

(2018) 07 P&H CK 0209

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 371 Of 2010 (O&M)

Ishwar Chand Jain

APPELLANT

Vs

Punjab & Haryana High Court And Another

RESPONDENT

Date of Decision : 30-07-2018

Acts Referred:

India Services (Death-cum-Retirement) Rules, 1958 — Rule 18(1)(b)(i)
Civil Services Rules, 1972 — Rule 4(2A)
Punjab Superior Judicial Service Rules, 1963 — Rule 16

Citation : (2018) 07 P&H CK 0209

Hon'ble Judges : A.B. Chaudhari, J;Kuldip Singh, J

Bench : Division Bench

Advocate : Swarn Sandhir, Ravi Dutt Sharma

Final Decision : Allowed

Judgement

The present Letters Patent Appeal has been filed by the appellant against the judgment dated 01.07.2009 passed by the Single Bench of this Court in CWP No.12391 of 2003, vide which only partial relief was granted to him to the effect that his pension was ordered to be computed in terms of the proviso to rule 18(1)(b)(i) of the All India Services (Death-cum-Retirement) Rules, 1958 as interpreted above within three months from the receipt of copy of that order. The interest @ 8% per annum on the arrears was also allowed.

The brief facts of the case are that the appellant, who had obtained Advocates' licence on 06.11.1968, on his selection, joined as Addl. District and Sessions Judge at Hisar in Haryana on 02.05.1983 from the quota of the Bar. In the year 1984-85 when he was posted at Narnaul, on account of certain complaints made against him, the Full Court vide Resolution dated 21.02.1985 terminated his services. A writ petition filed by him challenging his termination was dismissed by this Court vide order dated 09.12.1986. However, Hon'ble the Supreme Court of India in the appeal reinstated him in service. Thereafter, he was posted as Addl. District and Sessions Judge, Narnaul on 09.06.1988. On 06.01.1992, a

complaint dated 26.12.1991 was received against the appellant. On which, a preliminary inquiry was conducted and report was submitted on 20.02.1992. Thereafter, another set of complaints was submitted by Shri K.C. Sharma, Advocate, Jind, regarding which preliminary inquiry was ordered to be conducted. In this regard, report was submitted on 10.04.1992. The Full Court on 24.04.1992 decided to charge-sheet the appellant and withdraw the judicial work from him. Since, the appellant had come in the zone of consideration for designation as District and Sessions Judge on 27.07.1992 but the same was not approved as his judicial work had already been withdrawn from him. On account of the Resolution passed by the Full Court, a charge sheet was issued to him on 29.07.1992. On 28.09.1992, he was considered for selection grade but was not granted on account of pendency of the aforesaid charge-sheet. After considering the reply filed by the appellant, the Full Court decided to hold regular departmental inquiry and placed him under suspension in the meeting held on 29.09.1992. Consequently, vide order dated 03.10.1992 the appellant was placed under suspension. In the meanwhile, the appellant attained the age of 55 years. Therefore, the Full Court vide Resolution dated 12.12.1995 recommended to the Government of Haryana to retire the appellant forthwith in public interest by giving three months pay and allowances in lieu of notices. It was ordered that the inquiry will continue for the limited purpose of imposing cut in his retiral benefits. However, vide another Resolution dated 17.01.1996, the Full Court decided that departmental proceedings be not proceeded for the present and departmental inquiries against him are deemed to have been dropped. Consequently, vide order dated 10.05.1996, the appellant was compulsory retired w.e.f. 17.05.1996. The appellant challenged his premature retirement by way of filing CWP No.2091 of 1996. The said petition was allowed by this Court vide judgment dated 22.05.1998 and the order of his compulsory retirement was set aside. The said order was affirmed by Hon'ble the Supreme Court vide order dated 26.04.1999. The appellant was not immediately reinstated and rather the Full Court in the meeting held on 28.05.1999 decided to constitute a committee of three Judges to look into the matter regarding implementation of the judgment of Hon'ble the Supreme Court. The committee submitted its report on 01.06.1999, which was considered by the Full Court on 02.06.1999 and it was decided that the appellant be allowed to join duty. It was also decided that the inquiry which was dropped by Resolution dated 11.01.1996 be revived and the appellant be placed under suspension. Consequently, the appellant was allowed to join duties and thereafter, placed under suspension and the inquiry was revived. The appellant again challenged the said action of this Court by way of filing CWP No.15669 of 1999, which was decided by the Division Bench of this Court, vide order dated 02.06.2000. The said petition was partly allowed and the suspension order (Annexure P-1) was quashed. However, his prayer for quashing the charge-sheet and the decision taken by this Court to revive the inquiry was rejected with liberty to him to raise his objections to the charge-sheet before the inquiry officer. The issue regarding re-designation of the appellant as

District and Sessions Judge, release of selection grade and payment of other dues was ordered to be decided after the conclusion of the departmental inquiry. The appellant again approached Hon'ble the Supreme Court of India by way of filing SLP. Hon'ble the Supreme Court of India ordered that inquiry was to continue but its finalization was stayed. Since, the order of quashing of suspension was not implemented, therefore, the appellant filed COCP before this Court. While all these proceedings were continued, the appellant filed representation dated 05.01.2002, which is reproduced as under:

"..... I have retired and have recently under-gone open heart bye-pass surgery and do not want to involve myself in unnecessary personal litigation. As per the rules (as I understand) maximum punishment which can be imposed on a retired employee is the cut in the pension to the extent of 33% and that to depending upon the fact whether the pension is sufficient for the maintenance of the retired employee and his family. I have been sanctioned a provisional pension of Rs.4993/- p.m and one third of it comes to Rs.1331/-. In order to avoid further litigation/hardship and embarrassment and without going into the merits of the case I voluntarily offer a cut of Rs.1331/- p.m in my pension provided the enquiry is dropped/not proceeded further and all my due/dues becoming due is released/paid to me."

The appellant also withdrew his COCP. The Full Court vide its Resolution dated 26.07.2002 passed the following order:

"Representations dated 5.1.2002 and 17.1.2002 of Sh. I.C.Jain Member Superior Judicial Service Haryana who retired from service on 31.10.2000 considered along with the report of Registrar and the request of Sh. I.C. Jain is accepted."

In view of the matter, the SLP filed by the appellant was dismissed as infructuous. The pension after imposing 1/3rd cut and other retiral benefits were released to the appellant.

Before the Single Bench, the appellant claimed the following reliefs:

1. Release of selection grade/ super time scale from the date his juniors were designated.
2. Benefits of Rule 4.2-A of Civil Services Rules, 1972.
3. Benefits of addition of 10 years practice at Bar under Rule 16 of the Superior Judicial Service Rules, 1963 for the purpose of retiral benefits.
4. To calculate his pension after allowing abovenoted reliefs, his pension should be fixed on the basis of last pay/emoluments drawn by him on the date of retirement on 32 years of qualifying service or 50% of the minimum of pay of the post held by the appellant at the time of retirement, whichever is higher.
5. Interest on the amount of arrears of pension for the delayed period i.e. from 01.02.2001.

6. To grant the pension without imposing cut of 1/3rd.

We have heard the appellant in person, the Presenting Officer and learned State counsel as well and have also carefully gone through the case file.

We will take up the issue of grant of selection grade first. Admittedly, the litigation between the appellant and the High Court reproduced above shows that for one or the other reason as discussed above, the appellant was involved in long litigation with his employer. He had to approach this Court as well as Hon'ble the Supreme Court repeatedly.

On behalf of the High Court, it is stated that the selection grade was not allowed to the appellant on account of ACR recorded as grade 'B-Satisfactory' for the year 1988-89 and grade 'C-Integrity doubtful' for the year 1991-92. The information obtained by the appellant under RTI shows that in CWP No.4991 of 1993, a Single Bench of this Court ordered that ACR for the year 1988-89 is to be recorded as 'Good'. It appears that the office did not implement the said order and did not correct its record. Therefore, the ACR for the year 1988-89 was continued recorded as 'B-Satisfactory'.

However, in view of the judgment of this Court, it should be recorded 'B-Satisfactory'. Second is for the report for the year 1991-92, which is recorded as 'integrity doubtful'. When the appellant was prematurely retired on the basis of said report. He approached the Apex Court. The Apex Court in Civil Appeal No.2465 of 1999, titled as "High

Court of Punjab and Haryana through R.G. vs Ishwar Chand Jain and another, AIR 1999 Supreme Court 1677, while setting aside of his order of pre-mature retirement of the appellant, ordered that the ACR for the year 1991-92 is to be kept aside. The order was passed after considering in detailed circumstances, under which the appellant was compulsory retired.

The relevant extract from the said judgment is reproduced as under:

"Keeping in view the aforesaid principles we may examine the background under which the order compulsorily retiring Jain came to be passed. In December, 1995 judges comprising the Full Court were not the same as that in the year 1985 when probation of Jain was terminated. There were new appointments of Judges and there were judges, who had come on transfer from other High Courts. They could not be aware of the circumstances leading to termination of the probation of Jain and ACR given to him for the year 1984-85. In the precis of the ACRs for the Full Court ACR given to Jain For the year 1984-85 was Shown as "C-Below Average." The inspecting judge for the year 1984-85 had graded the officer as "B+Good" but the Full Court modified the same to "C-Below Average." This Court in earlier appeal filed by Jain against termination of his probation held that the modification of the entry by the High Court was without any material and was not sustainable in law. It meant that the Supreme Court restored the grading of Jain in his ACR for the year 1984-85 as "B+Good." There is no indication of this in the

precis prepared by the Registry which certainly would have misled many of the judges of the Full Court. There is no ACR recorded for the years 1992-93, 1993-94, 1994-95 and for nine months of 1995-96 when the Full Court met on December 12, 1995. In its earlier meeting on September 22, 1995 it recorded ACR for the year 1991- 92 grading Jain as "C-integrity doubtful." In coming to this conclusion Full Court relied on the inspection report prepared by the inspecting Judge on February 22, 1992 where he graded Jain as "integrity doubtful" and gave his note which we have quoted above. There is no material forthcoming as to why the inspection report of February 1992 came to be considered by the Full Court in September, 1995 and why there could be no inspection from that year till holding of the Full Court meeting. Inspection note by the inspecting Judge gives an impression that he inspected the Court of Jain and visited the bar room before he gave his report. Fact, however, remains that the inspecting Judge inspected the Court of Jain only in March, 1992. Inspecting Judge also noted that there were some complaints which formed the subject-matter of the disciplinary proceedings against him. This also does not appear to be correct inasmuch as on the date of the inspection report no disciplinary proceedings were pending against Jain. There were also no particulars of the complaints whether these were in writing or oral and if these related to the judicial work performed by the officer. At least some of the cases in which Jain was found to have acted improperly could have been mentioned when there were many complaints from the members of the Bar, The inspection note is certainly flawed and could not have formed the basis by the Full Court to record that integrity of the officer was doubtful and to grade him "C". Moreover we were told at the bar and it was not contradicted that the Inspecting Judge took charge of Jind district only on November 21, 1991 and within three months, i.e., on February 25, 1992 gave his inspection report. This is certainly not satisfactory. The ACR for the year 1991-92 is, therefore to be kept aside. That being the position if we now refer to the precis of the ACRs of Jain there were only four ACRs and these are for the years 1983-84 (B-Average/satisfactory), 1984-85 (B+Good), 1988-89 (B- Satisfactory) and 1989-90 (B+good)). On the basis of these ACRs it is difficult to hold that the recommendation of the High Court could be justified under clause (c) of third principle laid in Baikunth Nath Das case. (1992 AIR SCW 793)"

It goes to show that the said adverse ACR for the year 1991-92 was ordered to be kept aside and not to be considered. The information obtained by the appellant through RTI on 22.02.2014, shows that he was not granted selection grade as he was placed under suspension. On 12.10.1995 and on 07.04.1997, he was passed order for selection grade on the basis of his service record. On 19.11.1999, the matter of the selection grade was deferred. On 14.07.2000, the matter regarding selection grade was deferred as he was under suspension and departmental inquiry was pending.

It is to be noted that since the adverse ACR for the year 1991- 92 was to be kept aside and the suspension of the appellant was later on quashed by this Court,

therefore, in our considered opinion, the appellant is entitled to the selection grade and supertime scale from the date it was granted to his juniors. Since, his juniors might have retired, therefore, if necessary one supernumerary post shall be created in the selection grade/supertime grade to grant the said benefits to the appellant without disturbing his juniors.

Now, we come to the claim of the appellant regarding extending him the benefits of Rule 4.2-A of the Punjab Civil Services Rules, Volume II by adding certain period in his service at the time of retirement. The relevant Rule 4.2-A of the Punjab Civil Services Rules, Volume II is reproduced as under:

4.2-A. An officer appointed to a service or post may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty-five years or a period of five years whichever is least, if the service or post is one:-

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

(b) to which candidate or more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to any such officer unless his actual qualifying service at the time he quits Government service is not less than ten years.

Provided further that any such officer whose recruited at the age of thirty-five years or more may, within a period of three months, from the date of his appointment, elect to forego his rights to pensions whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

Note-1: The option once exercised shall be final.

Note-2: The decision to grant the concession under this rule shall be taken by the Administrative department of the time of recruitment in consultation with the Finance

Department and the Public Service Commission.

The consultation with the Public Service Commission will be restricted to those posts only which fall within their preview.

2. This rule shall apply in respect of persons who are recruited after the 26th October, 1960."

It appears that the High Court was of the view that a period of 4 years, 4 months and 15 days is to be added in qualifying service. Therefore, the High Court addressed a communication dated 12.01.2001 (Annexure P-

9) to the Chief Secretary to Government of Haryana, Chandigarh, for addition of

4 years, 4 months and 15 days in his qualifying service for pension.

However, strangely enough, vide another letter dated 20.08.2001 (Annexure P-10) the said letter was withdrawn on the ground that the pension case of the appellant is to be governed by the All India Services (DCRB) Rule, 1958.

We are of the view that the case of the appellant is governed by the Punjab Civil Services Rules as applicable to the State of Haryana and not by the All India Services (DCRB) Rules, 1958. Therefore, the High Court had correctly requested the Government of Haryana to add the period of 4 years, 4 months and 15 days in the qualifying service of the appellant for the purpose of pension.

Consequently, we are of the considered view that a period of 4 years, 4 months and 15 days is to be added in the qualifying service of the appellant for the purpose of pension.

Now, we come to the claim of the appellant for the benefits of Rule 16 of the Punjab Superior Judicial Services Rules, 1963 for adding 10 years practice at Bar in his service for the purpose of retiral benefits.

We are of the view that the appellant is not entitled to the said benefits. At the initial stage when a direct recruit from the Bar joins as Addl. District and Sessions Judge, he is granted the benefits of the certain period of his practice and his pay is, accordingly, enhanced.

The appellant cannot claim the benefits of said practice at Bar twice, firstly at the initial stage and second time at the time of retirement. Further, the said Rule was introduced much later by way of making amendment in the Rules on 20.02.1990. Therefore, the appellant is not entitled to the addition of said 10 years of practice at Bar towards the qualifying service for the purpose of retiral benefits. Therefore, the said relief of the appellant is declined.

The appellant, who is present in person has argued that 1/3rd cut in his pension was imposed after dropping the inquiry. He has stated that the said cut could not be imposed unless he is held guilty. He has further argued that the charge-sheet was not approved by the Full Court. Therefore, no inquiry could be held against him.

On behalf of the High Court, it has not been disputed that the charge sheet was dropped and 1/3rd cut in the pension of the appellant was imposed on the basis of his own request.

We are of the view that imposing 1/3rd cut in the pension is a punishment. The said punishment could not be awarded until the appellant is held guilty in the departmental inquiry either on merits or on the basis of his own admission. The history of the appellant shows that he had to approach the High Court and Hon'ble the Supreme Court several times.

Ultimately when even after his retirement, inquiry continued, he made a request that he is ready to accept 1/3rd cut in the pension. The Resolution dated

26.07.2002 passed by the Full Court, shows that it was taken as a representation, which was considered with the report of the Registrar and the request of the appellant was accepted.

We are of the view that this was not the representation. The appellant having been forced in constant litigation with the High Court as discussed above soon after his joining service, was pushed to wall and he wanted to rest in peace. That is why, he had made the representation, the extract of which are reproduced above. It goes to show that the appellant had undergone heart by-pass surgery. He did not want to involve in unnecessary litigation. Therefore, he voluntarily offered a cut of 1/3rd in the pension amounting to Rs.1331/-, provided inquiry is dropped and not proceeded further and all his dues are released.

It is not disputed by the learned counsel for the High Court that inquiry was dropped.

We are of the view that once the inquiry is dropped and the appellant is not held guilty and the request having been made under distress to avoid litigation, the High Court was not justified in imposing the punishment of cut of 1/3rd in the pension of the appellant, treating the request of the appellant as representation to accept the punishment.

We are of the view that until or unless the appellant is held guilty either on the basis of proved charge sheet or on the basis of admission, no punishment could be awarded. The request made by the appellant is deemed to have been made under coercion and distress. Hence, the order imposing 1/3rd cut in the pension of the appellant is also set aside and it is held that the appellant is entitled to full pension.

As a result of the foregoing discussions, we pass the following order:

ORDER

1. The Full Court Resolution dated 26.07.2002 followed by the consequent orders imposing 1/3rd cut in the pension is set aside. The appellant is held entitled to full pension.
2. The appellant is held entitled to the selection grade/supertime scale from the date the same was granted to his juniors, if necessary by creating supernumerary post on account of his juniors having already retired.
3. The appellant is also entitled to addition of the period of 4 years 4 months and 15 days of qualifying service under Rule 4.2-A of the Civil Services Rules, Volume II. Since the appellant had to run from pillar to the post, we are of the view that though the appellant is entitled to compensatory costs, however, in place of compensatory costs, we enhance the interest on the arrears from 8% to 12 % per annum.
4. The High Court is directed to consider the case of the appellant regarding granting him proforma re-designation as District and Sessions Judge from the

date it became due under the Rules and take a decision in this regard within three months from the date of receipt of certified copy of this judgment.

In view of the above, the pension of the appellant shall be re-calculated and refixed, which shall not be less than 50% of his last drawn pay along with emoluments and arrears shall be released to him within three months from the date of receipt of certified copy of this judgment along with simple interest @ 12% per annum. However, the remaining part of the relief is declined.

As such, the present appeal is allowed, accordingly, in the abovenoted terms.