

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 11682 of 2011 (O&M)
Date of Decision: 10.03.2015

Balbir Singh

....Petitioner

Versus

Punjab State Agricultural Marketing Board and another

....Respondents

CORAM:HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Ahluwalia, Advocate for the petitioner.

Mr. H.S. Brar, Advocate for the respondents.

JITENDRA CHAUHAN, J. (ORAL)

The petitioner, a retired Secretary from the Market Committee, Gurdaspur has filed this writ petition for a direction to the respondents to refix and release the arrears of retiral benefits treating himself to have been retired from service w.e.f. 01.01.2006.

Learned counsel for the petitioner contends that the date of birth of the petitioner is 01.01.1948 and thus, his retirement was due on 01.01.2006 on attaining the age of superannuation i.e. 58 years, but he was illegally retired on 31.12.2005 i.e. the last date of the preceding month. He vehemently contended that he was to retire on 01.01.2006 and not on 31.12.2005.

Learned counsel for the respondent contends that the petitioner on completion of 58 years retired on 31.12.2005, therefore, the petitioner is not entitled to the benefit of the recommendations of 6th pay commission which were implemented from 01.01.2006. He further contended that on 01.01.2006, the petitioner was a retiree and no relationship of an employer and employee subsists between the parties.

I have heard learned counsel for the parties and considered the rival contentions of the counsel for the parties.

The date of birth of the petitioner is 01.01.1948. In case, his date of retirement is taken as 01.01.2006, in such an eventuality his age will be 58 years and one day.

Rule 3.26(b) of the Punjab Civil Services Rules Part-I reads as under:-

“3.26(b) *Notwithstanding anything in this rule, a Government employee whose date of birth falls on any day of the month other than the first of that month, shall on attaining the age of superannuation determined in accordance with the provision of clause (a), (b) or © as the case may be, retire on the last day of that month, which will be a working day.*

Explanation:- *A Government employee whose date of birth is the first of the month shall retire on the afternoon of the last day of the preceding month.”*

Thus, the petitioner admittedly on 31.12.2005 has completed 58 years of age.

In **Union of India versus George, (Kerala) (DB) 2003(4)**

Service Cases Today 475, in para 13, it has been held that:-

“What is the position in the present case? Respondents No. 1 and 2 had admittedly drawn full salary for the month of December 1995. They were paid full wages for the last day of the month viz, December 31, 1995. In fact, as well as in law, they were in the service of the Department till the midnight of December 31, 1995. It is only when the clock ticks 12 midnight that the relationship of employer and employee ceases and the status of a pensioner commences. Thus, from January 1, 1996, the two respondents had become pensioners. The date on which the right to claim pension accrues is deemed to be the last working day of the employee. On this basis, the benefit of the circular dated October 27, 1997 was clearly available to the two respondents.”

Explanation attached to Rule 3.26 (b) of the Service Rules (supra) makes it very clear that a Government employee, whose date of birth, is the first of the month, shall retire on the afternoon of the last day of the preceding month. Thus, he was rightly retired on 31.12.2005.

The petitioner continued in service till the midnight of 31.12.2005. It is only from 01.01.2006 that he ceased to be in service and acquired the status of a pensioner. He was also paid salary up to 31.12.2005. If his date of retirement is considered as 01.01.2006, the same would exceed beyond the retirement age i.e. 58 years. Therefore, he is not entitled to the

benefit of 6th pay commission, the recommendation of which was implemented w.e.f. 01.01.2006.

Hence, there is no merit in this petition.

Dismissed.

[JITENDRA CHAUHAN]
JUDGE

10.03.2015
pooja saini

Whether to be referred to the reporter? Yes.