

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

**CWP No.8435 of 2014 (O&M)
Date of decision: 06.04.2015.**

Satish Bhanot

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Puneet Kansal, Advocate
for the petitioner.

Mr. Parupkar Singh Ghuman, Addl. A.G., Punjab
for the respondents – State.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of letter dated 05.03.2014 (Annexure P-7), whereby, the claim of the petitioner for grant of pensionary benefits has been rejected. A prayer has also been made for direction to respondents to grant pension and other consequential benefits as has been granted to other similarly situated employees.

The petitioner was appointed as Deputy Advocate General in the office of Advocate General, Punjab on 09.07.1993 in the pay

scale of ₹4500-125-5000-150-5990-200-6100/ 600 special pay and allowances. The appointment of the petitioner was subject to decision of **CWP No.15237 of 1990 titled as 'Mrs. S.K. Bhatia, AAG vs. State of Punjab and others'**. The petitioner continued to work on the said post till 31.03.2004. The post of Deputy Advocate General was upgraded to the post of Senior Deputy Advocate General by the Committee consisting of the then Principal Secretary Home, Additional Secretary Home and Advocate General, Punjab. As per decision of the Committee, the petitioner was re-designated as Senior Deputy Advocate General vide letter dated 31.03.2004 and continued on said post till 27.05.2009. The petitioner attained the age of superannuation on 26.07.2007.

The petitioner made representations for grant of pensionary benefits and other consequential benefits by giving reference of case of Mrs. S.K. Bhatia, Suresh Kumar Sharma, Sushant Maini, Late Sh. Inder Pal Singh Sidhu and Sh. G.S. Cheema. The case of the petitioner was recommended by the Advocate General. It was mentioned that as no service rules were there to govern the posts of AAG, DAG and Sr. DAG and the case of the petitioner could be considered in view of earlier decisions. A legal opinion was also sought before sending the case to State Government. Thereafter, the case was forwarded to Finance Department and was also sent for seeking the legal opinion of Legal Remembrancer. As per opinion given by Legal Remembrancer, the

case of the petitioner was considered at par with case of Smt. S.K. Bhatia and Sh. G.S. Cheema. Ultimately, the case of the petitioner was rejected by Principal Secretary, Home on the ground that in case of other Deputy Advocate Generals, the order was passed as per directions issued by the Court but the same have not been issued in the case of the petitioner.

Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by the decisions of Hon'ble the Supreme Court in **State of Punjab and another vs. S.K. Bhatia and others, Civil Appeal No.5810 of 2000 decided on 17.03.2009 (Annexure P-8)** and **State of Punjab and another vs. Suresh Kumar Sharma, Civil Appeal No.7872 of 2004 decided on 23.09.2010 (Annexure P-9)**. Learned counsel for the petitioner further submits that in various judgments, it has been settled that wherever the rights of the parties have been settled by the judgments of the Courts and the State has taken all the available remedies upto the highest Court, then the judgment must be accepted in its true spirit. Learned counsel for the petitioner also submits that the case of the petitioner is squarely covered by decision of **CWP No.438 of 2002 titled as Satbir Singh and others vs. State of Haryana**. It is also the argument of learned counsel for the petitioner that the action of the respondents in denying pensionary benefits to the petitioner is violative of Article 14 of Constitution of India as no pick and choose policy can be adopted from amongst the similarly situated persons.

The action of the respondents is not only arbitrary but the same is unjust and *mala fide* also.

Learned State counsel has not disputed the submissions raised by learned counsel for the petitioner as well as the decisions passed in case of S.K. Bhatia and other similarly situated persons.

Heard arguments of learned counsel for the petitioner as well as learned State counsel.

The facts of the case are not disputed by learned State counsel. It is also not disputed that the decision passed in case of Smt. S.K. Bhatia and Sh. G.S. Cheema has attained finality. Even while dismissing civil appeal of State of Punjab, the cost of ₹25,000/- was also imposed. Similarly, the order passed in Sh. Sushant Maini's case has also attained finality. The Committee consisting of Chief Secretary, LR and Administrative Secretary has considered and examined the case of the petitioner in view of judgments of Hon'ble the Apex Court, which has attained finality and recommended for taking the same view but despite the recommendation, the case of the petitioner has been declined simply on the ground that no direction was issued by the Court. Hon'ble the Apex Court has held in case of **K.C. Bajaj and other vs. UOI and others, SCC 2014 (3) 777** that the State cannot arbitrarily pick and choose from amongst similarly situated persons, to pursue legal proceedings against some and not to do so consciously against others. Such approach would be ex facie arbitrary, unjust and violative of Article 14 of the Constitution of India.

The relevant paras No.27 and 28 of the judgment are reproduced as under: -

“27. However, the fact of the matter is that the Union of India did challenge the order passed by the Delhi High Court in Dr. K. C. Garg’s case and other connected matters by filing special leave petitions, which were converted into Civil Appeal Nos.1972-1974/2003 and during the pendency of the appeals, a conscious decision was taken by the Government of India not to pursue the appeals and implement the order of the High Court. It is neither the pleaded case of the respondents nor it has been argued before us that the Government of India had taken decision to withdraw the appeals filed in the cases of Dr. K. C. Garg and others because the financial implications were negligible or that the concerned officers were misled in doing so on account of wrong legal advice. At the cost of repetition, we consider it necessary to observe that during the pendency of the appeals, the matter was referred to the Attorney General for his opinion whether the judgment of the High Court is correct and the same should be implemented. The Attorney General examined the matter keeping in view the relevant rules and the policy decisions taken by the Government of India and opined that the judgment of the High Court was correct and should be accepted in preference to the view taken by the Tribunal. The issue was then considered at the highest level of the Government and the Prime Minister

ordered implementation of the High Court's order. Thereafter, the appeals were withdrawn. It is a different thing that the proposal for withdrawal of O.M. dated 29.10.1999 was shelved in view of the judgment in Col. B. J. Akkara's case. In other words, the Government of India had taken a well considered decision not to pursue the appeals filed against the order of the Delhi High Court and implement the same on the premise that the proposition laid down therein was correct.

28. In view of the above discussion, we hold that the ratio of the Digambar's case cannot be invoked to justify the pick and choose methodology adopted by the Union of India in resisting the claim of similarly situated doctors that NPA payable to them shall be taken into consideration for calculating the pension. Such an approach by the Union of India is ex-facie arbitrary, unjust and has resulted in violation of Article 14 of the Constitution."

It is expected that action of State Executive Authority must be subject to rule of law and must be informed by reason. It should also meet the test of Article 14 of the Constitution. In case, the action of the Government fails to satisfy the test of reasonableness, the same would be unreasonable as has been observed by Hon'ble the Supreme Court in **E.P. Royappa vs. State of Tamilnadu, 1974(4) SCC 3, Maneka Gandhi vs. UOI, 1978(1) SCC 248, R.D. Shetty vs. International Airport Authority of India, 1979(3) SCC 489, Kasturi**

Lal Laxmi Reddy vs. State of J&K, 1980(4) SCC 1 and Ajay Hassia vs. Khalid Mujib, 1981(1) SCC 722.

By applying ratio of such judgments in the present case, it is apparent that impugned order has been passed without any application of mind and without mentioning any sufficient reason and as such, the same is unjust, arbitrary and violative of Article 14 of the Constitution of India. The respondents have rejected the claim of the petitioner inspite of the fact that similarly situated persons have already been granted benefits by the State Government.

The observations made by Hon'ble the Supreme Court in **LIC of India vs. Consumer Education and Research Centre, 1995 (5) SCC 482** are relevant, which are reproduced as under: -

“In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest. It is

the exercise of the public power or action hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary unjust and unfair, it should be no answer for the State its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simplicitor, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons.

In view of the facts as mentioned above, the present petition deserves to be allowed. Accordingly, the impugned order (Annexure P-7) is set-aside and respondents are directed to release all pensionary and other benefits within a period of two months from the date of receipt of certified copy of the order.

However, keeping in view the special facts and circumstances of the case, it is appropriate to impose costs of ₹25,000/- upon the State of Punjab, which shall be paid along with the benefits.

Ordered accordingly.

06.04.2015
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(DAYA CHAUDHARY)
JUDGE