

(2015) 09 P&H CK 0273

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 13333 of 2015, 3112 of 2015 (OandM), 4082, 4083, 9330, 12246, 12248, 12490, 12647, 13861 and 15170 of 2015

Gurmeet Singh Randhawa and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Citation : (2015) 4 SCT 437

Hon'ble Judges : Gurmeet Singh Sandhawalia, J.

Bench : Single Bench

Advocate : Gurminder Singh, Sr. Advocate and R.P.S. Bara, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Gurmeet Singh Sandhawalia, J.—This judgment shall dispose of CWP Nos. 13333, 3112, 4082, 4083, 9330, 12246, 12248, 12490, 12647, 13861 & 15170 of 2015, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP No. 13333 of 2015 titled Gurmeet Singh Randhawa v. State of Punjab & others. Challenge in the present writ petition is to the order dated 30.06.2015 (Annexure P12) whereby the petitioner's second extension in service has been curtailed on account of the registration of two CBI cases against him and the filing of chargesheet. Accordingly, in view of the instructions of the Government dated 08.10.2012 and 20.09.2013, on account of the pendency of the chargesheet, the second extension in service of the petitioner was curtailed from 31.08.2015, vide impugned order. The challenge in the present writ petition is based on the ground that the order was passed without prior notice or opportunity of hearing and just 60 days prior to his completion of extension and that sanction had not been given by the competent authority and the charges framed by the CBI Court had been stayed by the Apex Court. The Government had taken a conscious decision to grant him extension despite the pendency of the FIR and the cancellation of his extension in service would entail civil

consequences.

2. The State, in its reply, has relied upon the instructions dated 30.10.2014, 07.01.2015, 23.01.2015 and 30.04.2015. It was averred that the charges had been framed by the Addl. Sessions Judge, Patiala on 15.05.2004 but the Apex Court had stayed the proceedings on 13.07.2012. In the second case also, the CBI had filed charge sheet against the petitioner and further proceedings had been stayed by the Apex Court on 14.07.2006. Plea taken was that the petitioner had no right to continue in service beyond the prescribed age of superannuation and the extension was a mere concession and could be unilaterally withdrawn, in public interest. Reliance was placed upon the decision of this Court in CWP No. 3847 of 2015 titled Iqbal Mohammad v. State of Punjab & others, decided on 24.04.2015, whereby this Court had held that extension was a mere concession and could be curtailed, without grant of opportunity of hearing. Resultant, the impugned order was passed, keeping in view the above said instructions.

3. Learned Senior Counsel for the petitioner (in CWP No. 13333 of 2015) had vehemently argued that the extension was not a concession and it was a vested right once the State had applied its mind and granted the extension in service, in public interest. It was argued that as per Rule 3.26 (b) of the Punjab Civil Services (Punishment & Appeals) Rules, 1970, the Government employee was also entitled for promotion if the post was available and thus, it was a vested right. Clause 7 of the instructions dated 22.01.2013 provided that even if there were Court cases, Vigilance enquiries, enquiries pending, the extension was to be given if the option had been exercised by the employee. The withdrawal vide instructions dated 30.10.2014 and the setting up of the Committee to look into the extensions against officers who had Vigilance/Criminal/Departmental enquiries and the subsequent instructions dated 07.01.2015, which clarified that the departmental enquiry should be under Rule 8 for major punishment and not on account of minor punishment and further reconsideration by the Committees was beyond the purview of Rule 3.26 and could not override the same. Similarly, the instructions dated 30.04.2015, wherein it was provided that extension could be withdrawn without issuing any notice was also challenged on the ground that once there was statutory right given, the said action could not be done without giving an opportunity of hearing and would amount to supplanting the rule itself. Reliance was, accordingly, placed upon M. Gopalakrishnaiah Vs. Union of India, , State of Haryana and Another Vs. Raghubir Dayal, , Director General of Posts and Others Vs. B. Ravindran and Another, , Ramesh Chandra Acharya Vs. Registrar, High Court of Orissa and Another, , Union of India (UOI) and Another Vs. Shardindu, and the Full Bench judgment of the Delhi High Court in Ex Sub Rajender Singh v. Union of India & others 2015 (2) SCT 728 . On the principle of natural justice, the judgments cited are Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another, , Canara Bank and Others Vs. Shri Debasis Das and Others, and BCPP Mazdoor Sangh and Another Vs. N.T.P.C. and Others, . The judgment in Iqbal Mohammad"s case (supra) was sought to be distinguished on the ground that

the subsequent instructions dated 30.04.2015 had also come in, which were not the subject matter of consideration in the said case.

4. The State, on the other hand, relied upon the provisions of Rule 3.26, to submit that the proviso of Rule itself provided that extension may be granted beyond the date of retirement, for a period not exceeding 2 years and the extension could be lessor than the said period and the concession given could be withdrawn and the instructions are only clarificatory and a classification could be done, in public interest. The right of any of the employee was only for the substantive service till the age of 58 years and the instructions validly provided not to grant extension to the persons charge sheeted and against those where major penalty had been proposed. The principle of promissory estoppel was not applicable as no alteration had been done, in any manner. The judgment of this Court in the case bearing CWP No. 26001 of 2014 titled *Amrik Singh v. Punjab State Cooperative Agricultural Development Bank Ltd. & another* decided on 26.05.2015, was relied upon to submit that the subsequent instructions dated 30.04.2015 had also been taken into consideration. It was argued that the extensions were necessary and to be expedient, in public interest and the date of retirement was 58 years and there could not be different dates of retirement amongst similarly situated employees and it was also the discretion of the Government to extend the extension beyond two years, in exceptional circumstances. The judgment of the Division Bench in the case bearing CWP No. 11994 of 2013 titled *Lal Chand Goyal v. Punjab State Agricultural Marketing Board & others* decided on 10.02.2014, was referred to wherein it had been held that it was a mere concession in service which had also been extended to Public Sector Undertakings and autonomous bodies, the employees could not claim any legal right against the said extension in service.

5. A Coordinate Bench of this Court in the case of *Iqbal Mohammad (supra)* had examined the issue threadbare including the issue that the curtailment of the extension period was not violative of the principles of natural justice, on account of the fact that the extension of service itself was a concession. It was accepted that the extension was under the discretion of the employer and it could be unilaterally withdrawn and the instructions had been issued, in public interest, whereby employees who are facing disciplinary action for major penalty could be relieved by way of a policy decision taken. The argument that curtailment of extension in service was bad in law being in violation of the principles of natural justice was rejected on the ground that once the extension was by concession, it could be unilaterally withdrawn. The relevant portion of the judgment reads as under:

"Principles of natural justice would be attracted to the facts of a case, where some legal right is adversely effected, but in the facts of the case in hand, once the Apex Court has, through a catena of judgments (some of which have been referred to earlier), held that an employee has no right, much less a vested or legal right to continue beyond the age of superannuation, then curtailment of

such period would not attract the principles of natural justice and the same can be done through a unilateral decision taken by an employer.

The extension in service in the case of the petitioners has been curtailed on the ground that they face departmental action which could entail major penalty. It is admitted by the petitioners that at the time, the orders impugned by them were passed, they were all facing disciplinary action which could lead to the imposition of a major penalty. Their cases are thus covered by the instructions impugned by them. In view of such admission, I fail to understand what prejudice has been caused to the petitioners on account of non-issuance of a notice to them before ordering them to be relieved. The extension of service, as observed earlier, is by way of a concession given by an employer to its employee and any concession so granted can be unilaterally withdrawn. That being so, there is no question of violation of principles of natural justice for curtailment of period of extension of service already granted."

6. Vide a judgment of even date, the said Coordinate Bench had also disposed of another set of cases whereby extension had been declined to the employees in CWP No. 3826 of 2015 titled Romesh Garg v. State of Punjab & others decided on 24.04.2015. The view in Romesh Garg's case (supra) was approved by the Division Bench of this Court in LPA No. 776 of 2015 titled Ashok Arora v. State of Punjab & others decided on 20.05.2015, by holding that the view taken by the Learned Single Judge was the correct statement of law and no elaborate discussion was required. The instructions dated 30.04.2015, vide which the Government had further clarified and superseded the instructions dated 30.10.2014 and 07.01.2015, were challenged before the Division Bench in CWP No. 10911 of 2015 titled Lal Chand v. State of Punjab decided on 06.07.2015, wherein it has been held that the instructions do not have any retrospective effect but are only with immediate effect and the extension in service beyond the age of retirement was sort of incentive and employees with a clean slate record were to be retained and two distinct separate classes have been created. Relevant portion of the observations of the Division Bench read as under:

"(7) In our considered view none of these evils can be attributed to the subject Instructions. The Instructions have not been applied retrospectively as the benefits drawn by an employee on the extension in service have not been withdrawn. The new set of instructions have been applied with immediate effect and are indeed prospective in nature.

(8) Since extension in service beyond the age of retirement is a sort of incentive, reward or encouragement, it cannot be said that the instructions are arbitrary in nature merely because an official with chequered service record is denied such benefits.

(9) Similarly, the employees having clean slate record on one hand and those who are subjected to major disciplinary action, constitute to two separate and distinct classes, therefore, the vice of discrimination cannot be read into the

instructions."

Keeping in view the above settled position, the argument, thus raised that the petitioner was entitled for any hearing and that they have substantive right, stands already decided against the petitioner in the above said cases and further upheld by the Division Benches and therefore, there is no scope for interference in the present set of cases. Accordingly, all the writ petitions are, hereby, dismissed. It is, however, made clear that wherever there were any interim orders passed by this Court in favour of the petitioners, they would be entitled for the financial benefits, as per the terms of extension order, till today. Accordingly, all the interim orders passed, hereby, stand vacated.