(2007) 08 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Dr. Swaran Sharma APPELLANT

Vs

State of Haryana and Another RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Citation : (2007) 4 PLR 526

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—The petitioner was appointed as a lady doctor by the Secretary, District Red Cross Society, Ambala for the Family

Welfare Planning Centre, Yamuna Nagar w.e.f. 25.6.1975 vide appointment letter dated 25.6.1975. Her engagement continued till 10.2.2005

when the petitioner was finally retired from service. It is not in the dispute that the normal date of superannuation in the Red cross Society at the

relevant time was 58 years. The society framed and adopted the rules, namely, Indian Red Cross Society and St. John Ambulance Association,

District Branch, Yamuna Nagar Staff Rules of 2002 which, interalia, provides as under:

Superannuation & Retirement:

11. An employee shall retire on attaining the age of 58 years. He may, however, be allowed to work upto the age of 60 years by the appointing

authority, if his performance is satisfactory and he is physically fit. No extension beyond 60 years shall be given except with the prior approval of

the President.

Provided that an employee may seek voluntary retirement before attaining the age of 58 years, after completing 20 years service, and giving 3 months clear notice of his intention to do so. In that case, he shall be entitled to benefits admissible to him under the Rules according to his length of

service.

Provided that an employee, may, however be permitted to withdraw his notice with the approval of the competent authority.

The date of retirement of the employees except those whose date of birth falls on the 1st day of month, will be the afternoon of the last day of

month, in which the date of their retirement falls instead of the actual date of their superannuation. In the case of those employees whose date of

birth falls on the 1st day of the month, the date of retirement will be the afternoon of the day of the month preceding the month their date of birth

falls.

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14. Employee of the Society/Association shall be entitled to leave as per Haryana Government Leave Rules.

2. A bare perusal of these rules indicates that the society may retain an employee beyond 58 years of age up to the age of 60 years with the prior

approval of the President. The petitioner attained the age of superannuation i.e. 58 years on 31.10.2004. However, the society continued the

petitioner and recommended for extension of her services upto the age of 60 years to the Director Health Services, Haryana. It appears that the

society was getting grant-in-aid and thought it proper to seek approval of the Director Health Services, Haryana. The Director Health Services

vide its letter dated 9.2.2005 informed the society that in the event an employee is to be retained in service beyond the 58 years of age then no

salary will be paid by the State Government and, society will bear the expenses in respect of such employee. This decision was communicated to

the petitioner on 10.2.2005.

3. The petitioner approached this Court seeking a direction for payment of salary and other post retiral benefits in C.W.P. No. 6001 of 2005, a

Division Bench of this Court disposed of this writ petition with the following directions:

After hearing the learned Counsel for the petitioner, we dispose of this writ petition with a direction to respondent No. 2 to take a decision on the

representations Annexures P-5, P-8 and P-9, within a period of three months from the date that a certified copy of this order is supplied to him. In

case the petitioner''s claim is to be denied, the respondent shall pass a speaking and well reasoned order and communicate the same to the

petitioner.

4. In furtherance to the directions of this Court in the aforesaid judgment dated 12.4.2005, respondents have passed the order dated 4.7.2005,

declining the salary to petitioner for the period of overstay beyond 58 years of age. However, the claim for CPF amount was accepted with the

condition that recovery, if any, will be deducted on account of discrepancy in pay scale. The Director Health Services also issued a communication

dated 9.2.2005 to the Secretary Red Cross Society whereby certain recoveries have been ordered from the emoluments of the petitioner on the

ground that the petitioner has been granted selection grade of Rs. 4100-5300 w.e.f. 1.5.1989 whereas this pay scale was admissible w.e.f.

1.1.1998. This grade is payable to only 20% officers working on cadre posts. There is only one post of Medical Officer at the Centre to whom

this grade is not admissible. This letter further indicated that the petitioner is entitled to ACP benefit w.e.f. 1.1.1998 instead of 1.1.1996. The

petitioner is aggrieved of the aforesaid two communications i.e. 9.2.2005 whereby recovery is sought to be made from her and the communication

dated 4.7.2005 vide which his claim regarding pay fixation has been rejected.

5. The petitioner has brought on record resolution No. 5 passed by the society wherein the employees of the society are to be governed by the

Punishment and Appeal Rules as are applicable to the employees of the State Government. Similarly, the employees of the Society are also entitled

to the allowance of leave and travel as are prevalent in Haryana Government and even the pay scale payable to the employees are the same as are

meant for the State of Haryana. The claim of the petitioner is resisted by the State of Haryana as also by the Society on the grounds indicated in

the impugned order dated 4.7.2005 and letter dated 9.2.2005.

6. I have heard learned Counsel for the parties.

7. The petitioner has two kinds of claim; one salary for the period from 1.11.2004 till 10.2.2005, the period when the petitioner continued in

serviced beyond 58 years of age and second; recovery from his post retiral dues. Admittedly, during this period the petitioner was made to work.

The respondents have extracted work from him. It is not the case of the respondents as the petitioner continued in service beyond 58 years of age

on account of any kind of fraud, and/or misrepresentation on her part. To the contrary, the respondents'' society itself retained her after

superannuation, continued to pay salary and other allowances and recommended her case to the State Government. It clearly indicates that the

society of its own and without any misrepresentation on the part of the petitioner allowed her to continue in service. It is only when the Director

Health Services, Haryana informed the society that in the event of extension, the society will have to bear the expenses of retention in service of the

petitioner, petitioner''s extension was terminated and she was made to retire on 10.2.2005. Since the petitioner has performed the duties during the

extended period of employment, she is entitled to salary for this period. As far as the other aspects of payment of post retiral benefits is concerned,

the petitioner has brought on record the Resolution No. 5. Respondents have not denied the passing as well as the adoption of such resolution.

Only objection raised by the society is that the petitioner was serving on a project and is governed by the service conditions of Scheme of the

project. Under this project, she is not entitled to leave salary, gratuity or any other post retiral benefits which are payable to the State Government

employees. The order of the appointment of the petitioner refers to the terms and conditions dated 18.2.1975. None of the parties placed on

record this letter to indicate as to what were the terms and conditions for the appointment of the petitioner. The resolution No. 5 adopted by the

society provides for payment of all allowances of leave and travel and also the pay scale.

8. Learned Counsel appearing for the State has referred to para 6 of the reply wherein reference is made to Indian Red Cross Society and St.

John Ambulance Association, District Branch (Yamuna Nagar), Staff Rules, 2002. In this, it is mentioned that the services of the staff employed in

different project of Red Cross, Yamuna Nagar which will run by grant in aid received for Red Cross Society, Yamuna Nagar from Haryana Govt.

or Govt. of India, New Delhi, shall be governed by Rules of services of employees under grant-in-aid scheme. It further clarifies that their services

shall continue as long as the grant exists. This rule does not in any manner deprive the petitioner of the post retiral benefits which are being claimed by her. The petitioner has claimed gratuity, leave encasement, salary for the period w.e.f. 1.11.2004 to 10.2.2005, provident fund and has also

challenged the action of the respondents for recovery of alleged excess salary. In view of Resolution No. 5, petitioner is entitled to-all the post

retiral benefits as are available to the employees under State Government. Therefore, petitioner is entitled to gratuity as per the provisions of

Payment and Gratuity Act, 1972, leave encashment as provided to State Govt, employees and also provident fund contribution. It is not in dispute

that the petitioner has contributed towards provident fund. Therefore, the same is to be paid to the petitioner alongwith statutory interest payable

on such contribution. The other dispute raised is in terms of letter dated 9.2.2005 wherein certain recoveries are sought to be effected from the

emoluments of the petitioner. Admittedly, the petitioner was allowed to draw the alleged excess salary right from 1.5.1989 and her pay fixed

accordingly. She continued to receive selection grade till her retirement i.e. on 10.2.2005. During the period she was in service, no objection was

ever raised nor any recovery sought from her. It is not the case of the respondents that selection grade was released in favour of the petitioner on

account of any fraud attributed to her. The issue is no more res integra and has been concluded in the judgment cited as Sahib Ram Vs. State of

Haryana and Others, wherein the Apex Court has observed as under:

Admittedly, the appellant does not possess the required educational qualifications. Under the circumstances, the appellant would hot be entitled to

the relaxation, the appellant had been paid his salary on the revised scale. However, it is act on account of any mis-representation made by the

appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot

be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the appellant. The principal of equal pay for

equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to

costs.

9. This judgment has been followed by Division Bench of this Court in case Karnail Singh v. State of Punjab 2003 (2) R.S.J. 433. In view of the

above circumstances and law laid down by the Apex Court, the action of the respondents in effecting any recovery from the petitioner on account of alleged excess payment of salary is also not sustainable in law.

10. Learned Counsel for the respondent has raised a question as to maintainability of writ petition against the Red Cross Society. However, this issue has been decided by Divisional Bench of this Court in The District Red Cross Society, Sirsa v. Radha Kishan Rajpal 2005 (1) S.C.T. 41. In view of the Division Bench Judgment which is binding upon this Court, this preliminary objection is not valid.

11. For the above reasons, this petition is allowed. Respondents are directed to pay the salary to the petitioner for the period w.e.f. 1.11.1994 to 10.2.2005. She is also entitled to leave encashment as is permissible to the Haryana State Government employees as well as gratuity and Provident Fund in accordance with the rules and Payment of Gratuity Act, 1972. Provident Fund and Gratuity will carry statutory interest. Since the salary and leave encashment has been withheld by the respondents/ petitioner is also entitled to interest on the sum payable at the rate of 6 per cent per annum after expiry of one month from the date of retirement i.e. 10.2.2005 till the amount is actually paid. Respondents are also restrained from effecting any recovery from emoluments of the petitioner on account of alleged excess payment. Let all the claims be settled and paid within period of three months from today.