

(1963) 07 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 629 of 1961

Shri Kidar Nath

APPELLANT

Vs

Punjab Government and Another

RESPONDENT

Date of Decision : 18-07-1963

Acts Referred:

Business of the Government of Punjab Rules, 1983 — Rule 31
Constitution of India, 1950 — Article 166, 226, 227, 229, 229(2)
Government of India Act, 1935 — Section 241, 242(4), 276
High Court Establishment (Appointment and Conditions of Service) Rules, 1952 — Rule 29
New Pension Rules — Rule 7(1)
Punjab Civil Services Rules — Rule 1.8, 12, 18, 2.14, 219

Citation : AIR 1964 P&H 285 : (1964) 1 ILR (P&H) 377

Hon'ble Judges : I.D. Dua, J;A.N. Grover, J

Bench : Division Bench

Advocate : Ram Rang, for the Appellant; H.S. Doabia, A.A.G., for the Respondent

Judgement

A.N. Grover, J.—The facts which have led to the institution of the present petition under Articles 226 and 227 of the Constitution have been fully set out in the reference order and may again be recapitulated.

2. The Petitioner joined the Lahore High Court as Senior Clerk on 24th November, 1930, and retired as a Senior Translator of this Court on 14th August, 1956. The period of service of the Petitioner may be split up under three heads i.e. 24th November, 1930 to 12th August, 1940, 12th August 1940 to 20th June, 1942 and 21st June, 1942 to 13th August, 1956. For the first period which came to 9 years, 8 months and 19 days he was officiating in leave and other short term vacancies with frequent interruptions as unpaid candidate etc.

For the second period which was of the duration, of ,I year, 10 months and 9 days he was continuously officiating in leave or other short term vacancies without break and during the third period he was indisputably officiating against vacant posts or as substantive provisional or substantive permanent qualifying

for pension in full. As the Petitioner was admittedly governed by the New Pension Rules contained in Appendix. 2 of the Punjab Civil Services Rules, Volume II, only "qualifying service was to be treated as service which would count towards pension. Full period of service rendered in substantive posts is qualifying service but service which is temporary or is not continuous or is interpreted by breaks is not treated as such although half of the temporary continuous service is treated as qualifying service." In normal course, therefore, the Petitioner was to have the benefit of 15 years and 27 days as qualifying service in respect of the last two items. Half of the service rendered by him for the period covered" by the first head could also be counted provided the appropriate authority relaxed the rule in his favour under Note 2 to Rule 18 of the Punjab Civil Services Rules, Volume 1, Part 1.

3. As the Petitioner had put in a number of years of service, interrupted by breaks and he stood to lose a fair amount of pension, his case was considered to be a hard one. He had continuously been working as a clerk even when he was reverted as unpaid. The Registrar of this Court addressed a memorandum dated 30th May, 1956, (Annexure "A") to the Accountant General, Punjab, forwarding his pension papers and conveying the, decision of the Chief Justice under Note 2 to Rule 18, read with Article 229 of the Constitution, that the periods of unpaid service between 24th November, 1930 and nth August, 1940, be treated as continuous temporary service as he had actually worked in the High Court and that he be allowed to add half of the entire service, both paid and, unpaid, to his qualifying service after excluding therefrom the period of extraordinary leave under Rule 7(1) of Section IV of the New Pension Rules. In this way the period of his service qualifying for pension would come to 19 years, 9 months and 3 days.

The Accountant General, Punjab, raised an objection (memorandum dated 23rd May 1956--Annexure "C") that interrupted service prior to 12th August, 1940, could not be taken into account for pension. This objection was met in a reply sent by this Court dated 30th May, 1957 (Annexure "D"). Thereupon the Accountant General, Punjab, agreed to give the benefit of half of the service for the first period from 24th November, 1930 to nth August, 1940. The pension was finally calculated on that basis and fixed at Rs. 47.64 and the gratuity at Rs. 1,863/- vide certificate and report of the Accountant General, Punjab, (Annexure "E"). The Registrar then sent the following communication (Annexure "F") to the Accountant General, Punjab:

1. Please refer to your certificate and report No. Pen(R) K-14/56-57/2493 dated 27-6-1957.

2. The Hon"ble the Chief Justice and Judges are pleased to sanction the grant of a superannuation pension of Rs. 47.64 nP. per mensem with effect from 14-8-1956" and the payment of death-cum-retirement gratuity of Rs. 1,863/- to Shri Kidar Nath, retired Senior Translator of the Punjab High Court, subject to the condition that should the amount be proved afterwards to be in excess of those to which he is entitled under the rules, he shall be caled upon to refund the

excess.

The Petitioner continued to receive the pension at the rate of Rs. 47.64 nP. from 14th August, 1956 to 31st October, 1959, and had also received the death-cum-retirement gratuity amounting to Rs. 1.863/.

4. In November, 1959, the Accountant General, Punjab, addressed a letter to the Secretary, Finance Department, Punjab Government, that the grant of the pension at the rate of Rs. 47.64 nP. and of the gratuity as above to the Petitioner was not correct as he, was not entitled to the benefit of half of the temporary/officiating service which was interrupted by breaks as unpaid candidate. His pension case was purported to be revised and a revised certificate and report dated 3rd November, 1959, was issued according to which he was to be entitled to a pension of Rs. 39.69 nP. per mensem and gratuity of Rs. 1,552.50 nP. The excess amount paid was to be recovered back from the Petitioner, Thereupon this Court issued a sanction, at the revised rate and the Accountant General, Punjab, authorised the Treasury Officer, Chandigarh, to pay pension and gratuity at the revised rate.

The Petitioner made a representation to this Court against those orders and by means of a letter (Annexure "K") dated 22nd April, 1960, the Registrar conveyed to the Home Secretary the entire background of the case and the relevant rules on the basis of which the Chief Justice had decided previously to allow the benefit of half of the service to the Petitioner for the period in question. It was also intimated that the Hon'ble Judges had recommended that as a special case the Petitioner should not be required to refund the amount overpaid to him and his pension should not be reduced. The Petitioner had addressed a letter to the Governor of the Punjab to which he received a reply on 4th March, 1960, (Annexure "L") in which it was stated:

* * * the Governor is of the view that the matter is to be decided exclusively by the Chief Justice.

The Petitioner had also sent a representation to the Chief Minister to which he received as reply from the Home Secretary to Government, Punjab, dated 18th November, 1960, (Annexure "N") saying that the decision already arrived at could not be altered. It was in these circumstances that the present petition was filed in this Court challenging the orders of the Government revising the pension and the amount of gratuity payable to the Petitioner and demanding the refund of the excess amounts paid.

5. In the return most of the facts as stated in the petition have been admitted. The position taken up is that no undue hardship was caused to the Petitioner and as such the benefit claimed by him under Rule 18 of the Punjab Civil Services Rules, Volume I, Part I, was not allowed. It has also been maintained that the powers of interpreting, changing and relaxing the rule contained in Rule 18 of the Punjab Civil Services Rules, Volume I, Part I, vests in the Finance Department and not in the High Court. The order of the Chief Justice was, therefore, without

jurisdiction because neither the benefit envisaged in his order was extended to the Petitioner by the Government who alone could relax the said rule nor had the order which extended certain pensionary benefits the approval of the Governor of the Punjab which was necessary under proviso 2 of Article 229 of the Constitution.

6. The main and the substantial point which arises for determination out of the pleas contained in the petition and the written statement and to which the arguments have been confined by learned Counsel for both sides is whether it is the Chief Justice who could exercise the powers conferred by Rule 1.8 read with Note 2 of the Punjab Civil Services Rules contained in Volume. I, Part I, or whether it is the Finance Department of the Punjab Government in which alone that power vests. It has not been disputed by the learned Additional Advocate General, who appears for the Respondents, that if the power vests in the Chief Justice, the pension and gratuity as originally sanctioned could not be reduced.

7. Now, the obvious intention of the framers of the Constitution when they declared and provided in Article 229 that appointments of officers and servants of a High Court shall be made by the Chief Justice or such other Judge or officer of the Court as he may direct, was to secure and maintain the independence of the High Courts, which was the sine qua non for establishing and working an essentially and highly developed democratic form of Government in this country. Article 229(2) does provide.

Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officers of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State....

But it is clear from Article 310(1) that it is made subject to the express provisions elsewhere which would include Article 229. Similarly Article 309 is subject to the provisions of the Constitution. If appointments and dismissal by the High Courts and measures taken by them in respect of their staff are to be interpreted by the executive the independence of the High Court would have been in serious jeopardy. The High Court was consequently freed from the control of the executive in regard to the powers given by Article 229 except in the manner provided therein. Of course, the High Courts are subject to legislative control in respect of the matters provided for in Article 229(2) but that is quite different from being subject to any interference in the appointment, dismissal and control of the High Court's staff the executive.

In *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, the question was whether the Chief Justice of the Calcutta High Court

had the power to order the dismissal of the Registrar of Original Side of that Court. The argument addressed on behalf of the Registrar who was the Appellant was based on the assumption that he fell within the category of public servants who were governed by the Civil Services (Classification, Control and Appeal) Rules of the year 1930 which continued to apply to him even after the Government of India Act, 1935, and later the Constitution of India, 1950, successively came into force. After referring to all the relevant statutory provisions from the time of the Charter of the Supreme Court of Calcutta issued in 1774 and Clause 8 of the Letters Patent of the Calcutta High Court of 1862, as amended in 1919. the Government of India Act 1915, the Government of India Act, 1935, and the Constitution of 1950 it was observed that the continuance of the aforesaid rules u/s 276 of the Government of India Act could only be in so far as such continuance was consistent with the new Act. The rules, therefore, must be deemed to be rules" made by the Chief Justice consistently with the scheme and the provisions of the Act relating to the High Court staff which specifically vested in him the power of appointment and of regulation of service including the power of dismissal.

According to their Lordships, such continuance could only operate by a process of adaptation implicitly authorised by the very terms of Section 276. Therefore, in their continued Application to the High Court staff the word "Governor" had to be read as substituted by the word "Chief Justice" wherever necessary in the same way as Section 242(4) of that Act required the provisions of Section 241 to be read as though any, reference to the Governor therein was substituted by a reference to the Chief Justice of the High Court. In this judgment the fact was recognised that the power of making rules relating to conditions of service of the staff of the High Court vested in the Chief Justice of the Court u/s 242(4) read with Section 241 of the Government of India Act, 1935, as also under Article 229(2) of the Constitution of India.

8. In exercise of the powers conferred by-Article 229 the Chief Justice of the High Court of Punjab, after previous reference to the Governor under the proviso to the Article, promulgated the High Court Establishment (Appointment, and Conditions of Service) Rules, 1952, (hereinafter to be referred to as the High Court Establishment Rules) which have been amended from time to time and the legality and validity of which have not been challenged by the Respondents or the Additional Advocate-General. Rule 29 which deals with leave, pension etc is to the following effect:

(29)(1) Subject to any special provisions contained in these rules, the rules and orders for the time being in force and applicable to Government: servants of corresponding classes in the service of the Government of the Punjab shall regulate the conditions of service of persons serving on the staff attached to the High Court:

Provided that the powers exercisable under the said rules and orders by the Governor of the Punjab or the Government of the Punjab or by any authority

subordinate to the Governor or Government shall be exercisable by the Chief Justice or by such person as he may, by general or special order, direct.

(2) Any question arising as to which rules or orders are applicable to the case of any person serving on the stall attached to the High Court shall be decided by the Chief Justice.

Rule 12(b)(2) of the Punjab Civil Services Rules, Volume 1, Part 1, issued by the Governor under proviso to Article 309 of the Constitution which came into force from 1st April, 1953 provides that these rules apply to officers and servants of the Punjab High Court, in respect of whom rules have to be made by the Chief Justice with the approval of the Governor of the Punjab (Article 229(2) of the Constitution of India). In Note 2 it is stated-

The Chief Justice of the Punjab High Court has agreed to the Application of these rules as amended from time to time, in case of officers and servants of the Punjab High Court.

Rule 18 together with the Notes is in the following terms:

The power of interpreting, changing and relaxing these rules is vested in the Finance Department.

Note 1. Communications regarding the interpretation and alteration of these rules should be addressed to the Finance Department through the Administrative Department concerned.

Note, 2. Where the Finance Department is satisfied that the operation of any of these rules regulating the conditions of service of State Government servants or any class of such Government servants, causes undue hardship in any particular case, it may by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

The expression "State Government Servants" means all persons whose conditions of service may be regulated by rules made by the Governor of Punjab under the proviso to Article 309 of the Constitution.

Rule 219 of the Punjab Civil Services Rules says that the Finance Department means the "Finance Department of the Punjab Government. "Now, the High Court Establishment Rules as also the Punjab Civil Services Rules have to be read together and not in an isolated manner and it has to be seen who would have the power of interpreting and relaxing the Punjab Civil Services Rules under Rule 18 with particular reference to Note 2. If it is the Finance Department of the Punjab Government then the present petition cannot possibly succeed but if the power conferred by Rule 18 vests in the Chief Justice or such other person as he may by general or special order, direct, then it is common ground that it is the Chief Justice or his delegate alone who could have interpreted and relaxed the rules relating to Denton and gratuity in respect of the Petitioner and who in fact did

exercise that power when the pension was sanctioned at a figure of Rs. 47.64 nP. and gratuity at a figure of Rs. 1,863/-. Rule 29 of the High Court Establishment Rules, set out before, made the Punjab Civil Services Rules applicable to persons serving on the staff attached to the High Court but according to the proviso the powers exercisable under those rules by the Governor of the Punjab or the Government of the Punjab or any authority subordinate to the Governor or Government were to be exercised by the Chief Justice or such other person as he may by general or special order, direct.

The Finance Department of the Punjab Government is only a unit or branch of the Government of the Punjab see *Ram Chandra Vs. The District Magistrate of Aligarh and Others*, and at any rate, it is a Department which is subordinate to the Governor of the Punjab or the Government of the Punjab. Therefore, the powers conferred on the Finance Department of the Punjab Government by Rule 18 of the Punjab Civil Service? Rules are exercisable by the Chief Justice and that was the position taken up in the various communications sent by this Court to the Accountant General to which reference has already been made.

9. The learned Additional Advocate-General has not been able to show any infirmity in the above reasoning except by pointing out that any matter having financial implications including pension has been deliberately, according to the scheme of the Punjab Civil Services Rules, made the responsibility of the Finance Department of the Punjab Government and that even according to the Rules of Business of the Punjab Government framed under Article 166 of the Constitution (Rule 31, Part II) the Finance Department must be consulted before the issue of orders upon proposals which affect the finances of the State and, in particular, with regard to proposals to sanction an allowance or special or personal pay for any post or class of posts or to any servant of the Government of the State or proposals involving abandonment of revenue or involving an expenditure for which no provision has been made in the Appropriation Act. It is futile to refer to the Rules of Business as they can have no relevancy for the purposes of interpreting the ambit and scope of Rule 29 of the High Court Establishment Rules and Rule 18 of the Punjab Civil Services Rules with reference to Note 2.

10. As stated before, the only question that we are called upon to determine is whether the powers which have been made exercisable by the Finance Department of the Punjab Government under Rule 18 can be exercised by the Chief Justice alone or any person who may be directed by him. In view of Article 229 of the Constitution which vests complete control in the Chief Justice over the persons serving on the staff of the High Court and the express provisions of Rule 29 of the High Court Establishment Rules, there can possibly be no doubt that the power to relax the rule in order to meet any hardship as contemplated by Rule 18 could be exercised and was properly and validly exercised by the Chief Justice and that the Respondents could not reduce or withhold the pension and the gratuity as originally fixed by the Chief Justice who in exercise of his powers had relaxed the rule for treating the first period of the service of the Petitioner as

continuous temporary service for which he was to be allowed to add half of the entire service (both paid and unpaid) to his qualifying service after excluding therefrom the period of extraordinary leave under Rule 7(1) of Section IV of the New Pension Rules.

11. The learned Additional Advocate-General referred to Rule 2.14 of the Punjab Civil Services Rules which says that competent authority in relation to the exercise of any power means the Administrative Department concerned of Government acting in consultation with the Finance Departments or any other authority to which such power shall be delegated by or under these rules. A list of authorities who exercise the powers of a competent authority under the various rules is given in Chapter XV. The question of applicability of this rule cannot possibly arise in the present case as Rule 1.8 does not even contain a mention of the competent authority.

12. On behalf of the Petitioner another proposition that has been canvassed is that the pension of a Government servant once fixed by the appropriate authorities cannot be reduced. In our opinion it is altogether unnecessary to decide that point in view of our conclusion that it was the Chief Justice of this Court who could validly exercise powers under Rule 1.8 of the Punjab Civil Services Rules read with the High Court establishment Rules and that the pension at the rate of Rs. 47.64 nP. per mensem and the gratuity at Rs. 1,863/- were correctly fixed and sanctioned in the year 1957. In this view of the matter it has not been disputed by the learned Additional Advocate-General that the subsequent orders which have been impugned and which have the effect of reducing the pension and the gratuity and making a demand from the Petitioner to refund the excess amount alleged to have been received by him are altogether void and illegal. A writ of mandamus shall consequently issue directing the Respondents to treat those orders as wholly void and ineffective.

13. In view of the nature of the points involved, the parties are left to bear their own costs.

I.D. Dua, J.

14. I agree.