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**(2013) 07 P&H CK 0110**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 23751 of 2011**

Jai Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

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**Date of Decision :** 05-07-2013

**Acts Referred:**

**Citation :** (2013) 172 PLR 34 : (2013) 4 SCT 244

**Hon'ble Judges :** Tejinder Singh Dhindsa, J

**Bench :** Single Bench

**Advocate :** J.S. Maanipur, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

**Final Decision :** Allowed

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## Judgement

Tejinder Singh Dhindsa, J.—Learned counsel for the parties have been heard at length and the pleadings on record have been perused. Brief facts of the case are that the petitioner had joined the Haryana State Transport Department on the post of Driver on a regular basis w.e.f. 21.12.1990. The date of birth of the petitioner is 1.1.1947 and in the normal course, the petitioner was to retire on 31.12.2004 upon attaining the age of superannuation. However, vide order dated 6.5.2003 passed by the General Manager, Haryana Roadways, Rohtak, the petitioner was compulsorily retired with immediate effect. The basis for passing such an order was that the bus driven by the petitioner was involved in an accident in which a boy died even though in the departmental enquiry, the petitioner had been exonerated. Even though the date of joining of service of the petitioner was 21.12.1990 and the date of compulsory retirement was 6.5.2003, but some period had been treated without duty and, accordingly, the petitioner did not fulfil the requirement of possessing 10 years qualifying service for the grant of pensionary benefits.

2. The petitioner availed of his remedy in terms of filing a statutory appeal and the same was decided vide order dated 7.8.2006 passed by the Additional Transport Commissioner, Haryana, Annexure P1, whereby the order of

compulsory retirement dated 6.5.2003 passed by the General Manager was modified and the petitioner was ordered to be retired from service with effect from the due date i.e. 31.12.2004.

3. The instant writ petition has been filed impugning memo dated 16.9.2009 issued by respondent No. 1 whereby the proposal submitted by the petitioner for taking into consideration the period i.e. from 6.5.2003 to 31.12.2004 towards qualifying service for the grant of pensionary benefits in pursuance to the order dated 7.8.2006 passed by the Appellate Authority has not been accepted. Further prayer for the issuance of mandamus has been raised seeking directions to the respondents to treat the period in question i.e. from 6.5.2003 to 31.12.2004 towards qualifying service for the grant of pensionary benefits as also for all other admissible consequential benefits along with interest @ 12% per annum.

4. Upon notice having been issued, the broad facts pleaded on behalf of the petitioner had not been disputed in the written statement filed by General Manager, Haryana Roadways, Rohtak on behalf of respondents No. 1 to 3. The stand taken on behalf of the State is that in terms of the order dated 7.8.2006 passed by the Appellate Authority i.e. the Additional Transport Commissioner, Haryana, respondent No. 3 had prepared the pension case of the petitioner and the same was sent to the Accountant General, Haryana vide letter dated 15.11.2006, but the same was returned with an objection that prior sanction of the State Government be sought for treating the period from 6.5.2003 to 31.12.2004 towards the qualifying service. It has further been stated that in the light of memo dated 16.9.2009 issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Transport Department, since the proposal of the Department has not been accepted, accordingly, the period of service from 6.5.2003 to 31.12.2004 of the petitioner cannot be counted towards qualifying service. It has been further argued on behalf of the State that in terms of Rule 6.16(1) of the Civil Services Rules, Vol. II, the minimum period of qualifying service of 10 years is required for grant of pensionary benefits and since the petitioner does not complete such minimum period stipulated, accordingly, he is not entitled to service pension and, accordingly, was held entitled for benefits towards gratuity.

5. Having heard learned counsel for the parties, this Court is of the considered view that the claim raised by the petitioner deserves acceptance. The petitioner had been ordered to be compulsorily retired w.e.f. 6.5.2003. A statutory appeal came to be accepted by the Competent Authority and the order of compulsorily retirement was modified and he was held to be retired w.e.f. 31.12.2004 i.e. the date on which he would have attained the age of superannuation in normal course. A perusal of the order dated 7.8.2006 passed by the Appellate Authority would reveal that such view was taken by taking cognizance of the fact that in the accident that had occurred in which the bus was being driven by the petitioner, he had been exonerated by the Enquiry Officer. Still further, the Appellate Authority had clearly noticed that the petitioner had been working in

the Department since the year 1990 and if the order of compulsory retirement dated 6.5.2003 was to prevail, then the petitioner did not possess minimum qualifying service and, accordingly, looking towards the family circumstances of the petitioner and to ensure that the petitioner overcomes the impediment of minimum 10 years qualifying service, a view was taken towards modification of the order of compulsory retirement by treating the petitioner to be retired w.e.f. 31.12.2004. Such order has since attained finality. The petitioner is vested with the right to claim the consequential benefits that would flow from the passing of such order dated 7.8.2006. In the light of such order, the period in question i.e. from 6.5.2003 to 31.12.2004 has to be treated towards qualifying service for the grant of pensionary benefits.

6. The impugned memo dated 16.9.2005, Annexure P5, merely recites that the Government does not accept the proposal of the Department. Undisputedly, the proposal sent by the Department was towards counting the service of the petitioner from 6.5.2003 to 31.12.2004 for the grant of pension to the petitioner in view of the order dated 7.8.2006 passed by the Appellate Authority. The impugned memo dated 16.9.2009 is totally non-speaking and cryptic. It is also not in dispute that prior to taking such a view, the petitioner was not even granted any opportunity of hearing. The impugned memo dated 16.9.2009 virtually proceeds to set aside the order dated 7.8.2006 passed by the Appellate Authority. The same was not permissible without even following the principles of natural justice. Even under Rule 14 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, an order passed by the Appellate Authority is not open to revision at the hands of superior authorities and to the detriment of an employee unless an opportunity has been given to such employee. The action of the State Government in terms of issuing impugned memo dated 16.9.2009, Annexure P5, has no sanctity in law.

7. Accordingly, the writ petition is allowed. The memo dated 16.9.2009, Annexure P5, issued by respondent No. 1 stands quashed. The respondent-authorities are directed to treat the period i.e. from 6.5.2003 to 31.12.2004 towards qualifying service for grant of admissible pensionary benefits to the petitioner. It is, however, clarified that the petitioner shall not be paid any salary for such period. The necessary exercise of computation of the admissible pensionary benefits be completed within a period of two months from the date of receipt of a certified copy of this order and the requisite benefits be released to the petitioner immediately thereafter.

8. As the petitioner was denied the pensionary benefits without any justifiable reasons, he is also held entitled to interest @ 6% per annum w.e.f. 15.12.2006 i.e. the date respondent No. 3 had forwarded the proposal for release of pensionary benefits to the Accountant General, Haryana till the date of actual disbursement of the admissible pensionary benefits. Petition allowed in the aforesaid terms.