

(2016) 05 P&H CK 0471
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 26176 of 2014 (O&M)

Satwantveer Singh (Retd.), Driver

APPELLANT

Vs

Pepsu Road Transport Corporation

RESPONDENT

Date of Decision : 31-05-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Pepsu Roadways Transport Corporation Employees Service Regulations, 1992 —
Regulation 17, Regulation 2(h), Regulation 6, Regulation 8

Citation : (2017) 1 RSJ 334 : (2016) 4 SCT 447

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Vikas Chatrath and Gurpreet Singh, Advocates, for the Petitioner;
Karan Singla, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—The petitioner has a chequered career. He joined as a Conductor in PEPSU Road Transport Corporation (For short "PRTC") on 4th June, 1975. His services were terminated on 9th April, 1979 with immediate effect. He had rendered by then about 3 years and 10 months of service. Thereafter, he was reappointed as Conductor on 19th May, 1982 on ad hoc basis and was made permanent three months later. He continued to work till his services were again dispensed with on 21st September, 2001. The statutory appeal filed by the petitioner against the termination was dismissed on 10th September, 2002. The petitioner approached this Court through CWP No.5288 of 2007 assailing the order. The Division Bench of this Court applied the doctrine of proportionality and by order dated 6th December, 2007 held that the punishment of dismissal was excessive and disproportionate to the alleged misconduct and thereby converted the order of dismissal to one of compulsory retirement from service. Further, it was directed that the "consequential benefits" be worked out and paid to the petitioner within four months from the date of receipt of a copy of the order. The operative part of the order dated 6th December, 2007 reads as

follows:-

"Though normally this Court does not interfere with the quantum of penalty under Article 226 of the Constitution if the charges are established, the doctrine of proportionality being a part of the non-arbitrariness can be invoked where punishment imposed is grossly unjust. Reference may be made to the judgment of the Hon"ble Supreme Court in State of U.P. v. Jaikaran Singh, (2003) 9 SCC 228.

We, accordingly, direct that punishment of termination of services be converted that of compulsory retirement from the date of order of termination. Consequential benefits may be worked out and paid within four months from the date of receipt of a copy of this order."

2. Feeling aggrieved by the order, PRTC moved Special Leave to Appeal (Civil) No.5604 of 2008 before the Supreme Court in case titled Pepsu Road Transport Corporation & Ors v. Sawantveer Singh. A specific plea was taken by the PRTC for the consideration of the Supreme Court in the following terms:-

"The Hon"ble High Court failed to appreciate that by converting the punishment from dismissal to compulsory retirement it was rewarding the respondent herein with the wages and other consequential benefits like pension etc. for the period for which he (petitioner) has not worked and even if worked has acted in dishonest manner of pocketing the bus fare charged from the passenger."

3. The Supreme Court did not agree with this or the other contentions raised in the appeal by the PRTC and dismissed the SLP on 14th March, 2008. The order of the Division Bench attained finality. In implementation of the orders, the petitioner was treated as being compulsorily retired from service with effect from 21st September, 2001. He was reinstated to service.

4. This gave rise to claim for release of retiral benefits since the order of dismissal has been converted into one of compulsory retirement. However, no action was taken to implement the order which led to the filing of COCP No.6231 of 2011 complaining that the Corporation was in contempt. The stand of the PRTC was that all the necessary benefits have been paid to the petitioner, except pension as he did not complete the requisite period of service qualifying for pension. On these premises, the contempt petition was disposed of vide order dated 9th July, 2012 and the rule against the respondent was discharged with the liberty to the petitioner that in case he has any grievance against any order, he is at liberty to challenge the same, but no contempt was made out. This led to the filing of the present writ petition in which the petitioner claims a writ of mandamus to the respondents to release the pensionary benefits in terms of the PEPSU Road Transport Corporation Employees Pension/Gratuity & General Provident Fund Regulations, 1992 (for short the Regulations of 1992) [which came into force on 15th June, 1992] read with the provisions of the Punjab Civil Services Rules relating to pension. It is not disputed that in the 189th Meeting of Board of Directors of PRTC held on 30th June, 2005, the Corporation adopted the

Punjab Civil Service Rules, the Punjab Government Employees (Conduct) Rules, 1966, the Notifications, Standing Orders etc. issued by the Punjab Government for its employees to also govern the conditions of service of the officers/officials of the PRTC in addition to their own regulations/1992. To claim pension, the petitioner relies on the decisions of this Court rendered in LPA No.1147 of 2010 (Smt. Santo Devi and others v. State of Haryana and others decided on 12th January, 2011), Ganga Bishan v. State of Haryana, 1994 (3) PLR 691 and State of Punjab v. Gurkeerat Singh, 2002(3) SCT 653. It would be appropriate to notice some of the relevant provisions of the Regulations of 1992 relating to pension before proceeding further with the discussion. Regulation 2(h) defines "pension" as follows:-

"(h) (i) Pension: Except when the term `pension' is used in contradiction to Gratuity, Pension includes Gratuity. The term pension includes Compensation Pension, Superannuation Pension, Retiring Pension, Invalid Pension and Family Pension.

(ii) Pension, Gratuity and other retirement benefits will be admissible to the employees of the PRTC on Government pattern. However, Ex-gratia, Leave encashment LTC and Medical allowance will not be admissible as these are not the retirement benefits."

Regulation 6 deals with qualifying service and falls in Chapter III. The same reads as follows:-

"6. Qualifying Service:

(1) The qualifying service will be taken into account with effect from the date of an existing employee started contributing towards the Contributory Provident Fund.

(2) The service of an employee shall not qualify for retirement benefits under the said regulations unless:

(i) He attains the age of eighteen years;

(ii) He takes charge of the post to which he is first appointed except for which it is otherwise provided by special rules or contract; and

(iii) The service is on regular basis.

(3) The leave admissible under the Corporation regulations under the instructions issued by the Corporation from time to time, shall qualify for pension but leave without pay and period of suspension, overstay of leave not subsequently regularised under the above said regulations and the period of break in service shall not be reckoned as qualifying service.

(4) In a case where the total qualifying service is less."

Further, Regulation 8 deals with Entitlement of Pension which reads as follows:-

"8.Entitlement of pension: An employee shall be entitled for pension under the regulations only after he completes ten years (twenty half years) qualifying service."

Regulation 17 deals with Retiring Pension which reads as follows:-

17. Retiring Pension:

(1) A retiring pension and retirement gratuity shall be granted to an employee who retires voluntarily or is retired compulsorily according to the length of qualifying service, as provided in the succeeding sub-regulations.

(2) The Corporation shall, if it is of the opinion that it is in public interest to do so by recording the reasons in writing, have the right by giving an employee prior notice in writing of not less than three months to retire that employee on the date of which he completes twenty five years of qualifying service or on any other dates thereafter to be specified in the notice or on the date on which he attains fifty years of age.

Provided that where three months notice is not given or notice for a period of less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of pay and allowance at the same rate at which he was drawing immediately before the date of qualifying for a period three months or as the case may be, for the period by which such notice falls short of three months.

(3) An employee may after giving at least three months notice in writing to the Corporation, retire from service on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any late thereafter to be specified in the notice.

Provided that no employee under suspension shall retire from service except with the specific approval of competent authority."

5. In this conspectus of rules and regulations, the petitioner claims right to pension which has wrongly been denied to him. He criticizes the action for the reasons enumerated by him in this petition in the grounds of challenge. Briefly put, there are two periods of service. One is from 4th June, 1975 to 9th April, 1979 when the petitioner's services remained under termination. The second spell is when he was re-appointed on 19th May, 1982 which continued till his services were terminated on 21st September, 2001 which led to litigation before the Division Bench of this Court and thereafter the Supreme Court. First spell entails three years, eight months and 6 days of service. The second spell was for 19 years, 4 months and three days. It is argued that since the order of dismissal was converted to one of compulsory retirement from the date of termination, the entire period has to be counted by the fiction of law for service benefits. The Court did not wash out the period altogether since it directed award of "consequential benefits". The petitioner firstly claimed pension by serving a legal notice on 6th December, 2007 on the Corporation. He was paid Rs. 36,184, Rs.

14000 and Rs. 69000 toward Gratuity, Leave Encashment and GPF, respectively, but the pensionary benefits have not been released so far.

6. In defence of the action, the respondents have filed a written statement and have tried to contest the case citing regulations. The PRTC interprets the direction of the Division Bench for release of retirement benefits as one confined to mean "consequential benefits" which does not include pension. Placing such an interpretation on the directions of this Court, the PRTC has interpreted them to mean only payment towards Gratuity, Leave Encashment and GPF which were paid to the petitioner. Thus, nothing remains to be paid.

7. It is also the stand of the respondents that the petitioner had not completed the period of qualifying service for entitlement to pension. They refer to Regulation 8 which prescribes 10 years (twenty half years) qualifying service and argue that by virtue of operation of Reg. 17 (3), the petitioner should have completed above 25 years of qualifying service or attained the 50 years of age to be admissible for compulsory retirement. These periods are not satisfied. The respondents mention that as per service record, the date of birth of the petitioner is 10th September, 1954 and his date of retirement thus is 21st September, 2001, but by that time, the petitioner had not completed 50 years of age and was only 47 years old. Hence, the petitioner is not entitled to take the benefit under the Regulations because the petitioner may have completed 10 years qualifying service, but on the date of retirement he did not attain the age of 50 years. The respondent Corporation has excluded the first spell of service from the period qualifying for pension and as a result, they ascribe only 15 years, 7 months and 9 days of service till the date of termination i.e. 21st September, 2001. Since the petitioner was appointed afresh on 19th May, 1982 and was terminated from service on 21st September, 2001 then as per this calculation, he had put in 19 years and 20 days of service, but out of this period, the petitioner has to his discredit a total period of 3 years and 5 months when he either absented from duty or was on leave without pay or under suspension. Therefore, the petitioner had not completed qualifying service of 25 years which disentitle him for any pension. The respondents urge they did not commit any error in denying pension.

8. The primary issue which falls for consideration is as to the interpretation of the directions "consequential benefits" in the order of the Division Bench dated 6th December, 2007. The PRTC reads it restrictively while the petitioner submits that once the dismissal was converted into compulsory retirement, then the directions have to be read constructively to bring pension to him and not destructively of rights of pension. Be that as it may, the dispute can be put to a logical end simply for the reason that when the PRTC filed appeal before the Supreme Court challenging the directions of the Division Bench of this court on the ground that by converting punishment from dismissal to compulsory retirement it was rewarding the petitioner [respondent therein] with the wages and other consequential benefits like pension etc. for the period for which he (petitioner)

has not worked, and even if worked, had acted in a dishonest manner of pocketing the bus fare charged from the passenger. In short, what I think they meant was that premium could not be put on misconduct. It is submitted that this argument did not find any weight in the order passed by the Division Bench converting dismissal to compulsory retirement. If this was to secure pension for past service, it would have been clearly said so in the order in the shape of a direction.

9. However, the PRTC in its reply has not shown from its regulations that compulsory retirement is one of the specified punishments for major misconduct. The reasoned part of the order of the Division Bench dated 6th December, 2007 requires to be read in extenso:-

"The charge of misconduct has been held to be fully proved after inquiry and no ground has been shown for interference with the finding of misconduct. It is well settled that in departmental proceedings disciplinary authority or the Appellate Authority is the best judge of facts and of appreciation of evidence and the writ Court normally does not interfere with the factual findings unless the same are based on no evidence or are perverse. Reference may be made to judgment of the Hon"ble Supreme Court in Apparel Export Promotion Council v. A.K. Chopra AIR 1999 SC 625.

Accordingly, we do not find any ground to interfere with the finding of misconduct of the petitioner.

Last contention raised on behalf of the petitioner is on the question of penalty imposed. It is submitted that the petitioner served for 19 years and having regard to the nature of allegation, the penalty of termination of services was disproportionate to the charge of misconduct.

We find merit in the last contention.

"Though normally this Court does not interfere with the quantum of penalty under Article 226 of the Constitution if the charges are established, the doctrine of proportionality being a part of the non-arbitrariness can be invoked where punishment imposed is grossly unjust. Reference may be made to the judgment of the Hon"ble Supreme Court in State of U.P. v. Jaikaran Singh, (2003) 9 SCC 228.

We, accordingly, direct that punishment of termination of services be converted that of compulsory retirement from the date of order of termination. Consequential benefits may be worked out and paid within four months from the date of receipt of a copy of this order."

10. This Court did not interfere with the findings of misconduct, but converted dismissal to compulsory retirement on excessive use of power to punish by applying the time-tested doctrine of proportionality being a part of principles of the non-arbitrariness where punishment imposed is found grossly unjust and oppressively disproportionate to the gravamen of the charge of misconduct. If

compulsory retirement is a notified punishment in the regulations, which PRTC is unable to point, then it does not follow that anything short of dismissal would deprive person of pension. This is the grave error committed by the PRTC in interpreting "consequential benefits" from a narrow and wrong angle. The letter and spirit of the order is to be applied and followed as binding decision. Consequential benefits would necessarily include pension and pensionary benefits even if the misconduct remains but was substantially watered down and its sting will not effect legitimate rights of the petitioner claimed in this petition.

11. What remains for this Court to consider is whether 10 years of service is sufficient to bring pension home or is 20 years or more required? This issue has been dealt with directly in *Santo Devi* (supra) by the Division Bench of this Court ruling that an employee is entitled to grant of pension who had admittedly rendered more than 10 years of service at the time of exit. In respectful agreement with the dictum in *Santo Devi*, supra, I would accept this petition and direct the respondents PRTC to release pension to the petitioner not only in terms of its own regulations, but in terms of the Punjab Civil Services Rules which are sufficient to bring to the petitioner the fruit of pension.

12. Mr. Vikas Chatrath, learned counsel appearing for the petitioner broadens his case to contend that the State should act sympathetically and any unreasonable restriction on the valuable rights of the citizens in cases presenting peculiar facts and circumstances should not be imposed. He refers to case *Asha Rani v. State of Punjab*, 2015 (4) SCT 250 where this Court while dealing with the claim of a widow for compassionate appointment in special circumstances held as follows:-

"8. This Court finds that the present is not a case of transfer of an appointment and the reasoning adopted by the administrative authority is rather wide off the mark in its humanistic approach and is not acceptable as an ouster clause of rights arising from the death of Sham Lal are not accounted for in the impugned view. It is well to remember once again that extraordinary situations require extraordinary measures and broadly speaking executive instructions under Article 162 of the Constitution are themselves the prescription and the medicine for curing human problems and leave enough elbow room to the administrator social justice where rule or previous instructions may not necessarily be the controlling, limiting or the determining factor in the matter of grant of relief when justice demands. To speak teleologically, Parliament and State Assemblies made the law tailored to suit and to govern lives of citizens while the administrator has set about to fill the gaps in the law by framing rules and instructions but neither of them made the working life to run like machines without a heart. These do not nor should overly obsess us while dealing with out of the way cases which demand social justice by using so to speak- forks to lift food for our survival or to put it better; to apply the head of a pragmatic man and the hands of a liberal person acting within the sympathy that judicially manageable standards can afford. The rules and regulations on the statute and rule book or instructions in manuals are not just a makeup kit with just as many things put into the basket.

There is more to life than what meets the eye in legal documents and papers and that extra component lies is equity. To best understand the significance of the teleological explanation of why forks have prongs is that this design helps humans eat certain foods; stabbing food to help humans eat is what forks are for. Mercifully, forks are not found in rules or instructions of Government otherwise even this principle may not work to tide over an encountered human issue because of the wide variety of forks in the cutlery shop which make choices even more difficult. This is what is meant by a teleological explanation. This is how I think power of issuing executive instructions should be exercised and permitted by the court of law to be applied while judicially reviewing work of administrators who should never be afraid or shy in creating a new precedent or a fresh instruction when the call of social justice demands or a situation creates which can recur in other people's lives. There are many bad precedents anyway scattered on the path, both administrative and judicial for anyone to worry.

9. On the other hand, the purpose and object of Article 162 of the Constitution is also to give to a class of persons not only the minimal but at the same time the much needed freedom to the Government to act or respond to newly emerging situations as never before witnessed in Government files or addressed and to respond to them in a fair and just manner. To do real justice, rules and instructions are not enough to be obsessed with and the *ex aequo et bono* principle may deservedly apply to the case in hand to make the decision ameliorative in nature and pulsating with life which decision may sometimes not necessarily be in perfect harmony or in sync with the instructions/rules, but a decision based really on what appears to be fair and just, just as one might view the case of the widow in this case. If she is appointed by compassion heavens won't fall nor would all hell break loose."

12. The case may not be direct on the point but Mr. Chatrath suggests it fulfils the backdrop to view the regulations in this case, especially while dealing with social welfare measures in the hands of a model employer which PRTC ought to be. He may not be wrong.

13. For the foregoing reasons, this petition is allowed. The respondents are directed to release pension to the petitioner. Arrears of pension be calculated and paid within two months from the date of receipt of a certified copy of this order.