
(2014) 07 P&H CK 0777
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2957 of 1993 (O&M)

Khushi Ram

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 07 P&H CK 0777

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Monica Chhibber Sharma, DAG, Advocate for the Appellant; Vikas Suri, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—Petitioner impugns the order dated 4.3.1993 (Annexure P-6), whereby he was denied the amount of gratuity w.e.f. 8.4.1990 till 4.3.1993.

2. Notice of motion was issued and pursuant thereto, written statement was filed on behalf of the respondents.

3. Learned counsel for the petitioner submits that date of birth of the petitioner was 8.4.1938 and not 8.4.1930, which was made the basis by the respondent authorities to pass the impugned order. He further submits that the impugned order was illegal on the face of it for the reason that vested right of the petitioner was sought to be taken away. Once the petitioner has served the respondent-Department up to 4.3.1993, he was entitled for the amount of gratuity till the date of his retirement. In support of his contentions, he relies upon a judgment of the Hon'ble Supreme Court in R. Jearatnam v. The State of Madras, 1967 SLR 657. Finally, he prays for setting aside the impugned order, by allowing the present writ petition.

4. Per contra, learned counsel for the State refers to application dated 15.5.1979

submitted by the petitioner at Annexure R-1, to contend that once the petitioner himself submitted his date of birth as 8.4.1930, his latter affidavit dated 16.11.1987 (Annexure R-3) giving his date of birth as 8.4.1938 was not only false affidavit but it was contrary to his own stand taken earlier. She further submits the respondent authorities could have recovered the amount of salary illegally drawn by the petitioner for the period he was not entitled to continue in service, yet taking a lenient view, no recovery was ordered and he was held not entitled only for the gratuity amount w.e.f. 8.4.1992 to 4.3.1993. Learned counsel for the State concluded by submitting that since the case of the petitioner was based on falsehood and misrepresentation of facts, he was not entitled for any relief and the writ petition was liable to be dismissed with costs.

5. Learned counsel for respondent No. 6 has placed on record the subsequent events by way of CM No. 2092 of 2014. The said application is allowed and Annexure R-6/2 is permitted to be placed on record.

6. However, learned counsel for the parties are ad idem that so far as respondent no. 6 is concerned, no issue is involved any more between the petitioner and respondent No. 6, to be decided by this Court.

7. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of case in hand, the instant writ petition is liable to be dismissed, because the present one has not been found to be a fit case for exercising the writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

8. It is a matter of record that petitioner himself submitted the application dated 15.5.1979 (Annexure R-1) and in column No. 6 thereof, he has claimed his date of birth to be 8.4.1930. However, with a view to continue in service for more time, petitioner took a complete somersault and changed his date of birth, while submitting a factually wrong and incorrect affidavit dated 16.11.1987 (Annexure R-3) claiming his date of birth to be 8.4.1938 instead of 8.4.1930. Petitioner was successful in misleading the respondent authorities to the extent that he continued in service for the period he was not entitled to continue. Having said that, this Court feels no hesitation to conclude that petitioner had no case either on facts or in law and the present writ petition is wholly misconceived.

9. In spite of above-said glaring facts staring in the face, to which the petitioner had no answer, the respondent authorities were kind enough not to recover the amount of salary illegally drawn by the petitioner for the period he was not entitled to continue in service. Learned counsel for the State was right in saying that a lenient view was taken, while passing impugned order dated 4.3.1993 (Annexure P-6), whereby only the gratuity amount for less than three years was denied to the petitioner. In this view of the matter, the impugned order has been

found to be just and reasonable and the same deserves to be upheld.

10. So far as the judgment relied upon by the learned counsel for the petitioner is concerned, there is no dispute about the law laid down therein, however, the same is of no help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon''ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others,

11. No other argument was raised.

12. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is wholly misconceived, bereft of merit and without any substance Thus, it must fail. No case for interference has been made out.

13. Resultantly, the instant writ petition stands dismissed, however, with no order as to costs. 1