
(2011) 02 P&H CK 0186

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 598 of 2010 (O and M)

State of Haryana and Others

APPELLANT

Vs

Mulkh Raj Mehta

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Citation : (2011) 02 P&H CK 0186

Hon'ble Judges : Ritu Bahri, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This appeal has been referred to this Bench for decision on the following two substantial questions of law:

1. Whether as per Rule 4.2-A, the qualification of LL.B., qualify for benefit as contained in Rules 4.2-A of Civil Service Rules, Volume II?

2. Whether the underlying idea of the said enactment is to make one eligible for earning pension, if he is falling short of minimum service, for getting superannuation pension being late entrant only or to provide extra weight age for calculating the pension on account of his special qualification?

2. In order to put the whole controversy in its proper perspective it would first be apposite to notice the facts of the present case. The Plaintiff-Respondent Shri Mullkh Raj Mehta after doing his B. Com in the year 1966 and LL.B. in the year 1968 from the Panjab University, Chandigarh, was enrolled as an Advocate with the Bar Association Sirsa in August 1968. He practiced for over six years as an Advocate up to 17.12.1974 at Sirsa. On 18.12.1974, he joined the service as an Assistant District Attorney at Rohtak. On 30.11.2003, he retired from the post of District Attorney from Hisar on attaining the age of superannuation and started getting pension vide PPO No. 106402/S/HSR. It is conceded fact on record that his service is governed by the Punjab Civil Services Rules (as applicable to Haryana) [for brevity, "the Rules"]. In terms of Rule 4.2-A of the Rules, the Plaintiff-Respondent applied to the Defendant-Appellants for addition of the

period of 4 years and 33 days claiming a part of his total period of practice as an Advocate before joining Government service towards qualifying service for pension. However, the Defendant-Appellants only granted the benefit of 8 months and 4 days vide order dated 3/21.6.2002. Thereafter, he made a representation which was declined by the Director of Prosecution, Haryana, Panchkula vide order dated 5.3.2003/28.4.2003.

3. Feeling aggrieved, the Plaintiff-Respondent filed a suit for declaration, with a prayer for declaring order dated 5.3.2003/28.4.2003 as illegal and further holding that the Plaintiff-Respondent is entitled to count the period of 4 years and 33 days as special addition to his qualifying service towards his pension under Rule 4.2-A. The Plaintiff-Respondent also sought mandatory injunction directing the Defendant-Appellants to re-fix his pension and to pay arrears along with interest at the rate of 18% per annum from the due date till realisation.

4. The Defendant-Appellants contested the suit by raising various objections such as the suit is not maintainable in the present form; it is time barred and that it is bad for want of impleadment of necessary parties. On merits it has been admitted that the service of the Plaintiff-Respondent was governed under Rule 4.2-A of the "Rules". However, it has been denied that the Plaintiff-Respondent is entitled to the benefit of addition of the period of 4 years and 33 days towards qualifying service towards his pension. It has further been asserted that the Plaintiff-Respondent is only entitled for the benefit of 8 months and four days, which has already been granted to him vide order dated 3.6.2002/21.6.2002. They simply denied other averments and prayed for dismissal of the suit. On 9.5.2005, the following issues were framed by the trial Court:

1. Whether order/letter of the Government dated 05.03.2003 conveyed to the Plaintiff vide letter dated 28.04.2003 by Defendant No. 2 whereby the representation of the Plaintiff to count the period of 4 years and 33 days as practicing Advocate towards qualifying service for pension has been rejected, is totally illegal, arbitrary, against civil service rules applicable and as such not binding on the rights of the Plaintiff? OPP

2. Whether the Plaintiff is entitled to count his 4 years and 33 days period as special addition to his qualifying service towards his pension under Rule 4.2-A Civil Service Rules Vol-II? OPP

3. Whether the Plaintiff is entitled to get mandatory injunction for directing the Defendants to re-fix the pension of Plaintiff and to pay arrears accordingly alongwith interest @ 18% per annum? OPP

4. Whether the suit is not maintainable? OPD.

5. Whether the suit is time barred? OPD

6. Whether the suit is bad for want of impleading unnecessary parties? OPD.

7. Relief.

5. The trial Court decreed the suit of the Plaintiff vide judgment and decree dated 11.9.2007. Feeling dissatisfied with the judgment and decree dated 11.9.2007, the Defendant-Appellants preferred an appeal before the learned First Appellate Court. On 2.9.2009, the learned Additional District Judge (Fast Track Court), Hisar, dismissed the said appeal. Still feeling dissatisfied with the aforesaid judgments and decrees passed by both the Courts below, the Defendant-Appellants have preferred the instant Regular Second Appeal.

6. On 9.2.2010, a learned Single Judge of this Court passed an order, relevant part thereof is as under:

The question involved in this case is with regard to Rule 4.2-A of Civil Services Rules Vol-II. This rule provides that a Government employee who retires from a service or post shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty five years or a period of five years, whichever is less. Though not projected in this manner, but the interpretation of this rule may be a question of law whether while acquiring the LL.B degree, the operation of this rule can be put into play. This rule provides that the appointment in such cases is to be on the basis of postgraduate research or specialist qualification or experience in scientific, technological or profession fields is essential. Whether LL.B. would be covered in these conditions would be a substantial question of law.

Notice of motion for 17.3.2010.

7. On 6.5.2010, when the matter came up before the learned Single Judge, learned State counsel placed reliance on the judgment rendered in the case of Man Mohan Singh v. State of Haryana and Anr. 2009 (4) S.C.T. 468 and urged that Rule 4.2-A has been interpreted and it would apply only where some extra time is needed to acquire qualification before entering into the service. While granting time to the learned Counsel for the Plaintiff-Respondent, learned Single Judge stayed execution of the judgment and decree passed by the Courts below.

8. On 31.8.2010, learned State counsel after referring to paras 6 and 7 of the judgment rendered in the case of Man Mohan Singh (supra) before the learned Single Judge contended that since the Plaintiff-Respondent has already rendered more than 29 years of service, which was adequate to qualify for pension and as such he is not entitled to get the benefit of Rule 4.2-A. It was further contended that both the Courts below have committed a grave illegality by allowing the benefit of Rule 4.2-A. On the other hand learned Counsel for the Plaintiff-Respondent submitted that the observations made in para 7 in the case of Man Mohan Singh (supra) cannot be accepted because the underlying idea of enactment of Rule 4.2-A is to get extra year of service for the purpose of pension on account of spending extra time for being qualified for a Government job. It was further contended that any entrant to the service as Additional District

Attorney requires the degree of LL.B besides practice of two years and both the Courts below have rightly decreed the suit of the Plaintiff-Respondent. The learned Single Judge after noticing paras 6 and 7 of the judgment rendered in the case of Man Mohan Singh (supra) passed the reference order dated 31.8.2010 by framing two substantial questions of law, which have been noticed in the opening para of this judgment, by observing as under:

I am of the view that purpose of adding additional service is not only to make one eligible for earning pension if he is short of minimum service for getting the superannuation pension being late entrant, but the purpose of enactment is also to give extra weightage in grant of pension for his specialist qualification, experience in scientific technological or professional field and having been Postgraduate in Research. The specific fields mentioned in Clause I of Rule 4.2-A requires extra time to get the qualification and in those circumstances, additional weightage is given for the grant of pension.

Since this question is of vital importance, so I am of the view that following substantial questions of law should be referred to a larger Bench, for decision:

9. In order to find out answer to both the questions referred to this Bench, it would be imperative to analyse and examine the Rule 4.2-A, which reads as under:

4.2-A A Government employee who retires from a service or post shall be eligible to add to his service qualifying for super-annuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty five years or a period of five years, whichever is less, if the service or post to which the Government employee is appointed is one.

(b) to which candidates of more than twenty-five years of age are normally recruited. Provided that this concession shall not be admissible to a Government employee unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule:

Provided further that this concession shall not be admissible to those who are eligible for counting their past service or super-annuation pension, unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service foregoing the counting of the past service.

10. It is patent from a bare perusal of the Rule that a retiree from Government service is eligible to certain benefits under the Rules. An analysis of the Rule would show three situations when benefits may be availed by a retiree; (1) He can add to his service qualifying for superannuation pension the actual period not exceeding one-fourth of the length of his service; (2) In the alternative, he may

add the actual period by which his age at the time of recruitment exceeded 25 years; and (3) the maximum period can be five years but the addition can be only of the actual period, if it is less than 5 years. However, all the aforesaid situations contemplated by Rule 4.2-A are subject to the condition that the service or post to which retiree has been appointed is one where either post graduate research or specialist qualification, or experience in scientific, technological or professional fields is necessary and to which candidates of more than 25 years of age are normally recruited. The aforesaid benefits are further subject to three provisos. According to 1st proviso, such a retiree shall not have less than 10 years of service. The 2nd proviso further provides that the benefit of the Rule is to be given only if the Recruitment Rule in respect of the service or post has incorporated a specific provision that the service or post is one which carries the benefit of this Rule and 3rd proviso has also clarified that those who are eligible to count their past services of super annuation pension would not be entitled to avail any benefit of this Rule.

RE: QUESTION No. 1

11. The first question is more or less a question of fact because on the true interpretation of the Rules it has to be established on record that the service or post to which a retiree was appointed has been the one for which post graduate research or specialist qualification, or experience in scientific, technological or professional fields is essential. If the Rules applicable for recruitment to the post of Assistant District Attorney on the date when the respondent-Plaintiff was appointed in 1979 answers the requirements of Rule 4.2-A the question posed has to be answered in the affirmative. Those rules are known as the Haryana State Prosecution Legal Service (Group C) Rules, 1979 (for brevity, "the 1979 Rules"). According to Rule 7 read with Appendix "B", a degree of LL.B. with 3 years' practice at the Bar for appointment to the post of Assistant District Attorney is necessary. It appears that the Plaintiff-Respondent would fulfill the conditions of Rule 4.2-A(a) of the Rules because he was appointed to the post for which at that time experience of at least 3 years in the profession of law was prescribed.

12. It is pertinent to notice that Rule 30 of Central Civil Service (Pension) Rule, 1972 (for brevity "the 1972 Rules") is *pari materia* to Rule 4.2-A of the "Rules". In their letter, contents and effect, the Rule 30 is similar and therefore, any judgment concerning the interpretation of 1972 Rules would be fully applicable to cases which come up for consideration under Rule 4.2-A. Accordingly, we find that in the case of Council of Scientific and Industrial Research, New Delhi and another Vs. M.V. Sastry and another, , Hon'ble the Supreme Court declined to grant the benefit of this Rule when the claim was made by a Senior Technical Assistant. The qualification for appointment to the post of Senior Technical Assistant was M. Sc. degree in Chemistry, Physics, Chemical Engineering or any allied field of technology. The rationale of the judgment given by Hon'ble the Supreme Court is that the prescription of M. Sc. degree cannot be considered as post graduate research qualification. The judgment refers to advertisement,

which prescribed the qualification of M. Sc. degree in any of the aforesaid subject and that it also stipulated that such a degree should preferably be by research but it was not essential that a candidate should have a post graduate research qualification. Moreover, claimant in that case simply had a M. Sc. degree in Biology, which could not be regarded as post graduate re-search or specialist qualification. Therefore, the first requirement of Rule 4.2-A would be that the post to which Government employee is appointed shall be the one for which post graduate research is essential or any specialist qualification or experience in scientific technological or professional fields is essential. The aforesaid condition would stand fulfilled in case of appointment to the post of Assistant District Attorney because it requires minimum experience of 3 years of practice in the professional field as an Advocate. The other requirement of the Rule is that it should be a post to which candidates of more than 25 years of age are normally recruited. Again this question has to be answered by looking into facts whether officers were appointed to the post Assistant District Attorney normally after that age. For example if 80% of the officers have succeeded in seeking appointment after the age of 25 years then this condition may be regarded to have been fulfilled. However, one thing is clear that ordinarily a person would qualify the degree of LL.B under the old stream (10+4+3) at the age of 22 years or 23 years. He requires atleast a period of 3 years in practice. In that regard gradation list of Assistant District Attorney appointed and working in the State of Haryana would show that candidates of more than 25 years of age are normally recruited to this type of service. We are extracting below the extracts of gradation list which is Exhibit P-19 on record:

TENTATIVE GRADATION LIST OF Officers of the Group ?B? Service (Deputy Distt. Attorneys & Asstt. Distt. Attorneys) OF THE Prosecution Department, Haryana AS IT STOD ON 15TH SEPTEMBER, 1997

129 Permanent Posts of Assistant District Attorneys in the Scale of Rs. 2000-60-2300-75-2900-EB-100?3500+200/- S.P. S. No. Name Date of birth (a) Date of appointment/ promotion as such (b) Date of confirmation 1 2 3 6 1. Vijay Kumar Verma 2.4.1945 (a) 13.12.71 (b) 1.4.74 2. Trilochanjit Singh 4.6.1941 (a) 1.4.74 (b) 1.4.74 3. Ram Nath Verma 8.10.1944 (a) 1.4.74 (b) 1.4.74 4. Parkash Chand Masta 15.3.1943 (a) 1.4.74 (b) 1.4.74 5. Ronak Ram Gupta 24.2.1945 (a) 1.4.74 (b) 1.4.74 6. Jarnail Singh 5.2.1941 (a) 1.4.74 (b) 1.4.74 7. Dalip Singh 20.3.1948 (a) 1.4.74 (b) 1.4.74 8. Mukat Bihari Jain 16.4.1948 (a) 1.4.74 (b) 1.4.74 9. Ashok Kumar Ahalawat 13.3.1944 (a) 1.4.74 (b) 1.4.74 10. Pran Nath Kathuria 4.6.1943 (a) 1.4.74 (b) 1.4.74 11. Parshotam Dass 21.10.1949 (a) 1.4.74 (b) 1.4.74 12. Mahavir Parshad Verma 23.8.1948 (a) 1.4.74 (b) 1.4.74 13. Ish Kumar 6.1.1940 (a) 1.4.74 (b) 1.4.74 14. T.D. Kheterpal 25.5.1942 (a) 12.11.74 (b) 12.11.74 15. Chander Singh 6.4.1944 (a) 12.11.74 (b) 12.11.74 16. to xx xx xxxx 67. 67 to --- ---- ---- 129 vacant

13. A perusal of the aforesaid table would show that most of the offi cers have been appointed on the post of Assistant District Attorney beyond the age of 25

years and even after attaining the age of 30 years. Thus, the second condition of the Rule is also satisfied and therefore, we answer the first question by concluding that the qualification of LL.B. would qualify for the benefit as contained in Rule 4.2-A of the Rules for the simple reason that the Rules require experience in professional fields as one of the essential condition. However, it is subject to fulfillment of other requirements of the Rule which the learned Single Judge may have to ponder over.

RE: QUESTION No. 2

14. Rule 4.2-A has apparently been framed to benefit those employees who have to spend much more time than the other candidates to become eligible for appointment to post which involved expertise in the field of research, technology and profession. For the sake of illustration, if a person is to become eligible for appointment to the post of Clerk, a graduation degree would be enough. Such a degree could be acquired by the age of 21 years. However, for appointment as Assistant District Attorney, in addition to degree of B.A., a degree of LL.B. would also be necessary. The Rule prescribes professional experience of 3 years for eligibility. Likewise for a Medical or Dental Doctor, the period of studies to acquire expertise is much more than the other disciplines. Therefore, it appears to us that the Rule makes an attempt to level unevenness created on account of requirement of functions of the post at induction level.

15. For the aforesaid view, we seek support from the judgment of Hon'ble the Supreme Court in M.V. Sastry's case (supra), which reads as under:

The Second part of the rule is that it should be a post to which candidates of more than twenty-five years of age are normally recruited. The Appellants have pointed out that the intention under-lying Rule 30(1) is to compensate a government servant for the time taken by him in securing the specialist qualifications or experience which are essential for appointment to the post to which he is appointed. The qualifications and experience which are pre-scribed in the present case do not indicate that they would normally recruited take so much time that any candidate who possesses such qualifications and experience would be normally more than twenty-five years in age. A Master's Degree in one of the general fields of Chemistry, Physics, Chemical Engineering or any allied field with two years' experience need not necessarily push a candidate beyond the age of twenty-five years. Secondly, experience of the type required does not appear to be a mandatory requirement. Only a preference is indicated for candidates who possess the kind of experience which is prescribed. Therefore, both the conditions of Rule 30 are not satisfied by the Respondent.

(emphasis added)

16. In para 8 of the judgment in M.V. Sastry's case (supra), it has been pointed out that the intention underlying Rule 4.2-A is to compensate the Government servant for the time taken by him in securing the specialist qualification or experience, which is essential for appointment to the post to which he is

appointed. Once Hon"ble the Supreme Court has approved the view that the intention of the Rule is to provide extra weightage for calculating the pension on account of special qualification or experience then the answer to the question also has to be in the affirmative, namely, that underlying idea of the Rule is to provide extra weightage for calculating pension on account of his special qualification and/or experience. Therefore, the Second question is also decided in favour of the Plaintiff-Respondent and against the Appellant.

17. The judgment of the learned Single Judge rendered in the case of Man Mohan Singh (supra) does not proceed on correct assumption. There-fore, it is not possible for us to read anything into Rule 4.2-A to conclude that the Rule has been framed to make a retiree eligible for earning pension, if he is falling short of minimum qualifying service, being late entrant. It looks to us that the basic reason for granting benefit under the Rule is extra period of time spent for becoming eligible for a post which requires experience in professional fields as an essential requirement for appointment to the post of Assistant District Attorney after acquiring the degree of LL.B. There is no indication in the Rule which may lead to any inference to the contrary. We find that the judgment of the learned Single Judge is in direct conflict with the observation made by Hon"ble the Supreme Court in M.V. Sastry's case (supra). Ac-accordingly with due deference, we over-rule the view taken by the learned Single Judge in Man Mohan Singh's case (supra).

18. The questions having been answered in the aforesaid manner, the matter be placed before the learned Single Judge for decision of appeal on merit.