

(2014) 08 P&H CK 0183
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1290 of 2014 (OandM)

State of Haryana

APPELLANT

Vs

Inderjit

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Citation : (2014) 4 SCT 562 : (2015) 1 SLJ 327

Hon'ble Judges : Satish Kumar Mittal, J;Arun Palli, J

Bench : Division Bench

Advocate : Hitinder Singh Lalli, Addl. AG, Advocate for the Appellant

Judgement

Arun Palli, J.—This is an intra-court appeal, under Clause X of the Letters Patent, against judgment dated 20.02.2014, rendered by the learned Single Judge, vide which the civil writ petition preferred by the respondents was allowed and the appellant-State was directed to grant the benefits the respondents were held entitled to i.e. additional increment and higher pay scales by taking into account the work-charge service rendered by the respondents before their services were regularized. Learned Single Judge referred to various instructions/schemes that were introduced for the purposes of affording additional increments and higher standard scales to mitigate the effect of stagnation and lack of promotion avenues. It was noticed that initially, the Scheme was introduced vide instructions dated 14.05.1991 for employees belonging to Group "C" and "D" as a welfare measure. The said instructions envisaged provisions for additional increments after 10/20 years of service and also the grant of annual increments even after reaching the maximum pay scale in place of biennial increments. The said scheme was modified pursuant to the Government Instructions dated 07.08.1992, vide which additional increments on completion of 8/18 years regular satisfactory service could be provided instead of 10/20 years service. Subsequently, another scheme i.e. the Higher Standard Scales Scheme was notified on 08.02.1994, which was to come in operation from 01.01.1994. The said Scheme envisaged higher standard scales on completion of 10/20 years

regular satisfactory service. It would be crucial to note here that the claim of the respondents was predicated on the said Scheme. However, vide instructions dated 29.12.1995, it was clarified that ad hoc/work-charge service could not be factored into while calculating the requisite regular satisfactory service for awarding higher standard scales. As a result, respondents were denied the said benefit.

2. Learned Single Judge took cognizance of the fact that the issue, as to whether the period of work-charge service could be counted for the purpose of affording the benefit of additional increments after completion of 8/18 years of service and higher standard scales after completion of 10/20 years service, was determined by this Court and the writ petition preferred by such employees was allowed. It was further noticed that the appellant-State had preferred Special Leave Petition before the Hon"ble Supreme Court. The cases of employees, who were claiming the benefit of work-charge service to be counted for the purpose of granting additional increments and higher standard scales, were disposed of vide order dated 30.10.2000 in case titled State of Haryana v. Ravinder Kumar and others [Appeal Nos. 5740-5741 of 1997] and the same reads as thus:

"These batch of cases were de-linked while hearing another batch of appeals from the same state which were disposed-off by us by judgement dated 19th September, 2000. It is concealed by the learned counsel appearing for the state that in these cases we are concerned with employees who had been engaged initially on work charged basis and later on they were regularized and brought into the cadre of the service. It is also not disputed by the learned counsel appearing for the State that this period, which the employee have rendered on work charged basis, count for the purpose of increments in the cadre as well as the qualifying service for the pension. We, therefore, see no justification in not counting their period for the purpose of giving additional increment on completion of 8 and 18 years of service as well as 10 and 20 years of service for getting higher scale as per the Government circular, which obviously are intended to avoid stagnation in a particular grade."

3. The review petition preferred by the State was dismissed. Another appeal made by the State in SLP No. 4158 of 1998 was dismissed by relying upon the decision in Ravinder Kumar's case (supra). Accordingly, a large number of writ petitions pending in this Court were disposed of in the wake of the decision of the Hon"ble Supreme Court in Ravinder Kumar's (supra). And particularly, while disposing of Civil Writ Petition No. 425 of 2002 titled Ram Karan v. State of Haryana and others, this Court had observed as thus:

"Government being the large employer in this country is expected to maintain certain requisite standard of service administration so as to avoid unnecessary harassment to its employee. Once the matter is settled up to the highest court of the land, the least that is expected from the government is to grant benefit to its employees whether they were parties to the civil appeal before the apex court or not."

4. Pursuant to the directions issued by this Court in Ram Karan's case (supra), office memorandum dated 15.03.2002 was issued by the Government of Haryana, Department of Finance, wherein it was resolved to count the ad hoc and work-charge service towards the benefit of additional increments and higher standard scales. The said instructions are reproduced in the order being assailed and, therefore, we do not deem it necessary to extract the same in our order, except para 7(ii), which reads as thus:

"7. Decision of the Government

(i) xxxxxxxxxxxx

(ii) That the service rendered on work-charged basis followed by regular service which count for the purposes of increments in the cadre as well as qualifying service for pension, the same is to be taken into account for the purpose of calculation of prescribed length of service under the scheme of additional increment on completion of service of 8/18 years service implemented vide Government instructions dated 07-08-1992 and for grant of higher standard scales on completion 10/20 years service under the Scheme of Higher Standard Scales introduced by the Government vide letter dated 08-02-1994 in compliance of the orders of the Hon''ble Supreme Court of India in Ravinder Kumar's case.

Provided that the said benefits may be granted on notional basis on the relevant date(s) but the actual payment of arrears shall be confined to a period of 38 months prior to the issuance of these instructions. However, in cases where the requisite benefit has been granted by the Hon''ble Punjab & Haryana High Court, the payment of arrears be allowed to the petitioners in such cases for a period of 38 months prior to the date of filing of civil writ petitions by them or the date of introduction of relevant scheme whichever is later. Further, in case there are specific directions by the Hon''ble Court in a given case to pay arrears for more than 38 months period, then the payments be made as per specific directions only. Other terms and conditions of the scheme shall remain unchanged."

5. As is made out from the record, the cause of the respondents was sought to be opposed by the State in reference to the decision of the Hon''ble Supreme Court in State of Haryana and others v. Sita Ram and others [Civil Appeal Nos. 5411-5430 of 2009]. And it was sought to be urged that Hon''ble the Supreme Court had settled that the work-charge service as well as ad hoc service could not be counted for affording the benefit of ACP scales for the purpose of granting additional increment after completion of 8/18 years of service and higher standard scales after completion of 10/20 years of service. Reliance was also placed upon the clarificatory instructions issued vide office memorandum dated 27.06.2002 to contend that the benefit of work-charge service could not be counted.

6. Learned Single Judge, on a consideration of the matter in issue and the material on record, concluded that the claim of the respondents was fully covered under the instructions dated 15.03.2002, issued by the Government of

Haryana, Department of Finance, and also by the judgment of Hon''ble the Supreme Court in Ravinder Kumar's case (supra). It was observed that the decision of Hon''ble the Supreme Court in Sita Ram's case (supra) would not have any bearing on the matter in issue, as the question before the Hon''ble Court in the said case was whether the work-charge service could be counted as regular service for the purpose of granting benefit under the Haryana Civil Service (Assured Career Progression) Rules, 1998 [for short, "the 1998 Rules"]. Further in para 17 of the said judgment, it was observed that for granting ACP scales under the 1998 Rules or time bound promotional scales or additional increments, the work-charge or ad hoc service cannot be counted where rules/scheme required that the employee must have rendered regular service for a particular period. It was in this context, the Hon''ble Court while setting aside the Division Bench's judgment, in para 18, had further observed that an error was committed by directing the State to treat work-charge service as part of regular service for the purpose of Rule 5(1) and (2) of the 1998 Rules. Thus, the learned Single Judge held that as the respondents were not claiming any benefit under the 1998 Rules, the said decision would not apply to the facts of the present case. Likewise, even the office memorandum dated 27.06.2002, which was a clarification with regard to counting of work-charge service for the purpose of calculating the prescribed length of service for grant of ACP scales under the provisions of 1998 Rules, would also have no bearing on the matter in hand. Accordingly, writ petition filed by the respondents was allowed.

We have heard learned State counsel and perused the records.

7. Learned Additional Advocate General, Haryana, simply seeks to reiterate the submissions that were advanced before the learned Single Judge and rejected after due consideration. Once again, reliance is sought to be placed upon the decision of the Hon''ble Supreme Court in Sita Ram's case (supra) and the office memorandum dated 27.06.2002, to contend that the work-charge service is not countable for the purpose of calculating the prescribed length of service for claiming additional increment and higher standard scales.

8. To our mind, the argument that is being advanced lacks merit and cannot be countenanced. Evidently, decision of the Hon''ble Supreme Court in Sita Ram's case (supra) and office memorandum dated 27.06.2002 would have no bearing, as the issue involved therein was with regard to granting ACP scales under the 1998 Rules or time bound promotional scales or additional increments. It is in this context, it was observed that work-charge service could not be counted as part of regular service for the purpose of Rule 5(1) and (2) of the 1998 Rules. Thus, in the wake of the decision of the Hon''ble Supreme Court in Ravinder Kumar's case (supra) followed by the decision of this court in Ram Karan's case (supra) and then the office memorandum dated 15.03.2002, issued by none other than the Government of Haryana, Department of Finance, there could hardly be any doubt that the claim of the respondents was squarely covered by the office memorandum dated 15.03.2002 and also by the aforesaid decisions.

Learned State counsel despite being pointedly asked to show as to how the issue in hand was not covered by the aforesaid decisions and instructions, nothing could be shown least substantiated in this regard. Likewise, there is not even a word even in the grounds of appeal to suggest that the decision relied upon by the learned Single Judge do not cover the matter in issue and thus, the judgment being assailed in the present appeal is not sustainable.

9. Ex facie, what surprises us the most is that the position of law being clear and settled, and the State being fully conscious of all the decisions that have been referred to above yet compelled the respondents to approach this Court to pray for the benefits, which in the first instance could have been, rather should have been, afforded by the State itself. Not just that, even after the decision rendered by the learned Single Judge, State chose to prefer the appeal in hand. To our mind, the institution of this appeal completely frustrates the very purpose and objective of Haryana State Litigation Policy, 2010, "to transform Government into an Efficient and Responsible Litigant so that it (a) manages and conducts litigation in a collusive, coordinated and time bound manner (b) Ensures that good cases are won and bad cases not pursued needlessly (c) Reduces overall Govt. Litigation load in Courts thereby providing relief to the judiciary."

10. We may also remind the State of Clause 5.5 and 5.5.1 of its policy, which stipulates: "5.5 Covered Matters

A good number of cases are from the category of similar cases. Each Government Department will aim to consider and settle the claim a representational/applicant employee/citizen, if the claim is found covered by any decision of the Court. Many service matters of this nature, can be disposed of at the level of the department itself without compelling the litigant to come to the Court. In this manner, the government departments would be acting as efficient litigants.

5.5.1 In similar cases, departments shall endeavour to settle the issue as per post-judicial proceedings formed in identical cases by different courts when attained finality to avoid multiplicity of same matters increasing rush of work in different courts."

Most certainly, this was an avoidable litigation by the State. Indeed, it has costed dearly to all the stakeholders i.e. appellants, respondents and even the Court of its judicial time. There is no ground, least plausible in law, to interfere with the judgment that is being assailed in this appeal. The same being bereft of merit is, accordingly, dismissed with costs of Rs. 1,00,000/- to be deposited with the Haryana State Legal Services Authority.