

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 21810 of 2014(O&M)
Date of decision: 01.10.2015

Kaushal Kumar

....Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Mohit Garg, Advocate, for the petitioner.

Mr.A.P.S.Mann, Addl.A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

CM No.5689 of 2015

Application for placing on record the policy dated 19.11.2014 (Annexure P4), is allowed, subject to just exceptions. Said document is taken on record. Office to tag the same at appropriate place.

CWP No.21810 of 2014

Prayer in the present writ petition is for giving the benefit of 2 years' extension of service, in view of the disability the petitioner suffers from on account of being a physically handicapped person. Reliance has been placed upon the judgment of the Apex Court in Civil Appeal No.8855 of 2014 titled *State of Punjab & others Vs. Bhupinder Singh*, decided on 16.09.2014, which arose from the judgment passed by this Court in CWP No.7233 of 2010 titled *Bhupinder Singh Vs. State of Punjab*, decided on 25.05.2011.

The petitioner who was serving as officiating District Junior Sports Officer, was due to retire on 31.10.2014, at the age of 58 years. He submitted a representation dated 23.09.2014 (Annexure P2) for extension of 2 years' of service, on the strength of the judgment of the Apex Court, referred above. The same was forwarded by the Director (Sports), for finalization on 13.10.2014. On account of the matter not being finalized, he was retired from service on 31.10.2014, though he had approached this Court 2 days earlier, i.e., on 28.10.2014.

The State, in its reply, has placed reliance upon the policy dated 19.11.2014 (Annexure P4) wherein a decision has been taken to implement the judgment of the Apex Court. It is submitted that a clarification was sought regarding the implementation of the benefits to be granted. The petitioner had retired earlier and therefore, the instructions did not apply retrospectively.

The said defence is without any basis. As noticed, the law was crystallised by the Apex Court on 16.09.2014, before the date of retirement of the petitioner also. This court had already decided the issue on 25.05.2011 and all the persons suffering from disabilities, were held entitled for the benefit of 2 years extension in service. The Letters Patents Appeal against the said judgment had already been dismissed on 25.09.2012 and therefore, the petitioner was entitled for consideration on the representation that he had submitted. The said issue has already been discussed by a Coordinate Bench of this Court in CWP No.22664 of 2013 titled *Nirvail Singh Vs. State of Punjab & others*, decided on 28.11.2014, wherein it was held that the relevant date would be 25.05.2011. Relevant portion of the judgment read as under:

“The Special Leave Petition carried by the State of Punjab to the Supreme Court questioning the correctness of the orders passed by the learned Single Judge and in letters patent appeal has failed by upholding those orders and dismissing the SLP thereby declaring [but not creating] a right to continuity for the period prescribed. If rights were created for the first time sans statutory law or executive instructions the matter may have taken different shape in respect of arrears of salary for the period the petitioner was denied employment after retirement at 58 years. It can thus be verily said that on 25th May 2011 i.e. the date of pronouncement of judgment, delivered well before the petitioner was retired from service at age 58, rights as declared by this Court and upheld by the Supreme Court came to enure in his favour and would relate back to the date of declaration of status and rights as to legal character. Besides, the right was valuable and based on statute. The petitioner could have easily been continued in service beyond 31st December 2013 and not compelled to await the

outcome of the Special Leave Petition although there was a stay order granted by the Supreme Court in the beginning and till disposal. At that stage, the State could have summoned the petitioner to indemnify the State by undertaking refund of salary earned and service benefits availed meanwhile in case the Supreme Court reversed the decisions of this Court, but that was not to be. This may have been the proper thing to do in the circumstances in order to balance the interests of the State with that of the petitioner who was not a party to the earlier proceedings.

Therefore, I am inclined to lean in favour of the petitioner and to hold that he is entitled to arrears of salary with effect from 31st December 2013 till he rejoins duty to serve out the balance period. Otherwise, crystallized rights will be kept inchoate upon a fortuitous circumstance over which the petitioner could have no control and the State, the full sway. Monetary amends are the panacea of many ills.

It follows that the monetary benefits admissible under this order would be handed over to the petitioner but without any interest within two months from the date of receipt of a certified copy of this order.

The petition is allowed and a writ of mandamus is accordingly issued to the respondents to act as per orders. However, the parties are left to bear their own costs."

In the present case, counsel for the State has pointed out one issue which might stand in the way of the petitioner is that he has already availed all the retiral benefits which were due to him and encashed the same.

Counsel for the petitioner submits that he has instructions that the petitioner shall re-deposit the same with the State, within a period of one month.

Accordingly, it is directed that the petitioner will be allowed to rejoin duties on the deposit of the said amount with the State by 31.10.2015 and serve for the due balance period till he attain the age of 60 years. The amount of pension which he has already taken from 01.11.2014, would be adjusted while paying the back-wages to the petitioner, from the date he retired.

With the above observations, the present writ petition stands disposed of.

01.10.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE