
(2017) 01 P&H CK 0168
In the Punjab And Haryana At Chandigarh
Case No : CWP-2474 of 2012 (O&M)

Dr. Mam Chand Goel

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 LawHerald 403

Hon'ble Judges : Mr. Kuldeep Singh, J.

Bench : Single Bench

Advocate : Mr. Naveen Sheoran, DAG Haryana Mr. P.K. Mutneja, Advocate, for the Respondent Nos. 2 and 3; Mr. Manu K. Bhandari, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Kuldeep Singh, J. - By this single order, I will dispose of two Civil Writ Petition Nos.2474 and 2421 of 2012. However, for facility of reference, facts are being extracted from CWP No.2474 of 2012 titled as Dr. Mam Chand Goel v. State of Haryana and others.

2. Petitioner has impugned the order dated 25.8.2007 (Annexure P15), vide which, claim of the petitioner for addition of five years service in his qualifying service towards superannuation pension in accordance with Rule 3.2 of Chapter VIII-A of the University Pension Statute has been rejected. Further writ of mandamus has also been sought for directing the respondent ? University to grant the petitioner benefit of Rule 3.2 of Chapter VIII-A of the University Pension Statute. Petitioner has also sought the quashing of the instructions dated 5.3.2001 (Annexure P3) and order dated 15.5.2006 (Annexure P13), vide which, respondent No.1 has directed the respondent Nos.2 and 3 to re-consider the matter pertaining to counting of five years service under Clause 4.2A of CSR Volume-II which is paramateria to Rule 3.2 of Chapter VIII-A of the University Pension Statute. Accordingly, direction has been sought to restore benefit of addition of five years qualifying service for superannuation pension in terms of

the said Rule and re-fix the pension and release the arrears along with interest.

3. Petitioner Dr.Mam Chand Goel did his Ph.D. in the year 1970. Respondent-University issued an advertisement dated 30.12.1974 (Annexure P1) for filling up various posts. For the post of Epidemiologist, following qualifications were laid down:-

"(1) Second Class B.V. Sc & A.H./B.V.A.Sc.

(ii)Second Class M.V.Sc. in any field of Microbiology

(iii)Ph.D. Decree in animal epidemiology/ Virology/ Veterinary Bacteriology/ Vety. Public Health

(iv)5 years" teaching and research experience of which at least three years should be in research in epidemiology of microbial infections of animals;

Desirable: (i) Experience of research with Foot and Mouth Disease Virus (ii) Advanced training in Epidemiology and Immunology."

4. The said post of Epidemiologist, is equivalent to the post of Associate Professor. The petitioner was accordingly appointed in the year 1978. Petitioner is a direct appointee and not promotee under the University. It is stated that under Clause 3.2 of Chapter VIII-A of the University Pension Statute, petitioner is entitled to addition of five years service towards qualifying for superannuation pension. It is stated that the petitioner was granted such weightage vide order dated 8.1.1997 (Annexure P2). Petitioner retired from service on 30.6.2001. Petitioner has mentioned the number of other similarly situated employees, who were granted said benefit. The list is reproduced as such:-

Sr.No. Name Field of Specialization Date of joining Date of Superannuation

College of Agriculture

1 Dr. N.P. Chopra Entomology 08/1968 31.1.1995

2 Dr. A.N. Verma Entomology 02/1970 30.11.1998

3 Dr. M.L. Pandita Vegetable 7/1971 Crops 30.4.1971

4 Dr. Kamlesh Kumar Extension 03/1970 31.1.1995 Education

5 Dr. M.S. Chaudhary Plant 8/1968 31.5.1994

Breeding

6 Dr. R.P. Aggarwal Soil Sciences 01/1971 31.8.1999

7 Dr.M.C.Oswal Soil Sciences 4/1973 31.5.1999

College of Basic Sciences

8 Dr. N. Meharchandani Genetics 01/1973 31.7.1995

9 Dr. P.S. Chaudhary Math & Stat 09/1979 31.1.1994

10 Dr. Tauro Microbiology 2/1969 31.10.1995

College of Animal Sciences

12 Dr. S.P. Sengupta A.A.P./ L.P.M. 03/1977 30.9.1996

College of Veterinary Sciences

13 Dr. A.R. Rao Veterinary 6/1969 31.10.1994 Sciences

14 Dr. S. Aggarwal Veterinary 9/1974 31.10.1993 Sciences

15 Dr. R.P. Singh Veterinary 12/1964 30.4.1995 Sciences

16 Dr. Shruti Dhar Veterinary 7/1997 31.7.1997 Sciences

5. According to the petitioner, respondent No.1 issued instructions/ letter dated 5.3.2001, in which, it gave its own interpretation as to who will be entitled to benefit of Rule 4.2A of CSR Volume-II, which is paramateria to Clause 3.2 of Chapter VIII-A of the University Pension Statute. It is stated that applying the said interpretation/ instructions dated 5.3.2001, without issuing any show cause notice or affording hearing opportunity to the petitioner, five years additional benefit granted towards superannuation pension was withdrawn vide letter dated 13.2.2002. It is stated that on 23.2.2002, another letter was issued stating that weightage under clause 3.2 would be only on initial appointment of Assistant Professor and equivalent when the qualification for the post of Assistant Professor is Ph.D. or M.Sc. with three years experience. It is stated that previously, petitioner filed a Civil Writ Petition No.9070 of 2002, which was disposed of by this Court with a direction to the respondents to decide the representation of the petitioner within three months by passing a speaking order and well reasoned order. It is stated that the respondent No.2 addressed a letter to respondent No.1 requesting that relief of weightage under Clause 4.2A of CSR Volume-II should be given to the teachers working in the University. Respondent No.3 in compliance with the order of the High Court passed an order dated 3.9.2002, vide which representation submitted by the petitioner was rejected while relying upon instructions dated 5.3.2001. Thereafter, the petitioner again approached this Court by way of CWP No.689 of 2003. During the pendency of said writ petition, respondent No.3 produced a copy of the communication dated 15.5.2006 (Annexure P13), vide which, request of the respondent No.2 was not accepted by respondent no.1 in view of the instructions dated 5.3.2001. The petition was disposed of by this Court on 28.8.2006 by granting liberty to the petitioner to file a fresh writ petition by challenging the communication dated 15.5.2006.

Dr.Dhyan Pal Singh petitioner in CWP No.2421 of 2012 was appointed as Associate Professor of Agronomy in the University vide appointment letter dated 3.3.1975 (Annexure P1). At that time, the petitioner was working in the Department of Agronomy, R.B.S. College, Bichpuri, Agra (UP. Vide order dated

19.10.1996 (Annexure P2) weightage of 4 years 8 months and 6 days service in the pension was granted to the petitioner under Clause 3.2 of Chapter VIII-A of the University Pension Statute and after receiving the clarification dated 5.3.2001, same was withdrawn vide order dated 20.7.2007 (Annexure P10). Here also, the petitioner seeks the quashing of the instructions dated 5.3.2001 (Annexure P3) and order dated 15.5.2006 (Annexure P9).

6. As per advertisement, following qualifications for the post of Associate Processor in Agronomy were laid down:-

"Second class Bachelor's degree in B.Sc. / B.Sc. (Ag.) followed by second class in M.Sc./ M.Sc. (Ag.)

(ii) Ph.D. In Agronomy with specialization in Crop Water Management.

(iii) Five years teaching/ research/ extension experience in water use and crop management.

7. In the short reply submitted by respondent no.1, it is stated that while introducing the pension scheme in the University, the Board of Management of Haryana Agricultural University in its 113th meeting held on 21.5.1992 approved the pension scheme for the employees working in the University. University also adopted provisions of Rule 4.2A of CSR Volume-II by adding the said provision in Clause 3.2 of Chapter VIII-A of the Act and Statute of the University. Respondent No.1 has reiterated the instructions dated 5.3.2001. It is stated that University is an autonomous body. Therefore, decision to adopt the service rules applicable to the State Government employees is within the purview of the University. It is stated that Rule 4.2A has been amended vide notification dated 2.6.2004.

8. Respondent nos.2 and 3 in the written statement have stated that Clause 3.2 of Chapter XII of Pension Statutes of the University was introduced only on the basis of Rule 4.2A of CSR Volume-II. Thereafter, the benefit of 5 years of weightage under Clause 3.2 was allowed to the petitioner by the University. Thereafter, it was found necessary that criteria be laid down for interpretation of this Rule and for this reason particular, the State government was approached. The State government vide letter dated 5.3.2001 has given broad guidelines for the interpretation of Rule 4.2A of CSR Volume-II. Since Clause 3.2 of Chapter XII of the Pension Statute is paramateria to Rule 4.2A, therefore, same interpretation was accepted. Service of the petitioner and retirement is not denied. It is stated that as per instructions, benefit of qualifying period under this Rule is admissible at first entry level in service and not at the stage when post is filled up by way of promotion as well as by way of direct recruitment, where the experience of lower/ first entry post is a part of the prescribed qualifications. It was clarified in the instructions that the benefit will be available in case of an Assistant Profession but not in case of an Associate Professor. Therefore, the weightage granted to the petitioner was rightly withdrawn.

9. I have heard learned counsel for the parties and have also carefully gone

through the file.

10. First of all, it is necessary to reproduce Rule 3.2 of Chapter VIII-A of the University Pension Statute:-

"An employee appointed to a service or post shall be eligible to add to his service qualifying for superannuation pension (but not for any other purpose). Actual period that exceeding one forth of the length of his service from actual periods by which his age at the time of recruitment exceeds 25 years or a period of 5 years whichever is least if the service or post to which he is appointed is one;

(a) for which post graduate research or specialist qualification or experience in scientific or professional field is essential and;

(b) to which candidate or more than 25 years of age are normally recruited.

Provided that there shall not be admissible to an employee unless his qualifying service at the time of the quits the University's service is not less than 10 years.

Provided further that any such employee who is recruited at the age of 35 years or more may, within a period of 3 months from the date of his appointment may elect to forego his rights to pension whereupon he will be eligible to subscribe to Contributory Provident Fund."

11. Admittedly, previously, the University has been granting such benefit. Now, this Court is to see the advertisement issued by the petitioner for the post of Epidemiologist. Qualifications reproduced above clearly shows that Masters degree in any field of Microbiology was required. In addition to that Ph.D. degree was also required and five years teaching and research experience of which at least three years should be in research of Epidemiologist of microbial infections of animals was required. It was also desirable that experience of research with Foot and Mouth Disease Virus and advance training of Epidemiology and Immunology is there with the candidate. It is also not denying fact that the petitioner was not a promotee and directly appointed to the said post. It is also not denying fact that vide order dated 8.1.1997 (Annexure P2), the benefit of five years service towards pension was given to the petitioner. Petitioner retired from service on 30.6.2001. After retirement of the petitioner, the said benefit was initially stayed vide order dated 13.2.2002 (Annexure P4) and thereafter withdrawn. The entire case of the University is based on the instructions/clarification dated 5.3.2001, wherein Rule 4.2A of CSR Volume-II, which is paramateria to Clause 3.2 of Chapter VIII-A of the University Pension Statute, was clarified by the government. The language of both the Rule is similar. The relevant extract from the said interpretation is reproduced as under:-

"A. Interpretation of the Rules:

(i)The benefit of qualifying period under this rule is admissible for superannuation pension only and not for any other class of pension. Further, it is applicable only to such class of employees to whom CSR is applicable. It will not

be admissible to such of the public servants whose service conditions are regulated by some other specific set of service rules.

(ii) Secondly, the benefit of qualifying period under this rule is admissible at the first entry level in service and not at a stage where the posts are filled up both by way of promotion as well as by way of direct recruitment (where the experience of lower/ first entry post is a part of the prescribed qualifications). For example, it would be available in case of an Assistant Professor but not in the case of an Associate Professor.

(iii) Third, the benefit would be admissible only where postgraduate research or specialist qualifications or experience in scientific, technological or professional fields is prescribed as an essential qualification for the post.

(iv) Fourth, the rule further provides that in order to qualify for the benefit under this rule, the post must be such to which candidates or more than twenty five years of age are normally recruited."

12. The government also interpreted the key word "normally recruited" and gave the following clarification:-

"The key words here are "normally recruited". This has to be understood in its proper context. For example, a child joins Class I at the age of 5 (five) years. This could be taken / accepted as 6 years also (3 years + Nursery + LKG + UKG and then first) depending on the circumstances of the case. He thus passes his 10+2 level at the age of 17/18 years as the case may be. Allow another 3 or 4 years for the graduate programmes depending on the kind of graduation. Thus he does his graduation at the age of 20 years (minimum) or 22 years (maximum). This is followed by a two year post graduation programme reaching the age levels of 22 to 24 years as the case may be. This is then followed by a Research Degree (say, three years) obtained at the age of 25 to 27 years as the case may be. The above would be a good guideline for understanding the normal course. If somebody takes up a job after 10+2, say for three years, and then comes back and resumes his studies, it would not constitute a normal course."

13. It was observed that if somebody deviates from normal course of study for acquiring essential prescribed qualification be it for some other course of study, break in study, period of waiting or unemployment, any other employment or experience higher than what is essentially required, will have to be discounted in the process of calculation of entitlement period. The following example was given in the said clarification:-

"For instance, a person completes his Masters level at the age of 23 years. He gets a job somewhere and remains in such employment for a period of three years. He decides to quit the job and take up a course in LLB when he is 26 years old and completes his law degree at the age of 29 years and then starts practicing law in the court. After 4 years of practise, he applies for the job of ADA and gets the same. Now, the question is whether he would be entitled to a

benefit under this rule and if yes, to what extent? While examining his case, it should be seen at what age he would have acquired the essential qualifications prescribed for the post of ADA in the normal course. (The essential prescribed qualifications are BA, LLB with two years of practise experience). He could have completed his law course at the age of 24 years had not gone for his masters. Two years practise criterion gets completed at the age of 26 years. He would, therefore, be entitled to the benefit under the Rule but for a period of one year only."

14. Ultimately, it was clarified that decision regarding grant of concession shall be taken by the Administrative Department at the time of recruitment in consultation with the Finance Department and the Public Service Commission. University is an autonomous body and has adopted pension rules of the government and accordingly framed Clause 3.2 of Chapter VIII-A of the University Pension Statute, which is paramateria to the said Rule 4.2A of CSR Volumse-II. It is established law that clarification and instructions contrary to the Rules or law are not binding on any authority. The respondents have probably relied upon clause 2 of the interpretation wherein an example has been given that the benefit is available in case of Assistant Professor but not in case of Associate Professor. It was mentioned that benefit of qualifying period under this rule is admissible at the first entry level in service and "not at a stage where the posts are filled in both by way of promotion as well as by way of direct recruitment where the experience of lower/ first entry post is a part of the prescribed qualifications".

15. This Court is to see whether the said clarification given by the Government is in consonance with the Rules. Now, reverting to Clause 3.2 of Chapter VIII-A of the University Pension Statute, it is clear from the opening line that it pertains to "employees appointed to service or post" which means that it pertains to the direct appointment. The Rules do not talk whether the post could be filled in by promotion also in addition to the direct recruitment. Therefore, Clause 3.2 of Chapter VIII-A of the University Pension Statute is applicable to the employee who is directly appointed to the service whether it is first entry level service or a higher post in which direct recruitment is permissible. Therefore, the clarification depicting that it is applicable only to the entry level post is contrary to the said Rule. As per Clause 3.2 of Chapter VIII-A of the University Pension Statute, the actual period exceeding 7th of the length of service from the actual period by which his age at the time of recruitment exceeds 25 years or a period of five years whichever is least, if the service or the post to which he is appointed is one

(a) for which post graduate research or specialist qualification or experience in scientific or professional field is essential and

(b) to which candidate or more than 25 years of age are normally recruited.

16. Clause (a) reproduced above does not talk of entry level post only. It talks of appointment to the post in which post graduate research or specialist

qualification or experience in scientific or professional field is essential. If the said measure is applied to the present case, the advertisement reproduced above clearly shows that in the present case Masters degree and thereafter Ph.D. degree was required and thereafter, even five years teaching and research experience was required, out of which at least three years should be research in the Epidemiology of microbial infections of animals. It was further laid down that some more qualification is desirable which is to be considered for the purpose of appointment.

17. If the qualifications reproduced above in both the cases are considered, then even by the standards laid down in the said instructions, a candidate will normally be more than 25 years of age at the time of appointment.

18. Learned counsel for the respondents has laid a stress on the word "normally recruited".

19. Word "normally recruited" is to be interpreted in the contest of the qualifications laid down in the advertisement. Instructions reproduced above shows that for the purpose of "normal recruitment" instructions talks of the normal age on which one joins class 1 and graduates or post graduates and thereafter, acquired research. It is merely an example when normally a person acquires research degree. However, I am of the view that the instructions had gone beyond the said Rule. If while acquiring the qualifications, the normal age exceeds 25 years, the benefit can not be declined on the pretext that one had deviated from the normal course or there was a break in study. Rule only laid down that it should be a post where the candidate of more than 25 years of age are "normally recruited". The test is whether normally a candidate of more than 25 years of age is recruited to the said post? If the reply is in positive, the benefit of Clause 3.2 of Chapter VIII-A of the University Pension Statute is available to the employee and it is for the Administrative authority to decide how much benefit is to be given. It will depend upon case to case. Therefore, I am of the view that the instructions dated 5.3.2001 went much beyond the Rule. By mere instructions, the Rules cannot be amended. The clarification that the benefit is available only at the first entry level in the service and giving the example of Assistant Professor is misinterpretation of Clause 3.2 of Chapter VIII-A of the University Pension Statute, which is paramateria to Clause 4.2A of CSR Volume-II is contrary to the Rule 3.2 and binding on authorities.

20. It comes out that vide order dated 13.2.2002 (Annexure P4), in view of the clarification/ instructions dated 5.3.2001, the weightage part towards the pension of the petitioner was stayed till the finalization of the case by Board of Management. The University has also issued the instructions dated 22.3.2002 regarding implementation of Clause 3.2 of Chapter VIII-A of the University Pension Statute, basically relying upon the instructions/ clarification dated 5.3.2001, which are contrary to the said Rule.

21. It also comes out that the petitioner has made a representation on

23.3.2002 (Annexure P6). The University has also addressed a communication to the Commissioner and Secretary to the Government of Haryana Agricultural Department for reconsidering the said instructions. It comes out that vide impugned order dated 15.5.2006 (Annexure P13), the said request was rejected in view of the interpretation given vide instructions dated 5.3.2001. Respondent accordingly, passed the impugned order dated 3.9.2002 (Annexure P8), whereby while considering the order passed by this Court in CWP No.9070 of 2002 to pass a speaking order on the representation of the petitioner, claim of the petitioner was rejected, applying instructions dated 5.3.2001.

22. I am of the further view that service Rules as applicable to the petitioner at the time of initial appointment are to be considered and further that just by way of clarification, Rules cannot be altered or amended as was sought to be done vide instructions/ clarification dated 5.3.2001. The information under RTI further shows that the final decision regarding clarification issued by the Haryana Government vide letter dated 5.3.2001 was not taken till the date of the retirement of the petitioner i.e. on 30.6.2001.

23. It also comes out that regarding Shri Dhyan Pal Singh, petitioner in CWP No.2421 of 2012, similar order has been passed on 20.7.2007 (Annexure P10) on the basis of the same instructions dated 5.3.2001.

24. In similar case, this Court in *State of Haryana and others v. Sh.Mulk Raj Mehta*, 2012(3) PLR 58, took the view that in such cases for the purpose of Rule 4.2A of Punjab Civil Service Rules, Volume-II, age of the employee is to be seen at the time of recruitment or appointment and not when he becomes eligible for the purpose by acquiring necessary qualification and experience. It follows that if a person is normally appointed exceeding the age of 25 years, then even if the employee is appointed after the age of 25 years, who is having break in the study or recruited somewhere else, even then he is entitled to benefit of Rule 4.2A.

25. In view of what has been discussed above, I am of the view that interpretation given vide instructions dated 5.3.2001 are contrary to the Clause 3.2 of Chapter VIII-A of the University Pension Statute, which is paramateria to Rule 4.2A of CSR Volume-II and that the benefit of qualifying period cannot be restricted to first entry level in service i.e. Assistant Professor only. Benefit of such rules is available at the time of first entry into service by direct recruitment notwithstanding the fact that the post could also to be filled in by promotion.

26. Since, the petitioners made first entry in service as Epidemiologist and Associate Professor Agronomy, therefore, they are entitled to benefit of Clause 3.2 of Chapter VIII-A of the University Pension Statute, which was earlier given to the petitioners vide order dated 8.1.1997 and 19.10.1996 (Annexure P2) and was wrongly withdrawn by blindly applying the clarification issued by the government. Therefore, the instructions dated 5.3.2001 (Annexure P3) so far as these are contrary to Clause 3.2 of Chapter VIII-A of the University Pension

Statute and Rule 4.2A of CSR Volume-II are hereby quashed. Consequently, the impugned order dated 25.8.2007 (Annexure P15) and order dated 15.5.2006 (Annexure P13) and order dated 20.7.2007 (Annexure P10) also stand quashed.

27. Accordingly, both the writ petitions are allowed. The benefit of five years service qualifying towards superannuation pension earlier granted to the petitioners is restored. The pension of the petitioners is accordingly ordered to be fixed. The recovery, if any, effected from the petitioners be refunded to them with interest @ 9% per annum and the arrears, if any, shall also be paid to the petitioners within three months from the date of receipt of a certified copy of the order with interest @ 9% per annum till the date of payment.

28. A copy of the order be placed on the connected file.