
(2000) 05 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 4007 and 10826 of 1999

Sh. Gurbax Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Citation : (2000) 126 PLR 550

Hon'ble Judges : K.K. Srivastava, J;J.S. Khehar, J

Bench : Division Bench

Advocate : Rajneesh Bansal, in CWP 4007 of 1999 and R.K. Chhibbar and D.C. Khanna, CWP No. 10826 of 1999, for the Appellant; A.K. Sharma, DAG and Rajneesh Bansal in CWP No. 10826 of 1999, for the Respondent

Judgement

J.S. Khehar, J.—Gurbax Singh has approached this Court by filing CWP No. 4007 of 1999, challenging the order of the Central Administrative Tribunal dated 16.7.1998. The Sports Authority of India, Jawahar Lal Nehru Stadium, Lodhi Road Complex, New Delhi and others have impugned the same order through CWP No. 10826 of 1999. Both the aforesaid writ petitions have been heard together and are being disposed of by this common order:

2. Gurbax Singh joined the PEPSU State Police service as Prosecuting Sub Inspector on 21.4.1949. While in the aforesaid service, he was permitted to undertake a course in the sport of Volley Ball, where after he was transferred from the police department to the sports department. Gurbax Singh continued to discharge his duty in the sports department till 13.12.1963. In the interregnum, PEPSU was merged into the composite State of Punjab with effect from 1.11.1956. Gurbax Singh, therefore, became a member of the police department of the composite State of Punjab and carried with him all the benefits of service rendered by him in the erstwhile State of PEPSU.

3. The Director, National Institute of Sports, Patiala, (hereinafter referred to as the Institute) requested the sports department to loan the services of Gurbax Singh to the Institute by way of deputation for a period of one year as a Volley

Ball Coach. The State Government, accepted the request of the Institute and relieved the petitioner on 13.12.1963; whereupon Gurbax Singh joined the Institute on 14.12.1963. Before the expiry of the period of one year, the Institute requested the State Government to permit the absorption of Gurbax Singh in the service of the Institute on the expiry of the period of one year. After obtaining the consent of Gurbax Singh and after completing the necessary formalities of absorption, which included the submission of a formal resignation from his principal employer. Gurbax Singh was absorbed into the service of the Institute permanently vide office order dated 30.4.1965 with effect from 14.12.1964 (i.e. the date on which the petitioner completed one year's deputation with the Institute.

4. After the absorption of Gurbax Singh into the service of the Institute, he was promoted to higher posts and eventually to the post of Deputy Director on 1.7.1975. While holding the post of Deputy Director of the Institute, Gurbax Singh attained the age of superannuation and was accordingly retired from service on 30.4.1983. On his retirement, Gurbax Singh claimed all benefits of service earned by him in the erstwhile State of PEPSU and the composite State of Punjab while computing his pensionary benefits on retirement from the Institute.

5. The Institute was established in 1961 by the Ministry of Education and Culture of the Government of India. It is a department under the Ministry of Sports/ Education of the Government of India. All the funds of the Institute are provided by the Government of India. The Governing Body of the Institute is known as Society for National Institutes of Physical Education and Sports (for short S.N.I.P.E.S.") with its headquarters at Patiala. All the members of the S.N.I.P.E.S. are nominated by the Government of India. Undoubtedly, the Gurbax Singh's earlier service was in the erstwhile State of PEPSU and the composite State of Punjab and the remaining service was in the Institute which was an establishment of the Government of India; both employments being under separate and distinct employers.

6. When Gurbax Singh was inducted into the Institute on 14.12.1964, the conditions of service of the Institute did not provide for any pensionary benefits. However, on the basis of a circular dated 9.8.1978, the employees of the Institution were asked to opt for pensionary benefits or to continue under the Contributory Provident Fund Scheme. At that juncture, Gurbax Singh had opted for the pensionary benefits scheme. Soon after having submitted his option, Gurbax Singh made a representation dated 15.11.1978, requiring the authorities to take into consideration 15 years and 8 months of service rendered by him before his engagement with the Institute as qualifying service while computing his pensionary benefits. This representation made by the petitioner was rejected by the Institute vide its Memorandum dated 27.10.1980. Gurbax Singh filed an appeal against the determination of the Institute to the Member Secretary, S.N.I.P.E.S. reiterating his claim for taking into consideration the service rendered by him for a period of 15 years and 8 months prior to his engagement

into the Institute as qualifying service to determine his pensionary benefits. The appeal preferred by Gurbax Singh was rejected by the board of Governors on 24.11.1981. The request of Gurbax Singh to review the said order was again rejected on 9.9.1982. Gurbax Singh continued to make detailed representation to the aforesaid effect till he retired from service on attaining the age of superannuation on 30.4.1983.

7. When pensionary benefits due to Gurbax Singh were finalised, he was not given the benefit of the service rendered prior to his engagement with the Institute. He was not even given the benefit of the service rendered by him as a deputationist to the Institute from 14.12.1963 to 13.12.1964. Aggrieved by the aforesaid action, Gurbax Singh approached this court by filing CWP No. 3558 of 1984. On the constitution of the Central Administrative Tribunals, CWP No. 3558 of 1984 was transferred to the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the Tribunal), wherein it was numbered as O.A. No. T-10-PB-1997. The Tribunal accepted the claim of Gurbax Singh vide its judgment dated 16.7.1998.

8. Gurbax Singh relied on two orders to claim his benefits, first was the Government of India, Department of Pension and Pensioners' Welfare, Office Memo. No. 28(10)/84- P & P.W./Vol. II, dated 7.2.1986, modified by further orders dated 17.6.1986, 30.10.1986 and 20.3.1987, wherein it was provided that reciprocal arrangements may be entered into with various State Governments to give effect to the demand of the employees of the State Governments State Autonomous bodies/State Statutory Bodies who have been absorbed in the services of the Central Government/Central Autonomous bodies for taking into consideration service rendered prior to absorption as qualifying service for determining pensionary benefits. Since a reciprocal arrangement had been made by the Government of India with the State of Punjab, the petitioner claimed that under the aforesaid Office Memo, his pensionary benefits were liable to be computed by taking into consideration the service rendered by him prior to his absorption into the Institute which was admittedly a Central Autonomous Body . Under paragraph 2 of the office Memo, referred to above, it was specifically laid down that cases of employees were to be decided in accordance with the principles laid down in the second order relied upon by the petitioner i.e. the government of India, Department of Personnel and Administrative Reforms Office Memo No. 28/10/84-Pension Unit, dated 29.8.1984.

9. The Tribunal in its judgment/order dated 16.7.1998, held that Gurbax Singh was entitled to count his past service rendered by him in the police department, initially under PEPSU and subsequently under the Punjab Government towards pensionary benefits and accordingly directed by Gurbax Singh from 21.4.1949 to 13.12.1964 for calculation of his pensionary benefits along with the service rendered by him in the Institute till his date of retirement on attaining the age of superannuation on 30.4.1983. Gurbax Singh was, however, held to be entitled to arrears of pension with effect from 7.2.1986 i.e. the date from which a reciprocal

arrangement was made between the State of Punjab and the Government of India.

10. The State of Punjab which was impleaded as the respondent in CWP No. 3558 of 1984 and also a respondent in TA No. 10/PB/1997, did not contest the validity of the decision rendered by the Tribunal's order dated 16.7.1998.

11. During the course of arguments, Shri R.K. Chhibbar, Sr. Advocate, while addressing arguments in CWP No. 10826 of 1999, did not contest the determination of the Tribunal in finding the petitioner entitled to pensionary benefits even for service rendered by him in PEPSU and Punjab State prior to his absorption in the Institute with effect from 14.12.1964. His claim, however, was that the Tribunal, by oversight, had not passed further directions requiring the State of Punjab to discharge its liability for the services rendered by Gurbax Singh prior to 14.12.1964 by paying in lumpsum as a one time payment the prorata pension, service gratuity/terminal gratuity and retirement gratuity for service being the liability for service rendered upto the date of absorption in the service of the Institute as envisaged by the Government of India, Department of Personnel and Administrative Reforms Office Memo No. 28/10/84- pension Unit, dated 29.8.1984. In our considered view, no such direction was called for. The Tribunal having held the petitioner entitled to pensionary benefits by taking into consideration qualifying service rendered by him in the police department of PEPSU and the State of Punjab under the Office memos. referred to above, it was natural that under the aforesaid Office Memos. the State of Punjab was liable to make a one time lump-sum payment in lieu of the service rendered by Gurbax Singh prior to 14.12.1964 after the State Government entered into a reciprocal arrangement with the Government of India on 7.2.1986. For reasons of specificity, it may be mentioned that the liability of the State Government in this behalf was clearly envisaged under the Government of India, Department of Personnel" and Administrative Reforms, O.M. No. 28/10/84-pension Unit, dated 29.8.1984, paragraph 3 thereof, is reproduced hereunder:-

"The government/autonomous body will discharge its pension liability by paying in lumpsum as a one time payment, the prorata pension/service gratuity/terminal gratuity and retirement gratuity for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lumpsum amount of the prorata pension will be determined with reference to commutation table laid down in CCS(Commutation of Pension) Rules, 1981, as amended from time to time."

12. When the aforesaid Office Memo, dated 29.8.1984 is read with the Government of India, Department of Pension and Pensioners Welfare, O.M. No. 28/10/84-Pension Unit Volume II, dated 7.2.1986 as modified on 17.6.1986, 30.10.1986 and 20.3.1987, the term Government, in the extract reproduced above, will be the State of Punjab in so far as the instant case is concerned. Although the aforesaid direction as indicated above was implicit in the order of the Tribunal, yet as a matter of clarification, the State of Punjab is hereby

directed to fulfil its obligation by paying in lumpsum as a one time payment its liability emerging out of the reciprocal arrangement entered into with the Central Government on 7.2.1986.

13. The liability of the State Government as determined above on account of the service rendered by Gurbax Singh shall be released and forwarded to the Institute within 3 months from the date of receipt of a copy of the instant judgment. Within one month of the receipt of the payment from the State Government, the Institute shall release the pensionary benefits to the petitioner as determined by the Tribunal vide its order dated 16.7.1998. The writ petition is accordingly allowed by clarifying the order of the Tribunal as indicated above.

No costs.