

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:27.10.2016

CWP No. 15366 of 1999(O&M)

Naib Singh

... Petitioner

Versus

State of Haryana & anr.

... Respondents

CWP No. 10145 of 1993 (O&M)

Shashi Kala

... Petitioner

Versus

The State of Haryana & ors.

... Respondents

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

Present: Mr. R. Kartikeya, Advocate,
for the petitioner(s).

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

This order disposes of two writ petitions bearing CWPs No.15366 of 1999 and 10145 of 1993, as common questions of law and fact are involved in them which can conveniently be decided by a common order. Facts have been taken from CWP No.10145 of 1999. Before coming to that petition a brief note on CWP 15366 of 1999 would be apposite.

When notice was issued in this case, operation of the impugned order Annex P-7 was stayed vide order dated November 2, 1999. The petitioner Naib Singh retired from service in 2014 and his retiral benefits have been paid accordingly reckoned w.e.f. September 15, 1982 i.e. the initial date of regularization of his services. With the retirement and payment of pension and pensionary dues to the petitioner, nothing survives in this case for adjudication. The file is closed.

Nevertheless, in CWP No.10145 of 1993, the petitioner-Shashi Kala sought parity of treatment with Naib Singh, petitioner in the first petition. Her services were regularized w.e.f November 1, 1986. She claimed that her services ought to be regularized from September 15, 1982. The stand of the department to contradict the prayer is that Naib Singh was granted undue benefit by the Superintendent under mistake of law and fact in sheer violation of the letter dated September 20, 1983 as this case did not fall within the terms and conditions of the said policy instructions. The Superintendent went out of the way gave the benefit to Naib Singh and therefore, it is argued on behalf of the State that another wrong should not be allowed to be committed as it is settled law that a mistake cannot be compounded. Not to correct a mistake is to commit another mistake and therefore, it appears evident that the petitioner-Shashi Kala cannot take the benefit of the date of regularization of Naib Singh as a legitimate point for award of relief and she must rest content with her date of regularization as in 1986. It is equally well settled that an illegality cannot be perpetuated and Court will not act in aid in conferring a benefit not due under the law. However, since the interim order has continued in favour of Naib Singh, the benefit to Naib Singh is declared in *personam* to be applied only to his case but not to others who claim to be similarly situated. Nasib Sing's case should be read restricted to its own facts and relief not to be duplicated. Therefore, CWP No.10145 of 1993 is also rendered infructuous and is disposed of as such by rejection.

Ms. Shruti Goyal argues that if Naib Singh was not entitled to benefit in law then the State may not be in a position to make recovery of money from him, but still the department should be at liberty to refix his pay

and pension on the date of retirement to redetermine terminal benefits to him. Since no action has been initiated in this behalf, this Court expresses no opinion thereon and leaves the department free to take such steps as are available to it in accordance with law against Naib Singh in which case Naib Singh would have the right to fair hearing and fair decision with every right to take all his pleas against the action which might be proposed by the Government, having due regard to the law stated in State of Punjab v. Rafiq Masi, (2014) 8 SCC 883. It will thus be open to Naib Singh to take such pleas as would protect his date of initial regularization including promotions that may be safeguarded by long passage of time as relief came to him by an ad interim order passed years ago and which operates till today, which may be unjust to undo.

With these observations, the file of CWP No.15366 of 1999 is also closed with the limited liberty as above.

(RAJIV NARAIN RAINA)
JUDGE

27.10.2016
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Whether speaking/reasoned *Yes*

Whether reportable *No*