

(2013) 12 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1599 of 2003

Harpal Singh Baidwan

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 21-12-2013

Acts Referred:

Citation : (2014) 2 SCT 799

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.—The claim in the present petition is for quashing the Annexure P-3 and clause (iii) in Annexure P/1 and a direction to the respondents to pay the amount of medical reimbursement incurred on the treatment of his son. The facts of the case are that the petitioner was appointed as Assistant Advocate General on regular basis on 4.6.1997 in the pay scale of "4125-5600 plus special pay of Rs. 500/- in lieu of fee from the date of assuming charge of the post. The appointment letter is Annexure P/1 and as per clause (ii) of the same the appointment of the petitioner was mentioned to be contractual, purely temporary but as a whole time Government employee and Punjab Civil Services Rules were applicable in matter of leave and travelling allowance. The appointment letter(Annexure P/1) is as follows:-

(i) The pay scale of the post will be Rs. 4125-125-5000-150-5600 plus Rs. 500.00 as special allowances in lieu of fee from the date they assume the charge of the post;

(ii) They will be whole time Government employees and all criminal, civil and misc. work entrusted to them by the Advocate General, Punjab.

(iii) Their appointments/services are contractual and purely temporary in nature which are terminable at any time without assigning any reasons/giving any notice.

(iv) In the matter of leave and travelling allowances, they will be governed by the Punjab Civil Services Rules. They will also be entitled to House Rent Allowance as per rate sanctioned by the Government from time to time.

2. It was also mentioned that his appointment was against a non pensionable post. He continued to hold the post of Assistant Advocate General till 17.04.2002. Vide memo dated 17.4.2002 His Excellency, the Governor of Punjab accepted the resignation of the petitioner amongst other law officers working in the office of Advocate General Punjab. The son of the petitioner by birth was diagnosed as suffering from ventricular septum defect (a cardiac emergency) and was advised immediate surgery. He was operated in Escorts Heart Institute, New Delhi on 27.4.1999 and the petitioner incurred an expenditure of Rs. 1,66,494/- on his treatment. His claim for medical reimbursement was rejected on the ground that the same was not admissible in view of Rule 1(2) of the Punjab Services (Medical Attendance) Rules, 1940. The same is reproduced here as under:-

Rule I(2):-They shall apply to the following government Servants under the Punjab Government when on DUTY or LEAVE in India or in FOREIGN SERVICE in India (or when under SUSPENSION in India).

(i) Members of provincial services

(ii) xx xx xxx xxx xxxx

(iii) xx xxx xxx xxx xxxx

(iv) Contract Officers whose agreements provide for free medical attendance.

3. It is further the case of the petitioner that his letter of appointment not only mentioned the appointment to be in a regular scale but also that the appointment was as a whole time Govt. Employee. He was also granted regular scale/increments as well as the revised pay scales on revision of the scales w.e.f. 01.01.1986, the date of his joining. Thus, it is clear that the appointment of the petitioner is in the realm of Master Servant relationship and not that of contract of personal service. The Government being a welfare State cannot deny the basic facility of medical reimbursement which constitutes an integral part of the right to life.

4. In reply the stand taken by the respondents is that the petitioner has challenged clause 3 of his appointment letter dated 04.06.1997 on the ground that clause 3 is arbitrary and against law. In reply to this averment of the petitioner the respondents submitted that as per the notification issued by the Government of Punjab dated 30.03.1980 on the basis of recommendations made by the Pay Commission, the Govt. of Punjab decided to determine the strength of its law officers. As per notification dated 30.03.1980 the posts of Assistant Advocate General was 7, meaning thereby there were 7 posts of Assistant Advocate General's Office. That is the reason the State Government appointed law officers i.e. Assistant Advocate Generals on contractual basis. The petitioner was also appointed on contractual basis vide appointment letter dated 4.7.1997.

As far as clause 3 of the appointment letter is concerned the respondents averred that the State has power to appoint officers/employees on contractual basis, therefore, Clause 3 of the appointment letter dated 4.6.1997 is legal, constitutional and valid and once the resignation submitted by the petitioner was duly accepted by the Government, the petitioner is now estopped from challenging clause 3 of the appointment letter by his act and conduct.

5. Learned counsel for the petitioner has relied upon Rule 1.3 of the Punjab Civil Services Rules, Volume-1, Part-1 which lays down that when any special provisions inconsistent with the Punjab Civil Services Rules are required with reference to any particular post or any conditions of service, the competent authority may notwithstanding anything otherwise contained in the Punjab Civil Services Rules and subject to the provisions of Clause (2) of Article 310 of the Constitution of India, have an agreement with the person appointed to such post for any matters in respect of which in the opinion of that authority, special provisions are required to be made. He has also relied upon Rule 1.4 which lays down that the rules are not applicable in the case of any Government employee between whom and the Govt. a specific contract or agreement subsists etc. Rule 1.4 is reproduced below:-

Rule 1.4 These rules shall not apply to-

(i) any Government employee between whom and the Government, a specific contract or agreement subsists in respect of any matter dealt with herein to the extent up to which specific provision is made in the contract or agreement

(ii) any person for whose appointment and conditions of service special provision is made by or under any law for the time being in force; and

(iii) any Government employee or class of Government employees to whom the competent authority may, by general or special order, direct that they shall not apply in whole or in part. One of such classes of Government employees is that employed only occasionally or which is subject to discharge at one month's notice or class. A list of such Government employees is given in Appendix 2.

6. Learned counsel for the petitioner has relied upon State of Punjab and Another Vs. Suresh Kumar Sharma, to contend that The Assistant Advocate General and Deputy Advocate General are in the capacity of Govt. servants and therefore they are entitled to pension. They are in regular Govt., service. If they are allowed to continuous and qualifying service of pension, they cannot be denied pension on the basis of an arbitrary condition as to contract or service included in their appointments letters. Once this question is decided in another case up to the Supreme Court and the judgment is implemented, the same objection cannot be raised subsequently in other cases. Reliance has also been placed on Dr. Mrs. S.K. Bhatia v. State of Punjab, reported as 1998(1) SCT 514 where a single bench of this Court, dealing with Rules 1.3 and 1.4 of the Punjab Civil Services Rules, Vol. 1 Part 1 held that appointment as Deputy Advocate General and Assistant Advocate General under the Rules are made on regular basis in regular

pay scale and the incumbents are treated as Govt. servants and merely adding an arbitrary clause showing the appointment as contractual cannot empower the Government to terminate the services of the incumbent at any time without complying with the procedure and principles of natural justice. The unilateral and arbitrary clause in the appointment letter contrary to rules has to be struck down. Reference has also been made to CWP No. 7078 of 2002, decided on 21.5.2012, Kanwaljit Singh Bakshi v. State of Punjab and another wherein also there was an issue with regard to appointment of the petitioner as Assistant Advocate General on contractual basis. In that case also the judgment in the case of Dr. Mrs. S.K. Bhatia was followed.

7. Learned DAG is not in a position to cite any law contrary to that cited by learned counsel for the petitioner. In the circumstances I am of the considered opinion that the facts of the present case are fully covered by the above said judicial pronouncements. Therefore, this petition is allowed. It is held that petitioner's appointment cannot be termed as on contractual basis. His appointment as Assistant Advocate General would be treated against a regular post on whole time basis. The order Annexure P-3 is set aside. His case for medical reimbursement for the expenses incurred on the treatment of his son would be considered expeditiously and necessary reimbursement of medical expenses along with interest at the rate of 8% p.a. From the date of submission of medial bills till the date of payment would be made to him within a period of three months from the date of receipt of a certified copy of this order.