

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

Date of decision: 16.03.2016

CWP No.21217 of 2008 (O&M)

Verinder Pal Sharma

...Petitioner

Vs.

Dr. Jairup Singh, Vice Chancellor, Guru Nanak Dev University, Amritsar &
another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Verinder Pal Sharma – petitioner in person.

Mr. Amrit Paul, Advocate, for the respondents.

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

RAJIV NARAIN RAINA, J.

In this case the ground is covered by many layers of litigation fought in this Court and before the Supreme Court ending in favour of the petitioner. The petitioner's dismissal order was converted to one of compulsory retirement. This Court held that the nature of charges against the petitioner were "more in the nature of differences between the petitioner and the Vice Chancellor (respondent No.1)". These orders were passed on 14.08.2008 (Annex P-5) in CWP No.9357 of 2008 and CWP No.9364 of 2008 when both the petitions filed by the petitioner were disposed of together. Despite the orders of this Court, penalty orders were passed against the petitioner after compulsorily retiring him from service with effect from 27.05.2008. It was ordered that he shall be paid 2/3rd of the pension and gratuity due to him after

imposing a penalty of 1/3rd part of pension and gratuity as per the Civil Services Rules. The impugned office order declares the petitioner shall not be made any payment for the suspension period i.e. with effect from 11.06.2007 to 27.05.2008.

The petitioner has approached this Court in the background of the litigation culminating in his favour with a request that he be restored his pension and gratuity in full and the penalty orders be declared illegal, arbitrary and unjust and passed in gross violation of the order dated 15.09.2008 (Annex P-8) passed by the Supreme Court of India in appeal.

The Division Bench in its order dated 14.08.2008 concluded as follows:

“7. Having regard to the nature of charges which are more in the nature of differences between the petitioner and the Vice Chancellor, the petitioner cannot be denied terminal benefits which have been earned by way of long service. No final order of punishment has been shown in the criminal cases registered against the petitioner or departmental proceedings taken. Nature of such proceedings has also not been shown to be serious. In these circumstances, order of dismissal from service is shockingly disproportionate. In view of law laid down by the Hon’ble Supreme Court in State of U.P. Vs. Jai Karan Singh, (2003) 9 SCC 228, we direct that order of dismissal be converted into order of compulsory retirement.”

The positive direction issued is that terminal benefits which have been earned by way of long service cannot be denied. No final orders were passed either in the criminal case or in the departmental proceedings taken against the petitioner. The nature of such proceedings has also not been shown to be serious in nature. The Bench concluded that the order of dismissal from service was shockingly disproportionate to the cause. The accompanying

petition i.e. CWP No.9364 of 2008 was disposed of on the same day, as no further orders were found fit or were called for in the petition in view of the judgment passed in the connected writ i.e. CWP No.9357 of 2008 which was the main judgment.

The impugned office order dated 18.10.2008 passed after the orders and direction issued by the Division Bench has been defended in para.17 of the written statement by the University which has contested the case citing page 32 of the Calendar, Volume-I (2007) of the Guru Nanak Dev University and Rule 5.32(2)(i) of the Punjab Civil Service Rules, Volume-I. Rule 5.32(2)(i) cited against the petitioner is reproduced below:

“A Government employ compulsorily retired from service by way of penalty may be granted by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than 2/3rd and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.”

The 2/3rd cut in pension and gratuity has been justified on the touchstone of the aforesaid Rule. It is mentioned that two of the charge-sheets have led to the dismissal while one of the remaining four was for having caused financial loss to the University to the extent of approximately Rs.25.5 lakhs. Still further, Statute 33(i)(g) appearing at page 32 of Calendar, Volume-I (2007) of the Guru Nanak Dev University is used against the petitioner to justify that compulsory retirement in the University Statute is a enumerated penalty, which can be inflicted for good and sufficient reason upon an employee of the University.

As Mr. Amrit Paul relies on Statute 33 (i)(g) to submit that compulsory retirement is a punishment, he misses the point that the office

order was passed after the Division Bench had declared in no uncertain terms that the charges were not serious enough to invite dismissal, which punishment inflicted was shockingly disproportionate to the alleged misconduct. The University did not rely on the office order in its litigation before the Supreme Court in which order was passed subsequent thereto. Besides, if the operating reason for passing the impugned office order (Annex P-13) was to recover financial loss caused by the petitioner, then Mr. Paul is hard pressed to explain a certificate issued by the Registrar, Guru Nanak Dev University, Amritsar dated 04.05.2010 (Annex A-2) issued to whom it may concern, whereby the University declared as follows:

“TO WHOM IT MAY CONCERN

This is to certify that Sh. Verinder Pall Sharma S/o Late Sh. Ganda Ram, Ex-Finance & Development Officer has been compulsory retired from the service of this University on 27.05.2008. No departmental enquiry is pending against him and nothing is due against him. His other service particulars are as under:

1. Name : Sh. Verinder Pall Sharma
2. Father's Name : Late Sh. Ganda Ram
3. Date of Birth : 13.11.1948
4. Date of joining : 01.10.1971
of this University
5. Date of : 27.05.2008
Compulsory retirement”

Still further, the petitioner relies on a decision of this Court delivered in CWP No.9137 of 2015 titled ‘Des Raj Bhagat Vs. State of Punjab & others’ on 27.01.2016 to contend that where no punishment orders have been inflicted in departmental proceedings, then withholding of pensionary benefits and gratuity from the date of superannuation would be neither fair nor proper.

If no departmental inquiry is pending, as certified in letter/2010 (supra) against the petitioner, then I have no conceivable or earthly reason to uphold the impugned office order and allow the infliction on the petitioner a cut in pension and gratuity imposed without inquiries or concluding them before retirement harshly visiting the petitioner with the extreme punishment of dismissal, which orders of dismissal have been set aside and converted to compulsory retirement. Therefore, the Syndicate was not right in approving the action taken against the petitioner, which was mostly the result of the petitioner holding lastly the assignment of Finance and Development Officer of the University. The action appears vindictive resulting from differences between the Vice Chancellor and the petitioner and they not seen each other in the eye for reasons outlined in the petition and not specifically rebutted by the Ex. Vice Chancellor in writing.

In the present case, dismissal has been converted to compulsory retirement and compulsory retirement was not inflicted by way of punishment to support the office order passed subsequent to pronouncement of the judgment.

Having heard the petitioner and the learned counsel for the respondents at length, I fail to see how Rule 5.32(2)(i) or Statute 33(i)(g) appearing at page 32 of Calendar, Volume-I (2007) of the Guru Nanak Dev University can be used against the petitioner in the presence of Court directions which take primacy.

As a result of the foregoing discussion, I find sufficient merit in this petition for its acceptance. The writ petition is allowed. The impugned orders dated 08.10.2008 (Annex P-13); 11.11.2008 (Annex P-16) & 11.11.2008 (Annex P-18) are set aside. The petitioner is held entitled to full

pension and gratuity and all other dues that are protected as his right to moveable property under Article 300-A of our Constitution. The petitioner would take interest on the pending dues at the rate of 12% per annum from the date the order of compulsory retirement was passed till realization, which the University is free to recover from the first respondent and all those who were responsible for withholding the amounts illegally, arbitrarily and unconstitutionally.

16.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE