

(2013) 08 P&H CK 0271

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2911 of 2011 (O and M)

Haryana State and Others

APPELLANT

Vs

Rajinder Kumar

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2014) 173 PLR 566

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Advocate : Aakanksha Sawhney, DAG, Haryana, for the Appellant; Amit Jain, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is defendants' second appeal challenging the judgment and decree of the lower Appellate Court dated 17.3.2011, whereby suit of the plaintiff-respondent for declaration to the effect that he is entitled to addition of five years period of his qualifying service for pensionary benefits and for re-fixation of service, with a further direction to release the arrears of his pension alongwith interest, has been decreed. Briefly stated, the date of birth of the plaintiff-respondent is 4.6.1944. He passed L.L.B. from Punjab University on 2nd July, 1968 and started practicing as an Advocate at Sirsa from 1968 after obtaining the licence from the Bar Council of Punjab & Haryana, Chandigarh. He continued practicing as an Advocate till March, 1978 when he was selected for the post of Assistant District Attorney. He joined the post of Assistant District Attorney on 8.3.1978 and thus, at the time of joining of his service, he was having an experience of more than 09 years as an Advocate. He retired from the service of District Attorney, Faridabad on 30.6.2002. Pension payment order was issued in his favour and he was receiving regular pension.

2. According to him, as per Rule 4(2) of Civil Services Rules Volume-II, (herein referred to as CSR), he was entitled to Addition of Special period to his qualifying service for the purpose of pensionary benefits for 05 years in the following

manner:-

(a) 1/4th of actual service rendered=6 years, 28 days (24 years, 3 months, 23 days)

(b) The period by which the date recruitment is beyond the age=8 years, 9 months of 25 years.

3. However, the aforesaid benefit was not granted to him and thus, he filed the instant suit. He further alleged discrimination as according to him, one Baldev Singh, District Attorney, Hisar, who was similarly situated has been granted the benefit by the appellant-State itself.

4. The respondent-State denied that the plaintiff-respondent was entitled to the benefit of addition of 5 years to his service as qualifying service towards his pension. It was stated that the plaintiff was entitled to benefit of 02 years 01 month and 03 days only, which has already been granted by the State vide order dated 30.11.2005.

5. On the basis of the evidence adduced and considering the arguments raised, the suit was dismissed by the trial Court.

6. Aggrieved from the judgment and decree of the trial Court, plaintiff-respondent filed an appeal before the Appellate Court which was accepted in the following terms:-

The Division Bench of our Hon"ble High Court in case State of Haryana and others vs. Mulkhraj Mehta (supra) has interpreted the provisions of Rule 4.2. CSR Volume-II. In that case plaintiff Mulkhraj Mehta had also retired as a District Attorney. He had acquired the degree of LLB in the year 1968 from Punjab University, Chandigarh and was enrolled as an Advocate in August, 1968. He practiced for over six years as an Advocate and joined the service as an Assistant District Attorney at Rohtak on 18.12.1974 and retired from service on 30.06.2003. He had claimed the addition of the period of 4 years and 33 days in terms of Rule 4.2A of CSR Volume-II. In that background, Division Bench of our Hon"ble High Court had categorically held that Rule 4.2A of CSR is applicable to such services. Moreover, in the written statement respondents have clearly admitted that Rule 4.2A is applicable to the plaintiff. So, there is no dispute between the parties regarding applicability of this Rule. Hon"ble High Court has further laid down in Mulkhraj's case (supra) that the intention underlying Rule 4.2A is to compensate the Govt. Servant of the time taken by him in securing the Special Qualification or experience which is essential for appointment for the post to which he is appointed. Intention of the Rule is to provide extra weightage for calculating the pension for the special qualifications or the experience. Thus, as per the ratio of law laid down by the Division Bench of our Hon"ble High Court, the plaintiff in this case is entitled to extra weightage for calculation of pension on account of special qualification of L.L.B. acquired by him and the experience as an practicing Advocate which was essential for appointment as Assistant

District Attorney.

In the letter dated 5.3.2001 (copy Ex. D2) issued by the Government of Haryana Finance Department, the interpretation of Rule 4.2A has been made in a very different manner which is not borne out at all from the plain wording of this statutory Rule. It is settled principal of law that State has no authority to issue instructions contrary to Rule or instructions which would frustrate, undermine or negate the spirit of statutory Rule. Such departmental letters of executive instructions cannot prevail over statutory Rules. The executive instructions can only be issued with regard to the matter not covered by statutory Rules. The statutory rules cannot be modified or amended by the executive instructions. Such instructions can only supplement and not supplant the statutory rules. To support this view, reference can be made to cases. The State of Punjab vs. Darshan Singh Sandhu and others (supra), Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another, and case Senior Supdt of Post office and others vs. Izhar Hussain (supra). In view of consistent Rule of law laid down in the cases referred above, the instructions Ex. D2 dated 5.3.2001 issued by the Government of Haryana, Finance Department cannot override statutory Rule 4.2A CSR Volume-II and we have to decide the right of the appellant in accordance of the plain wording of this Rule.

It is settled principle of law that for the interpretation of statutory Rule or provisions the Court has to consider the language of provisions itself. As per the aforesaid Rule the benefit to an official under Rule 4.2A is admissible in the following manner:-

- i) Firstly, he can add to his service qualifying for superannuation pension, the actual period not exceeding 1/4th of the length of his service; or
- ii) Secondly, in the alternative he may add the actual period by which his age at the time of recruitment exceeds 25 years; or
- iii) Thirdly, for a period of five years whichever is least.

As already mentioned, the plaintiff has acquired the degree of LLB on 2nd July, 1968. He was enrolled as an Advocate on 17.07.1968 and was appointed as Assistant District Attorney on 8.3.1978. At that time three years experience as a practicing Advocate was required for the post of Assistant District Attorney. At the time of his appointment, the age of the appellant was 33 years 9 months and 4 days. The total length of the service of the appellant was 33 years 9 months and 4 days. The total length of the service of the appellant (from 8.3.1978 to 30.06.2002 comes to 24 years 3 months 22 days. 1/4th of the total service rendered comes to 6 years 0 months 29 days. The actual period by which the age of the appellant exceeded 25 years on the date of his appointment comes to 8 years 9 months and 4 days. Both these periods are more than five years. The maximum benefit which could be given under this rule is 5 years. So the appellant will be entitled for addition of 5 years service to his qualifying service for superannuation pension (but not for any other class of pension).

Mere this fact that Shri Raj Kumar Gupta, Shri Jai Dev Chandna and Shri Krishan Kumar Doda were the members of Haryana Superior Judicial Service is no ground to ignore their precedents because they were also governed by same Service Rules. This fact is also not disputed that the benefit of this Rule has already been granted by the Haryana Government to Baldev Singh, District Attorney vide order dated 30.5.2005 copy Ex. P7. The claim of Surender Kumar Mittal, the retired District Attorney was also decreed by learned Additional Civil Judge (Senior Division), Rewari which were also on the same footing.

The respondents have granted the benefit of service of 2 years 1 month and 3 days to the appellant on the basis of the incorrect interpretation of Rule 4.2A on the basis of executive instructions Ex. D2 issued by the Finance Department whereas legally the appellant is entitled for addition of 5 years service to his qualifying service for superannuation pension (but not for any other class of pension). Thus, the findings of learned trial Court on issue No. 1 are hereby reversed.

7. Still not satisfied from the judgment and decree of the First Appellate Court, the State of Haryana has filed the instant appeal submitting that the following substantial questions of law arises in this appeal:-

i) Whether the District Judge, Faridabad has erred in placing reliance upon the judgment wherein the matter has been remanded back and the same is pending adjudication before this Hon''ble court on 12.09.2011?

ii) Whether the findings of the Id. Distt. Judge, Faridabad that the Govt. letter dated 5.3.2001 Ex. D2 are not in consonance with the Rule 4.2-A of the Punjab Civil Services Vol. II without assigning any reason as to how at all was the same in contravention thereto, is unsustainable in the eyes of law?

iii) Whether the Id. District Judge, Faridabad erred in drawing parity of the case of the matter pertaining to other persons and equity in the same with the case of the respondent without giving any reason viz. their similarity given especially when the Id. Civil Judge had found the cases of these persons to be different than that of the respondent are not sustainable in the eyes of law?

iv) Whether the judgment of reversal passed by the Id. District Judge, Faridabad suffers from grave infirmity both in law and on facts?

8. At the outset, it may be noticed that the respondent-State has informed this Court that vide order dated 30.06.2002, plaintiff-respondent has been granted benefit of addition of 03 years to his service under Rule 4.2 of CSR. In view of the instructions dated 5.3.2011 of Finance Department of Haryana.

9. In support of his case, learned State counsel has vehemently argued that in the case in hand, period of 03 years experience as an Advocate which was essentially required for the post of Assistant District Attorney cannot be taken into consideration for the assessment of qualifying service, therefore, the total period of 09 years of experience could not have been counted in the case of the

appellant for determination of special period for addition into qualifying service for the purpose of pensionary benefits.

10. However, counsel for the respondent has brought to the notice of this Court that case of respondent is fully covered by a judgment of this Court in the case of State of Haryana & others versus Sh. Mulkh Raj Mehta (supra) wherein it has been observed as under:-

A bare reading of the Rule makes it clear that the employee is entitled to add the actual period not exceeding 1/4th of the length of service or the actual period by which his age at the time of recruitment exceeds 25 years or a period of 5 years which ever is less. It is undisputed that the post of ADA to which the plaintiff was recruited is covered by the aforesaid Rule because the defendants themselves granted benefit of the said Rule, although to the extent of 8 months 4 days qualifying service only. The Rule categorically states that the actual period by which age of the employee exceeds 25 years at the time of recruitment shall be added as qualifying service. Thus age of the employee has to be seen at the time of recruitment or appointment and not when he becomes eligible for the post by acquiring necessary qualification and experience. Defendants have granted the benefit of 8 months 4 days only by taking the age of the plaintiff on the day he became eligible to apply for the post by acquiring qualification and experience. However, immediately thereupon, the plaintiff could not have join the post. On the other hand, on becoming so eligible for the post, he had to go through the process of selection for the post and that too, after the posts were advertised. Consequently the question of counting the period on the day the plaintiff became eligible to apply for the post does not arise. The period has to be counted keeping in view the age of the plaintiff at the time of recruitment i.e. appointment as per plain language of the Rule. Instructions dated 05.03.2001 relied on by the defendants cannot override the statutory Service Rules i.e. Rule 4.2A of CSR.

11. Counsel appearing on behalf of the appellant could not dispute that the instant case is covered by the aforesaid observations of this Court in Mulkh Raj Mehta's case (supra).

12. In view thereof, no substantial question of law, as raised, arises in this appeal.

13. No other argument raised. This appeal having no merit is dismissed.