

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

CWP-5462-2014

Date of decision: 03.09.2015

Union of India & others

.....Petitioners

versus

Om Parkash & another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Puneet Jindal, Senior Advocate with
Ms. Sakshi, Advocate for petitioners.

Mr. D.R. Sharma, Advocate for respondent No.1.

DARSHAN SINGH J.

The present writ petition has been preferred under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of certiorari, quashing the order dated 23.09.2013 (Annexure P-9) passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (here-in-after called the 'Tribunal'), whereby the learned Tribunal has issued directions to the petitioners to offer the ward of respondent No.1 the post on which

the respondent was working at the time of making the application under the Safety Related Retirement Scheme (hereinafter called the 'Scheme') within a period of three months.

2. Respondent No.1 belonging to Scheduled Caste Category, had served the petitioners as a casual labour/substitute service during the year 1969 to 1970. He was posted as a Driver with the petitioners w.e.f. 16.2.1971. The petitioners introduced the Scheme for the Drivers and Gangmen. Under this scheme, the Drivers and Gangmen in the age group of 50-57 years can take retirement and the wards of such employees opting for retirement, will be considered for appointment. As per this Scheme, the employees who have completed 33 years of service and in the age group of 55-57 years were to be considered in the first round. After that those employees were to be considered who were above 53 years of age and below 55 years of age. The Scheme further provides that the second round cases of employees having less than 33 years of service will be considered with the approval of the Railway Board. The cut off date for the determination of the eligibility of the applicants and their wards under the Scheme was 30th June of the concerned years.

3. Respondent No.1 after having put in 33 years, 04 months and 14 days of service as on 30.06.2004, applied for his retirement under the Scheme and also submitted the application of his ward namely Amit Kumar born on 23.10.1975 and possessing the educational qualification of B.A. Final along with I.T.I. Diploma and knowledge of computer and Diesel Mechanic. The said application was rejected on the ground that

respondent No.1 has rendered the qualifying service less than 33 years. The applicant submitted the representation in the month of July 2007 and declared that he has also rendered the casual labour/substitute service during the year 1969 to 1970 which was not located and considered while considering his qualifying service. The Divisional Railway Manager, Northern Railway, Ferozepur on the request of respondent No.1 issued the letter dated 26.07.2007 for counting the service of 241 days rendered by respondent No.1 as casual labour/substitute service. But the Railway Board had not agreed to consider the request of respondent No.1, he being at the verge of retirement i.e. on 31.03.2008 vide order dated 25.06.2008. Respondent No.1 moved Original Application No.743/PB/2008 (Annexure P-1).

4. The said application of the respondent No.1 was contested by the petitioners primarily on the plea that no record of the casual labour service of respondent No.1 was available with the answering respondents. The qualifying service of respondent No.1 was calculated from the date of the appointment of respondent No.1 i.e. 16.02.1971, which comes to 32 years, 09 months and 19 days. He, later on, produced his casual labour service record for 241 days. His claim was submitted to the higher authorities but the Railway Board did not agree to the proposal regarding appointment of Amit Kumar the ward of respondent No.1, he being at the verge of retirement on 31.03.2008.

5. The Original Application of the respondent No.1 was dismissed by the learned Tribunal vide order dated 31.05.2010.

Respondent No.1 preferred Civil Writ Petition No.19689 of 2011. The said writ petition was allowed and the order dated 31.05.2010 was set aside and the case was remitted to the learned Tribunal for fresh adjudication.

6. The learned Tribunal has passed the impugned order dated 23.09.2013, vide which the Original Application of respondent No.1 was allowed with a direction to the petitioners to offer the appointment to the ward of the applicant for the post for which he was selected, provided the applicant furnishes an undertaking in terms of the observations of the Jurisdictional High court, reproduced in the opening para of this order, that he is willing to deposit the arrears of salary minus the pensionary benefits for the period from the deemed date of voluntary retirement of the applicant in accordance with his application which would have entitled him for the benefits under the SRRS, to the actual date of retirement. The respondents were directed to consider the case of the applicant and his ward in these terms, within a period of 3 months from the date a certified copy of this order is served upon the respondents. Hence, this writ petition.

7. We have heard Mr. Puneet Jindal, learned Senior Advocate assisted by Ms. Sakshi, Advocate, learned counsel for the petitioners, Mr. D.R. Sharma, Advocate, learned counsel for respondent No.1 and have carefully examined the record of the case.

8. Mr. Puneet Jindal, learned Senior Advocate for the petitioners contended that as per the Scheme, the Drivers and Gangmen

in the age group of 50 to 57 years may seek retirement. The employee should have completed 33 years of qualifying service in order to be eligible for seeking the retirement under the Scheme. In case, the application for retirement under the scheme is accepted, the employment to a suitable ward of the employee was to be considered. He contended that in this case, respondent No.1 was himself at fault. He has submitted the application (Annexure A-4) for voluntary retirement from the post of Driver under the Scheme. In the said application, he has mentioned the date of his enrollment as 16.02.1971. After deducting the break from his service, his qualifying service came to 32 years, 09 months and 19 days as on 30.06.2004, which was less than 33 years of requisite service. So, he was not entitled for the benefit of the Scheme and his claim was rejected due to his own fault. Later on, he claimed the benefit of his casual labour service for a period of 241 days and moved the representation only in July 2007 after a period of more than 3 years. His representation was sent to the competent authority but the Railway Board did not agree as the representation was moved at a belated stage and respondent No.1 was going to retire on 31.03.2008 on attaining the age of superannuation i.e. 60 years and he had already crossed the upper age limit of 57 years to claim the benefit under the scheme and had thereby become ineligible to claim retirement and employment to his ward under the scheme. So, his request was rightly declined by the Railway Board.

9. He further contended that respondent No.1 shall not be entitled for any relief due to delay and laches on his part as he had kept

silent for more than 3 years and did not bring to the notice of the authorities about his casual labour service. He himself mentioned the date of his enrollment as 16.02.2008, which was duly considered by the authorities. The representation moved by him was at highly belated stage when he has already crossed the age of 57 years and was going to retire shortly. Thus, he contended that he cannot claim any benefit under the Scheme and the learned Tribunal has erred in allowing his Original Application. To support his contentions, he relied upon *State of J & K & Ors. Vs. Sajad Ahmed Mir AIR 2006 SC 2743*.

10. On the other hand, Mr. D.R. Sharma, learned counsel for respondent No.1 contended that respondent No.1 has rendered more than 33 years of service. The service record was available with the petitioners. They cannot put the blame on respondent No.1 if the wrong date of appointment was mentioned in the application. He contended that the delay has occurred as respondent kept the matter pending for about three years. He further contended that respondent No.1 has moved the representation to count his casual labour service in February 2007, even before the rejection of his claim. Thus, he contended that respondent No.1 was entitled for the benefit of the Scheme as he has moved the application well before the age of 57 years of age and at that time he had rendered more than 33 years of qualifying service. His subsequent retirement will not have any adverse effect on his claim.

11. We have duly considered the aforesaid contentions.

12. There is absolutely no dispute that respondent No.1 had

moved the application (Annexure P-4) for seeking the voluntary retirement and also submitted the application for employment to his son/ward Amit Kumar under the Scheme. In the application, though he has mentioned his date of enrollment as 16.02.1971 but he has also mentioned that he has rendered the service for 34 years, 04 months and 14 days. The benefit under the Scheme has been declined to respondent No.1 simply on the ground that on the cut of date i.e. 30.06.2004, his qualifying service was 32 years, 09 months and 19 days which was less than the requisite service period of 33 years. This has occurred due to the fact that the casual labour service rendered by respondent No.1 during the period from the year 1969 to 1970 was not taken into consideration.

13. Annexure P-6 is the letter dated 26.07.2007 which shows that respondent No.1 has moved the representation dated 07.02.2007 and declared that he has rendered the casual labour/substitute service for the periods from 21.09.1969 to 21.10.1969, 23.10.1969 to 27.11.1969, 29.11.1969 to 21.12.1969 and 14.5.1970 to 12.10.1970, total 241 days. This letter further shows that as per the Rules, half service of such casual labour service can be considered for the propose of benefit under the ACP scheme as well as qualifying service for the pensionary benefits and after counting his casual service, the qualifying service of respondent No.1 was found to be 33 years, 01 month and 19 days. The Divisional Railway Manager, Northern Railway, Ferozepur has requested to the General Manager (P), Northern Railway, New Delhi to approach the competent authority in view of the aforesaid facts for taking the decision

with respect to the retirement of respondent No.1.

14. We do not find any substance in the contentions of learned counsel for the petitioners that respondent No.1 was to be blamed for this lapse. The service record obviously was in the possession of the petitioners. It was for the petitioners to verify the actual service period of respondent No.1. For example, if respondent No.1 would have claimed his qualifying service to be say 35 or 36 years, the question arises as to whether they would have accepted the same simply on the basis of the service period mentioned by him in the application. Obviously, the petitioners would have assessed the claim of respondent No.1 by verifying his service period on the basis of record. So, they cannot shift the fault to respondent No.1. Moreover, while disposing the Civil Writ Petition No.19689 of 2011, the Coordinate Division Bench of this Court has observed as under :-

“We have heard learned counsel for the parties and gone through the records.

There is, indeed, no dispute that the respondents Department is the custodian of record and the petitioner's assertion from the very beginning that he had rendered service of more than 33 years, has been found to be factually correct. The delay in tracing out the old record and in verifying the total service rendered by the petitioner, is solely attributable to the Department only. The petitioner can neither be penalized nor denied the benefit accrued in his favour under the aforesaid Scheme. We are unable to agree with the Tribunal that the respondents are not responsible for the delay as the record being in their custody, they were

obligated to ascertain within a reasonable period whether or not the petitioner had rendered more than 33 years of service at the time when he applied under the Scheme.”

15. So, it was the responsibility of the petitioners to determine the exact and actual period of service of respondent No.1, as the service record was in their custody. This fact is not disputed that after counting the casual labour service of respondent No.1, his qualifying service comes to 33 years, 01 month and 19 days. It is also not disputed that when he has applied for retirement to claim the benefit under the scheme, his age was 56 years, 02 months and 29 days as on 30.06.2004 i.e. below 57 years of age. So, he fulfilled the requisite conditions of the scheme to claim the retirement and employment to his ward.

16. Respondent No.1 cannot be held guilty for the delay and he cannot be non-suited on account of delay and latches. The letter (Annexure A-6) written by the Divisional Railway Manager to the General Manager (P), Northern Railways, New Delhi shows that the application of respondent No.1 was kept pending for about three years and was rejected only on 25.04.2007. Thus, the delay was on the part of the petitioners to decide the claim of respondent No.1. It is further pertinent to mention that respondent No.1 had already moved the representation dated 07.02.2007 for taking into consideration his casual labour service even before rejection of his claim vide letter dated 25.04.2007 but the said representation was not taken into consideration while rejecting his claim. Thus, respondent No.1 cannot be stated to be

guilty of delay and latches. Case *State of J&K & Ors. Vs. Sajad Ahmed Mir* (supra) relied upon by learned counsel for the petitioners is quite distinguishable on facts. In that case, the appointment was sought on compassionate ground. The application for appointment on compassionate ground was filed after four and a half year from the date of death of the father of the applicant. There was further delay of three years in challenging the order rejecting his application in filing the writ petition. After dismissal of the writ petition on ground of delay and latches, the order was challenged before the Division Bench and Division Bench allowed the application for compassionate appointment after 15 years of death of his father. In that factual matrix, the Hon'ble Apex Court held that the applicant was not entitled to appointment on compassionate ground on account of delay and latches. But in the instant case, the facts are otherwise. Here respondent No.1 had applied in accordance with the provisions of the Scheme well in time but it were the petitioners who had kept his application pending for about three years. So, they cannot take the benefit of their own wrong.

17. Mere this fact that respondent No.1 has retired subsequently on 31.03.2008, is also no ground to reject his claim. The said plea was also considered by the Co-ordinate Division Bench while allowing CWP No.19689 of 2011 with the following observations:-

“The Tribunal's observation that the petitioner has meanwhile retired on attaining the age of superannuation, in our considered view, is not an incurable disqualification. In

such like situation, the respondents-department ought to have fixed a deemed date of voluntary retirement of the petitioner with an option to him to deposit the arrears of salary minus the pension, which would have entitled him the benefits under the Scheme. Such a recourse would have balanced the equities between the parties.”

18. The aforesaid observations of the Co-ordinate Division Bench have not been challenged by the petitioners. So, the subsequent retirement of respondent No.1 will be of no legal consequences to decline him the relief to which he was otherwise entitled. Hence, we do not find any legal infirmity in the impugned order dated 23.09.2013 passed by the learned Tribunal.

19. Thus, keeping in view the aforesaid discussion, the present writ petition has no merits and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

03.09.2015
sunil yadav

(DARSHAN SINGH)
JUDGE