

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

CWP No.3953 of 2013(O&M)

Date of Decision: 24.09.2015

Karnail Singh

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. CS Bagri, Advocate,
for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

1. To be referred to the Reporters or not? .
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The facts, which are not disputed, are that the petitioner was appointed as a Conductor on ad hoc basis in Punjab Roadways in the year 1982. The petitioner had colleagues who were also inducted as conductors when the petitioner was appointed at the same time and place. He was in service when the department took a decision that the post held by the petitioner was rendered surplus. He was retrenched from service but was re-inducted after 3 days. After his reinstatement, the Transport Department of Government, Punjab passed an order granting the petitioner terminal leave for the aforesaid period of 3 days which stood regularized. This gave him continuity of service without break. Even if the order of terminal leave was not passed, the break would have been treated as notional for all intents and purposes being far too brief and occasioned for no fault of the workman as he did not withhold his labour.

It transpires that when the petitioner was retrenched from

service, he approached this Court by way of CWP No.2768 of 1990, where he claimed reinstatement and regularization of service and terms of the then prevalent authority in **State of Haryana Vs. Piara Singh**, 1992 (4) SCC 118 [declared not a good law in **Umadevi-3** case, (2006) 4 SCC 1].

The writ petition was disposed of and a direction was issued to the Punjab Roadways to decide the representation of the petitioner within 6 months and status quo with respect to his services was ordered to be maintained till the decision was taken. In the consideration exercised, the petitioner was successful and was reinstated to service by an order passed by the department. Later his services were confirmed. He was retrenched after being confirmed.

The dispute began when a provisional seniority list of conductors was circulated in the year 2006 where his name was downgraded to the date of confirmation but not to the date of original appointment on ad hoc basis. It may be noted at this juncture that the services of the petitioner were confirmed in 1990 and the retrenchment took place later in the circumstances next following.

Aggrieved by downgrading of his seniority position from the date of confirmation, the petitioner filed a civil suit at Chandigarh bearing No.1607 of 2007 in which he made the following prayers:-

“Suit for declaration that order No.S:A: 3(3)/6587 dated 22.5.2006 passed by defendant No.2 and conveyed by defendant No.3 and the appellate order, passed by defendant no.1 vide Order No. S:A: 3(3)/4209 dated 14.2.2007 vide which the plaintiff was shown as regular

in service w.e.f. 6.4.1990 in the seniority list, is wholly illegal, arbitrary and against the civil rules and the plaintiff is entitled to be regularized and confirmed in service w.e.f. 19.2.1982 as conveyed by the General Manager, Punjab Roadways, Chandigarh, vide order No.22343-63/ECC dated 28.12.1993 in view of the orders passed by the Punjab Government Instructions No.11/4/88-PP (1)/4960 dated 8.4.1991 and further entitled to one increment on completion of 24 years service w.e.f. 18.2.2006 along with arrears and interest thereto.”

The Punjab Roadways contested the suit but the petitioner as a plaintiff failed to avail several opportunities and last opportunity to adduce his evidence. His evidence was closed by order and the suit was dismissed for want of evidence vide decree dated 24.2.2009 passed by the Court of the Civil Judge (Junior Division), Chandigarh. The petitioner did not prefer an appeal and the decree is final. The limited dispute raised in suit was against two orders adverse to him i.e. dated 22.5.2006 and 14.2.2007, where the petitioner's name was shown as a regular employee w.e.f. 6.4.1990. He also claimed benefit of an increment on completion of 24 years of service with effect from 2006 along with arrears and interest thereon.

The next downgrading resultant litigation began with CWP No. 8649 of 2012, which the petitioner filed before this Court praying that the promotional scale on completion of 8 years and 16 years of service in terms of the ACP Scheme w.e.f. 11.1.1993 and 15.10.1999

respectively was denied to him by the impugned order dated 23.4.2012, which had withdrawn financial benefits from the petitioner resulting in recovery of an amount of Rs.64,586/-. The learned Single Judge by applying the law in Full Bench decision in **Budh Ram & ors. v. State of Haryana & ors.**, 2009(3) SCT 333, **Sahib Ram vs. State of Haryana**, 1995(1) SCT 668, and **Chandi Prasad Uniyal & ors. vs. State of Uttarakhand & ors.**, (2012) 8 SCC 417 did not find any merit in the petition and dismissed it on 30.11.2012. The Court held that merely on the plea that there was no fraud or misrepresentation committed by an employee cannot preclude the State Government to recover such excess payment released in his favour on account of bona fide mistake and wrong fixation of salary. The petitioner has not challenged the order dated 30.11.2012 in appeal. The decision is final and *res judicata* between the parties and cannot be re-opened in any proceeding other than in appeal. However, the issue of seniority was not directly agitated in the petition though the period claimed presently may have been the underlying principle but the order cannot be read as foreclosing the rights of the petitioner to challenge the seniority which is an independent cause of action not dealt with by court earlier. The issue of seniority was not the *lis* or the moot point debated before the learned Single Judge and I would not bring back this order as suggested by the learned State counsel that the order passed by this court also foreclosed the claim for seniority prior to the date of confirmation on 6.4.1990. For determining the question of seniority w.e.f. 19.2.1982, the present petition has been filed.

At present, the claim for ante-dated seniority with effect

from the date of initial appointment is based on unfair discrimination. The petitioner has relied on an order dated 4.10.2012, passed by the Secretary, Punjab Government, Department of Transport, which has granted similar relief as claimed by the petitioner to one Pargat Singh, Conductor, who was similarly placed as the petitioner since the beginning. Pargat Singh was also removed from service twice during the years 1984 and 1989 and for periods much longer than the 3 days as in the case of the petitioner. The competent authority has given the benefit of past seniority prior Pargat Singh from the date of confirmation which date in the case of Pargat Singh was 4.9.1996 based on the principle of discrimination since there was previous orders of the Government granting relief in similar cases though they have not been mentioned in the order. However, if grant of ante-dated benefit is lawful and legal then all similarly situated persons should be treated alike and similar benefits should be granted as is the law in **Satbir singh v. State of Haryana & ors.**, 2002(2) SCT 354 (DB) and **State of U.P. v. Arvind Kumar Srivastava**, (2015) 1 SCC 347.

This Court is conscious that normally ad hoc service should not be counted towards seniority but if in a common gradation list if a member of the cadre has been granted the benefit from a commonality of date then it should be given to those placed in similar circumstances to prevent unfair discrimination and flagrant violation of Article 14 of the Constitution of India. I have used the words 'lawful' and 'legal' since it is not the stand of the State that the entry of the petitioner as a Conductor in 1982 was contrary to law, illegal or irregular. In any case, the law had not

been fashioned to its point of refinement as it now, as was in the 1980s and it may not be proper to view what was perceived right by court three decades ago as different today when rights-in-issue relate back to 1982 for declaration today in a changed scenario and the law honed to a fine point and still being sharpened to its utmost clarity by the development of the law in precedents. The State has not been able to dispute that the benefit granted under the order dated 4.10.2012 would not apply on principle to the case of the petitioner. It may be noted that Pargat Singh did not litigate his rights but was granted benefit by the administrator. Therefore, his employment was not litigious in nature as exposed in the authority in **Secretary, State of Karnataka V. Uma Devi**, (2006) 4 SCC 1.

It has also not been argued before me that Pargat Singh's appointment as a Conductor was illegal at the inception and for these reasons, this Court is bound to apply principles of non-discrimination preserved under Article 14 of the Constitution and has in fact a constitutional duty to remove any traces of unfair discrimination and unreasonableness when it peers from the record amenable to certiorari. The petitioner and Pargat Singh have to be put at par and their seniority placed on equal footing by applying the same yardstick as was applied by the administrator in the case of the latter. This is the only way to prevent unfair treatment in the same post, in the same department, in the same set of rules of service, in the same seniority list. What Pargat Singh got without court intervention the petitioner must take by a judicial dispensation so that the petitioner does not go away thinking Article 14 is

meaningless and not meant for him. Article 14 is the soothing balm in the Constitution. It's a tool kit for both the administrator and the court to fix problems with since all men are equal and some are not more equal than others.

In the considered view of this court the petitioner must take relief from 1982 towards seniority for purposes of ACP scales of pay accruing notionally from 1982 but actually after next lot on completion of 16 years in the old scheme at point 24 in case it falls prior to retirement as before that period *res judicata* applies. After re-calculation by ante-dating the due dates at points 8th and 16th by length of satisfactory service counted from 1982 the monetary benefits will however accrue as below directed. The department will be free to examine the service record and the annual confidential reports in terms of the ACP Scheme then prevalent or as modified from time to time.

The petition is, therefore, allowed. Impugned order dated 7.8.2012(Annexure P-2/A) passed by the Secretary, Punjab Government, Transport Department is set aside. The petitioner will be treated equally with Pargat Singh, but the dates would remain *mutatis mutandis*. The recovery order dated 23.4.2012 would remain final and *res judicata* between the parties and is not permitted to be reopened in any proceedings other than in letters patent appeal, in case resorted to, subject to its own merits on which no opinion can be expressed in this order. Since the order in the earlier writ petition was confined to the benefits of the promotional scale on completion of 8 years and 16 years, the recovery shall remain confined to only those two length of service points, but

would the order would not in apply in case a further promotional scale is available on completion of 24 years of service before the petitioner retired. It may be noted that the petitioner has retired from service. The non-monetary benefits, seniority and length of service from 1982 for the purposes of ACP pay scales in this order will remain notional. However, actual monetary benefits as a result of re-fixation will remain restricted to 36 months prior to filing of the petition. The notional pension and pensionary benefits of the petitioner along with monetary benefits as above would be re-fixed in terms of this order notionally in the past with actual benefits flowing from pay re-fixation to three years as above directed. The name of the petitioner will be placed in the seniority list 2006 at the due place by issuing an amended seniority list of conductors and communicating the same to the petitioner for his record. The exercise would be completed within 4 months from the date the certified copy of this order is made available and served on the respondents.

(RAJIV NARAIN RAINA)
JUDGE

24.09.2015
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