumstances to deny relief to one and grant to the other. Looked in that context, the word "may" shall have to be read as "shall".

10. Before I might part with this order, I would like to mention that the pleadings of the petitioner as contained in paragraph 13, as have been referred to above, were not specifically denied in the corresponding paragraph of the written statement. On either count, therefore, i.e. by virtue of Rule 4.12A or for that matter discrimination, the petitioner deserves relief as asked for by him.

11. In view of the above discussion, the petition succeeds, and order dated 26-5-1995 (Annexure P-2) passed by the Financial Commissioner is set aside and

one passed by the Commissioner on 29-12-1994 is restored. The Government is further directed to count the period of petitioner that petitioner remained on training i.e. from 6-10-1938 to 30-1-1941 and then compute his pension. Let this exercise be done within two months and the arrears, if any, be paid to the petitioner within two weeks thereafter. Parties to bear their own costs.

12. Petition allowed.