

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

**RA-CW-63-2016 in/and
CWP No.20492 of 2015
Decided on :29.07.2016**

Lal Chand

... Petitioner

Versus

The Punjab State Cooperative Supply & Marketing Federation Ltd. and
others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Amit Sharma, Advocate
for the applicant-petitioner.

Mr. Aseem Rai, Advocate
for respondents No.1 and 2.

Mr. Inder Pal Goyat, Addl. AG, Punjab
for respondent No.3.

G.S. Sandhawalia, J. (Oral)

RA-CW-63-2016

The review application has been filed against the judgment dated 12.02.2016, on the ground that the present case was decided alongwith other two matters. There was a difference to the extent that in the case of the petitioner his appeal was accepted vide order dated 31.08.2015 (Annexure P-9). It is, accordingly, submitted that on that account alone the petitioner was entitled for review of the judgment, since in the other two cases, though the appeal had been allowed, but the petitioners in those cases have brought down by two stages. As per Rule 6-B (ii) of the Punjab State Cooperative Supply and Marketing Federation Employees (Punishment & Appeal) Rules, 1990, the same would still be a major penalty. Resultantly, it had been held that the request for extension

was justified and the writ petitions had been accordingly dismissed.

The factual aspect being different in the present case, resultantly, the said judgment necessarily requires to be reviewed. Accordingly, the present review application is allowed. In the case of the petitioner the judgment dated 12.02.2016 is recalled.

Main Case

With the consent of the counsel for the parties, the main writ petition is taken up for hearing today itself.

The petitioner challenges the order dated 11.09.2015 (Annexure P-10) issued by respondent No.2, whereby the petitioner's prayer for reconsideration as directed by the Division Bench in CWP No.10911 of 2015 has been rejected. The ground for rejection by respondent No.2 is that since a major penalty had been imposed against the petitioner at the time when the extension order was issued on 27.02.2015, the withdrawal of extension could not be reconsidered on his exoneration subsequently.

A perusal of the paper-book would go on to show that the petitioner was Assistant Accounts Officer and his retirement was due w.e.f. 28.02.2015 on attaining the age of superannuation. He, accordingly, applied for extension of service in view of the Punjab Government letter dated 27.02.2013 (Annexure P-3) and was granted the necessary extension from 01.03.2015 to 29.02.2016, vide order dated 27.02.2015 (Annexure P-5). However, in view of the Government

instructions dated 30.04.2015 (Annexure P-7) and on account of a major penalty having been imposed against him on 27.02.2015, his extension was withdrawn vide order dated 28.05.2015 (Annexure P-8/A) and he was retired w.e.f. 31.05.2015 (A.F.).

Before passing the impugned order, the respondents had served notice, as they were seeking to review his case in pursuance of the instruction dated 30.04.2015 (Annexure P-7). Resultantly, the petitioner had filed CWP No.10911 of 2015 challenging the instructions dated 30.04.2015. The Division Bench dismissed the writ petition by rejecting the argument that the instructions were not retrospective as such and the extension in service was only a incentive, reward or encouragement. The employees having clean slate record and those who were subjected to major disciplinary action, constituted two separate and distinct classes. Therefore, the vice of discrimination could not be read into the instructions. However, while disposing of the writ petition, the petitioner had pointed out that his appeal was still pending consideration against the order of major penalty and he was entitled to seek extension, if the punishment order was set aside. Resultantly, the petitioner was given the benefit of a direction that the appeal should be decided and his case would be considered for extension of service within two weeks in case of exoneration subject to other eligibility conditions. The relevant part of the order of the Division Bench reads as under:-

“(10) Faced with this, learned counsel points out and rightly so that against the punishment order dated 25.02.2015, the

petitioner has filed departmental appeal(s) which is still pending consideration before the Board of Directors/Chairman. He submits that if the petitioner's appeal is allowed and the punishment order is set aside in that event, he is entitled to seek extension of service.

(11) There appears to be substance in the petitioner's contention. Needless to say that if the very basis of denying extension in service disappears, the petitioner's claim for such benefit would require re-consideration at the hands of the competent authority. We thus dispose of this writ petition, without expressing any views on merit, with a direction to the Board of Directors/Managing Director of Markfed to decide the appeal(s) filed by the petitioner(s) at the earliest but in all circumstances before 31.08.2015. In the event of exoneration, the case of the petitioner(s) for extension of service would be considered within two weeks subject to other eligibility conditions."

In spite of the abovesaid order, the respondent No.2 rejected the representation on the ground that as per Clause-4 of the instructions dated 30.04.2015, persons who had not been allowed extension could not be given the benefit on account of their exoneration, since public interest was involved and the extension was neither necessary nor expedient.

The issue thus arises is that whether respondent No.2 was justified in taking such a stance as per Clause-4 of the instructions dated 30.04.2015, in view of the above direction issued in the case of the petitioner in his favour.

A perusal of the said clause would go on to show that the set of employees who had not been granted the extension were not liable to be granted benefit only on account of the fact that the appeal was allowed

and they had been exonerated on the allegation. However, peculiar facts of the present case would go on to show that he had approached this Court by filing CWP No.10911 of 2015, though his challenge to the instructions was rejected, but a window was kept open by the Division Bench that in case his appeal is decided in his favour and the very basis of denying extension in service would disappear, his case would require consideration. This consideration, thus, has been denied on a different ground altogether by falling back on Clause-4 of the instructions dated 30.04.2015.

In the opinion of this Court, once a specific direction had been issued by the Division Bench in the case of the petitioner himself and the benefit had been granted to him. The same was never got modified by the respondent-Board, thus, it would not lie for the respondent No.2 to sit in the appeal over the direction of favourable consideration, wherein a finding was recorded that once the appeal is decided in favour by the competent authority, the petitioner would have a right for consideration. The consideration would obviously mean a positive consideration, once the punishment order was no longer in operation.

Thus, keeping in view the peculiar facts and circumstances of the present case, this Court is of the opinion that the order dated 11.09.2015 (Annexure P-10) cannot be sustained, since as a matter of fact it runs contrary to the order of the Division Bench. Accordingly, the

same is quashed and the petitioner's prayer for extension in service with all consequential benefits, which he has also prayed is, thus, allowed, specially keeping in view the fact a specific averment has been made by the petitioner in CM No.1338-CWP-2016 that after May, 2015 the retiral benefits have not been paid to him.

Accordingly, a direction is issued to the respondent No.2 to reconsider the case of the petitioner for his second extension, which he would, thus, be entitled as per the instructions upto the age of the 60. The petitioner is, accordingly, given liberty to file an appropriate application, which would be acted upon immediately within a period of two weeks from the receipt of the same.

With the abovesaid observations, the present writ petition stands allowed.

JULY 29, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No