

(2009) 07 SC CK 0179

In the Supreme Court Of India

Case No : Civil Appeal No. 4903 of 2009 (Arising out of SLP (Civil) No. 23708 of 2005) , Civil Appeal No"s. 4904-4913 of 2009 (Arising out of SLP (C) No"s. 5787, 7284, 8267, 8986, 10462, 12856, 12354, 17243, 16411 and 16580 of 2006) , Civil Appeal No"s. 4914-493

Dakshin Haryana Bijli Vitran Nigam and Others

APPELLANT

Vs

Bachan Singh

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Punjab Civil Services Rules — Rule 3.17

Citation : AIR 2009 SC 2745 : (2009) AIRSCW 5467 : (2009) 123 FLR 435 : (2009) 10 JT 352 : (2009) 14 SCC 793 : (2010) 1 SCC(L&S) 463 : (2009) 11 SCR 710 : (2010) 1 SLJ 262 : (2009) 5 SLR 476 : (2009) 5 Supreme 665

Hon'ble Judges : Mukundakam Sharma, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Neeraj Kumar Jain, Sandeep Chaturvedi, Sanjay Singh, Ugra Shankar Prasad and Abha R. Sharma, for the Appellant; Manjit Singh and B.S. More, A.A.Gs., B.S. Malik Pranab Kumar Mullick, S. K. Patri, Shish Pal Laler, Balbir Singh Gupta, Manoj Swarup, Akshat Goel, Jyoti Srivastava, Hetu Arora, Arvind Minocha, R.K. Rathore, Chander Shekhar Ashri, Jasbir Singh Malik, Daya Krishan Sharma, Gagan Gupta, Kamal Mohan Gupta, Gaurav Twatia, B.S. Jain, Ajay Veer Singh Jain, Nitin Jain, Vipin Gupta, K. Sarada Devi, R.K. Kapoor, Sanjana J. Bali, Shweta Kapoor, Harish Chandra Pant, Mansi Dhiman, Gunjan Sinha, Anis Ahmed Khan, Shashi Bhushan, Vivekta Singh, B.K. Satija, B.K. Satija, S. K. Sabharwal, Binay Kumar Jha, Rameshwar Prasad Goyal, T.V. George, Amit Singh, Kusum Singh, R.C. Kaushik, V. Balaji, Pravesh Thakur, Narendra Kumar, S.S. Dahiya, Santosh Krishnan, Debasis Misra, Ramesh K. Haritash, Kailash Chand, Divya Godra, Madhu Moolchandani, Himanshu Upadhyay, Nitin Kumar, Arunabh Chaudhary, Ruby Singh Ahuja, Rajesh Srivastava, Raghvendra Pratap Singh, Suresh Kumari, Arvind Nayar and Kavita Wadia, for the Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—Leave granted in all the special leave petitions.

2. These appeals are directed against the judgments and orders of the High Court of Punjab and Haryana at Chandigarh.

3. Basic controversy involved in all these appeals is of similar nature. Therefore, we deem it appropriate to recapitulate the facts incorporated in Civil Appeal No. 4903 of 2009 arising out of SLP (Civil) No. 23708 of 2005 filed against the impugned judgment delivered by the High Court of Punjab & Haryana in Civil Writ Petition No. 3729 of 2004 on dated 28.7.2005.

4. The respondents herein has joined the services of the appellant as Laboratory Attendant in work-charge capacity on 16.5.1963 and continued to perform his duties on work-charge basis on different posts until he was regularized as Head Mistry w.e.f. 14.10.1981. The respondent was a member of the Employees Provident Fund Scheme (for short 'EPF Scheme'). During the period he remained a work-charge employee, the respondent had attained the age of superannuation and retired from the service on 28.2.2001. The appellants computed respondent's pensionary benefits by taking into account only the services rendered by him on regular basis and he was denied benefits of the services rendered by him w.e.f. 16.5.1963 to 13.10.1981 on work- charge basis.

5. The appellants had issued instructions dated 6.8.1993 for the grant of benefit of work-charge service towards pensionary benefits. The said letter of 6.8.1993 is reproduced as under:

From:

The Additional Secretary, Haryana State Electricity Board (HSEB), Panchkula

Memo No. Ch.9/Pen/G-G-43(93) Dated 6.8.93

Sub: Amendment in the Punjab CSR Vol.II-Adoption of State Govt. Notification

The Haryana State Electricity Board in its meeting held on 23.6.1993 has approved the adoption of Haryana Govt. Notification No. 1/2 (55)-88-2 FR-II dated 4.2.92 (copy enclosed for ready reference) with regard to the counting of service rendered by the workers in the work charged capacity towards pensionary benefit scheme.

2. However, most of the Board's workcharged employees are members of Employees Provident Fund (EPF). As such, the pensionary benefit would be subject to the following conditions:

i) On regularization from workcharged to regular employee, the employee has to submit an option within a period of 3 months from the date of regularization or from the date of issue of this circular, whichever is later as to whether he/she intends to count the period of workcharged service rendered by him/her towards pensionary benefits or intends to continue to be a member of EPF. The option is required to be furnished in writing to his drawing & Disbursing Officer who will authenticate and record its entry in the service book of the employee and also paste the same in the service book so as to form a permanent record for future

reference. The Drawing & Disbursing Officer will also inform about his/her option to the appointing authority immediately.

ii) The option once exercised will be final and not to be allowed to be changed in any circumstances. In case option is not given within the stipulated period of three months, it will be presumed that he/she intends to continue to be a member of EPF.

iii) In case, he/she opts for pensionary benefits, he/she has to refund the entire amount of employee's contribution along with interest thereon, towards their EPF in lumpsum for crediting to the Board's account, Employee's contribution alongwith interest is to be deposited with the Board for crediting to his/her GPF account.

3. Similarly, the above benefit will also be available to the pensioners/recipients of family pension of the Board on the same terms and conditions with the exception that they will have to deposit the amount contributed by the Board as Employee's contribution towards EPF alongwith interest thereon, in lumpsum. The pensioners/recipients of family pension will have to give an Affidavit to the fact that he/she will not claim any interest on the arrear of pensionary benefits which become payable due to adoption of the State Govt. circular. The pensioners/recipient of family pension will submit their option within 3 months from the date of issue of this circular, for availing pensionary benefits, to the Head of the office last attended. The option once exercised will be final. In case, option is not given within the stipulated period of 3 months, it will be presumed that he/she intends to continue to be a member of EPF.

4. These instructions may please be got noted from all the employees and acknowledge and receipt of the letter.

Sd/- Under Secretary (PW) For Additional Secretary, HSEB, Panchkula

6. The work-charge employees were given three months time to submit an option to the appellants. The appellants issued another circular dated 9.8.1994 allowing the said employees who could not exercise their option in response to the circular dated 6.8.1993 to opt for pensionary benefits. Circular dated 9.8.1994 reads as under:

HARYANA STATE ELECTRICITY BOARD

From:

The Additional Secretary, Haryana State Electricity Board (HSEB), Panchkula

Memo No. Ch.30/Pen/G-43(93) Dated 9.8.94

Sub: Amendment in the Punjab CSR Vol.II regarding counting of workcharged service towards pensionary benefits - Clarification thereof.

The Haryana State Electricity Board in its meeting held on 23.6.1993 had approved the adoption of Haryana Govt. Notification No. 1/2(55)-86-2 FR-II

dated 4.2.92 and the same was circulated vide Board's Memo No. Ch.2/Pen/G-43(93) dated 6.8.1993.

2. After issue of above Board's circular following issues/queries were raised by the different field officers/officials effected/Workers Unions. The issues/queries were considered by the Executive meeting held on 27.7.94 and necessary clarifications have been approved as under:

a) The time limit of three That a period of three months fixed by the Board months from the date of for submitting the option issue of the clarification expired on 5.11.93. There may be allowed to is a demand for the exercise option for extension of time limit for availing the pensionary exercising the option. benefits to those who could not avail this opportunity earlier.

b) There is an ambiguity That the workcharged as to whether such employees who were in employees who after service of the Board as regularization of their regular employee on services continued to be the 9.1.74 (i.e. the deemed member of EPF scheme are date of adoption of covered under the circular circular) or got or not. regularization thereafter, could exercise their option for availing the pensionary benefits by counting of their work-charged service even if they continued to be the member of EPF after issue of the Board's instructions dt. 6.8.93, if they exercise the option to join the pension scheme.

c) A point has been raised That the interest in that what will be rate of such like cases would interest payable by the be payable from the date employees/ pensioners/ of option for pensionary family pensioners to refund benefits to the date of the amount of EPF and the actual refund of the period for which the employer's/employee's interest is to be charged. contribution alongwith the interest thereon to the Board. The rate of interest would be the same which is applicable for GPF subscription.

d) A question has been That the Board has raised as to whether the adopted the Haryana total workcharged service is Government Notification to be reckoned towards dated 4.2.92 w.e.f. pensionary benefits in 9.1.74 as provided terms of para 'g' of the therein. Therefore, the Haryana Government total workcharged notification dt.4.2.92 from service of all those 9.1.74. employees would be countable towards pensionary benefits who were in service of the Board as regular employee on 9.1.74 or got regularization thereafter.

e) There is demand from That employer's/ the Workers Union that the employee's contribution recovery of EPF amount alongwith interest alongwith the interest thereon may be should be made in refunded to the Board in instalments instead of suitable instalments at lumpsum on the pattern of the employee's option BBMB. within his remaining period of service, subject to maximum of 24 monthly instalments. In case of those, who have already retired the employee's contribution alongwith interest thereon will be refunded to the Board in lumpsum.

3. These instructions may please be got noted from all the employees and acknowledge the receipt of the letter.

Sd/- Additional Secretary Haryana State Electricity Board Panchkula

7. The only condition for opting the pensionary benefits was that the concerned employee would refund the amount of employer's share received by him/her under the EPF Scheme along with interest accrued thereon.

8. It was pleaded by the respondent that he had no knowledge about the aforesaid instructions issued by the appellants nor were the same got noted from him and as such, he could not exercise his option for grant of pensionary benefits within the prescribed time-limit.

9. The respondent submitted that immediately after acquiring the knowledge of the circular he exercised his option for being governed under the pension scheme on 20.12.1994. The respondent submitted that he was ready to deposit the requisite amount received by him under the EPF Scheme. The appellants did not give any response and after the retirement of the respondent calculated his pension and other retiral benefits with effect from the date of his regularization i.e. 14.10.1981. The respondent issued reminders dated 2.9.2002 and 16.4.2003, but did not receive any response from the appellants. Ultimately, the respondent issued a legal notice to the appellants on 10.11.2003 calling upon the appellants to consider his pension case in the light of the instructions issued in the circulars of the appellants dated 6.8.1993 and 9.8.1994. Since no response was received by the respondent, therefore, he was compelled to file a writ petition before the Punjab and Haryana High Court.

10. The appellants' main plank of argument was that the said circulars were issued twice inviting options from the desirous employees for being governed under the pension scheme. Even the said circulars were also put on the Notice Board and copies thereof were endorsed to the Secretary, Workers' Union, but the respondent failed to exercise his option within the time prescribed and, therefore, his case for counting work-charge services towards pensionary benefits has rightly not been considered by the appellants.

11. It was submitted by the respondent before the High Court that he was always desirous and willing to opt for the pension scheme by counting the work-charge service and he was prepared to refund the amount of employer's share with interest under the EPF Scheme. The respondent further submitted that immediately after he learnt about the circulars, he exercised his option for pension scheme and in fact he has been consistently requesting the appellants to consider his case for grant of pension but the grievance of the respondent has not been redressed. The respondent was compelled to approach the Punjab & Haryana High Court.

12. The Division Bench of the Punjab and Haryana High Court, after hearing the learned Counsel for the parties at length, came to the definite conclusion that the

appellants had failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing from the respondent. The High Court further observed that in the absence of any such material, it can well be inferred that the respondent had no knowledge about the options called by the appellants vide circulars dated 6.8.1993 and 9.8.1994. The High Court also observed that it would be unreasonable to deny pensionary benefits to the respondent despite the said circulars issued by the appellants. The High Court allowed the writ petition filed by the respondent and directed the appellants to permit the respondent to exercise his option in accordance with the circulars dated 6.8.1993 and 9.8.1994 within a period of one month from the date of receipt of a certified copy of the order and thereafter give him the consequential benefits subject to his fulfilling the conditions of eligibility for being governed under the pension scheme. The appellants aggrieved by the said judgment of the Punjab and Haryana High Court have approached this Court.

13. The appellants submitted that the respondent did not comply with the instructions dated 6.8.1993 and 9.8.1994 within the prescribed period and as such was not entitled for benefits in terms of these circulars.

14. The High Court in its impugned judgment had categorically observed that the appellants had failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing from the respondent. The appellants had also failed to produce such material from which it can be inferred that the respondent had any knowledge about the options called by the appellants vide instructions dated 6.8.1993 and 9.8.1994. The High Court also observed that in this view of the matter it would be unreasonable to deny pensionary benefits to the respondent and the similarly placed respondents.

15. It may be pertinent to mention that the Full Bench of the Punjab and Haryana High Court in *Kesar Chand Vs. State of Punjab and Others*, after examining the entire case observed that once the services of work-charged employee are regularized, he will be deemed to be entitled to the benefit under Rule 3.17 (ii) of the Punjab Civil Service Rules Vol.2. Rule 3.17 (ii) reads as under:

If any employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying services except in respect of:

- (i) periods of temporary or officiating service in non- pensionable establishment;
- (ii) periods of services in work-charged establishment; and
- (iii)

16. The court in the said judgment held that the period of service spent by an employee on work charge basis prior to his regularization, should be taken into consideration for determining his qualifying service. This part is contained in para

19 of the judgment and reads thus:

19. ..It looks to be illogical that the period of service spent by an employee in a work- charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who eligible for pension and those who started work-charged employees and their services regularised subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable is hit by the vice of arbitrariness, and for se reasons the provisions of Sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.

17. Full Bench judgment of the Punjab & Haryana High Court in Kesar Chand's case (supra) was carried before this Court by way of filing a special leave petition. This Court dismissed the said special leave petition.

18. This Court has taken the view that pension is reward for long service rendered by the employee and not a bounty. The Supreme Court in the case of Subrata Sen and Others Vs. Union of India and Others, held that:

14. ...As observed in Nakara's case, pension is neither a bounty, not a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic to those who in the day-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch...

19. The appellants had issued circulars dated 6.8.1993 and 9.8.1994 for giving pensionary benefits to the respondent and similarly placed employees.

20. This Court time and again had observed that the principle underlying the guarantee of Article 14 of the Constitution is that all persons similarly placed shall be treated alike, both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation without any discrimination.

21. In E.P. Royappa Vs. State of Tamil Nadu and Another, , this Court observed as under:

From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

22. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , this Court observed as under:

Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.

23. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , this Court observed as under:

The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare state will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of state affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succor. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved.

24. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, this Court observed as under:

That is must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law, and is, therefore, violative of Article 14.

25. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, again this Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

26. In view of the law as has been articulated in a large number of cases where this Court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.

27. In our considered opinion, the view taken by the Division Bench of the High Court in the impugned judgment is indeed a rational, just and fair view and no interference is called for.

28. These appeals are devoid of any merit and are accordingly dismissed leaving the parties to bear their own costs.