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

CWP No.20631 of 2015

Pawan Kumar

... Petitioner

Versus

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

... Respondents

(2)

CWP No.20306 of 2015

Malkiat Singh

... Petitioner

Versus

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

... Respondents

(3)

CWP No.20492 of 2015

Lal Chand

... Petitioner

Versus

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

... Respondents

**Reserved on: 02.02.2016
Decided on : 12.02.2016**

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

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

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

Mr. Avinit Avasthi, AAG, Punjab.

G.S. Sandhawalia , J.

The present judgment shall dispose of three writ petitions i.e. ***CWP Nos. 20631, 20306 and 20492 of 2015.*** The facts are being taken from ***CWP No.20631 of 2015.***

The petitioner challenges the order dated 10/11.09.2015 (Annexure P-10) passed by respondent No.2, whereby the petitioner's request for extension in service has been rejected, in spite of the fact that his appeal had been allowed against the major penalty imposed.

The respondent No.2 has passed the order by placing reliance upon Clause-4 of the Government Instructions dated 30.04.2015 (Annexure P6) holding that the earlier decision cannot be reviewed and in view of the fact that reduction in time scale continued to be a major penalty, as per para 6-B(ii) of the Punjab State Cooperative Supply and Marketing Federation Employees (Punishment & Appeal) Rules, 1990 (for short, the '1990 Rules').

The petitioner who was appointed as a Field Officer in the year 1986, was charge-sheeted in the year 2005, on account of certain shortages for the year crop year 1999-2000. On the verge of his superannuation, which was to be on 31.01.2015, he was imposed a major penalty by passing an order dated 25.01.2015, bringing him down in his time scale of pay. In view of the Government Instructions dated 08.10.2012 (Annexure P-2), his request for extension in service was granted vide order dated 29.01.2015 (Annexure P-4), till

31.01.2016.

In the meantime, fresh instructions were issued on 30.04.2015 (P-6), wherein the earlier instructions dated 30.10.2014, 22.02.2012 and 07.01.2015 were superseded. Similarly, Clause-7 of the letter dated 22.01.2013 was also withdrawn and a decision was taken that where a decision was taken to issue charge-sheet or charge-sheet has been issued or major punishment has been given under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, the effect of which has been continuing during retirement or major penalty have been given three years prior to the date of retirement, the employees would not be considered for extension. Resultantly, order dated 28.05.2015 (Annexure P-8) was passed, whereby in view of the major penalty inflicted upon him, he was retired w.e.f. 31.01.2015.

The petitioner approached this Court challenging the vires of the instructions in ***CWP No.10924 of 2015***, which was heard alongwith ***CWP No.10911 of 2015 titled as 'Lal Chand Vs. State of Punjab and others',*** decided on 06.07.2015. The vires were, accordingly, upheld by the Division Bench of this Court by holding that instructions are not arbitrary. But the alternative plea of the petitioner was accepted that since, he had filed a appeal against the major punishment imposed, therefore, his case should be reconsidered, in case the appeal was allowed and the punishment order was set aside. The relevant part of the order reads as under:-

"(6) We have heard learned counsel for the petitioner in support of the core issue, namely, that the instructions are liable to be struck down being arbitrary, having been introduced retrospectively and also being in conflict with Articles 14 & 16 of the Constitution.

(7) In our considered view none of these evils can be attributed to the subject Instructions. The Instructions have not been applied retrospectively as the benefits drawn by an employee on the extension in service have not been withdrawn. The new set of instructions have been applied with immediate effect and are indeed prospective in nature.

(8) Since extension in service beyond the age of retirement is a sort of incentive, reward or encouragement, it cannot be said that the instructions are arbitrary in nature merely because an official with chequered service record is denied such benefits.

(9) Similarly, the employees having clean slate record on one hand and those who are subjected to major disciplinary action, constitute to two separate and distinct classes, therefore, the vice of discrimination cannot be read into the instructions.

(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 view of the directions, the petitioner's appeal was also, accordingly, heard on 14.07.2015 and the punishment order was modified to the extent that he was brought down by two stages in his time scale of pay and it was to be without cumulative effect and the recovery also of 50% of ₹ 52,22,339 was set aside. Resultantly, the impugned order has been passed by placing reliance upon the instructions dated 30.04.2015 that the extension has to be in public interest and that the orders earlier passed are not to be reconsidered.

Counsel for the petitioner has vehemently argued that Clause-4 of the Instructions dated 30.04.2015 pertains to cases where extensions have not been allowed and, therefore, in such cases on account of appeals or proceedings ending in favour of the employees, the issue is not to be re-opened. But in the present case, the petitioner had already been granted the benefit of extension and it was withdrawn on account of the fresh instructions dated 30.04.2015 and in view of the order of the Division Bench, the impugned order was not justified. The effect of the appellate order meant that there was no major punishment imposed and, therefore, the petitioner was entitled for the benefit of extension in service.

Counsel for the respondent-Markfed on the other hand submitted that the Clause-3 and 4 were to be read together once review was being done, where major punishment had been imposed and the matter could not be re-opened only because the appeal had been decided in favour of the employee. Relevant portion of the instructions read as under:

> "2. The officers/employees of the Government of Punjab regarding whose extension in the age of retirement, instructions were issued bearing memo No.22/2/2012-F.P.2/43 dated 23.01.2013 wherein clause 7 thereof is withdrawn and it has been decided that those Govt. Officers/employees against whom departmental proceedings under Rule 8 is pending under Punjab Civil Services (Punishment & Appeal Rules), or decision to charge sheet has been taken or the charge sheet has been issued or major penalty has been inflicted whose effect is going on at the time of retirement or major penalty has been inflicted three years before the date of retirement or sanction for prosecution in criminal case/vigilance case has been given or the concerned Court has framed charges (charges have been framed by the court of competent jurisdiction). They will not be considered for extension in service in terms of the Finance Department instruction memo No.22/2/2012-3FP.2/475 dated 08.10.2012 and 22/2/2012-3FP2/471 dated 20.09.2013."

The observations of the Division Bench have already been noticed above, that employees having a clean slate record and those who were submitted to major disciplinary action, constitute two separate and distinct classes and extension in service is a sort of incentive, reward and encouragement. The instructions and the judgment, both lay stress on the major penalty which is to be imposed. In the present case, while passing the impugned order, it has been specifically noticed and which fact has not been addressed by counsel for the petitioners is that though the appeal stood allowed and the cumulative effect of the punishment had been set aside but the fact remains that the employee who is serving had been levied the penalty of reduction by two stages in his time-scale of pay, without cumulative effect. As per Rule 6-B of the 1990 Rules, the reduction to low time-scale of pay would be a major penalty and there would be ordinarily a bar on promotion. Relevant rule reads as under:

> "6. Notwithstanding anything contained in any other regulation and without prejudice to such action to which an employee becomes liable under any other law or regulation for the time being in force any and all of following penalties may, for good and sufficient reason, be imposed on any member of service(s).
>
> A) Minor penalties:-
>
> ......
>
> B) Major penalties:-
>
> (i) ......
>
> (ii) Reduction to lower time-scale of pay, grade, post of service, which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the employee reduced and his seniority and pay on such restoration to that grade or post."

Thus, from the reading of the above rule, it would be clear that as per instructions dated 30.04.2015, once a major penalty has been imposed and continues, as such in force on the date of the retirement, the employee is not liable to be given extension. The appellate order dated 06.10.2015 even if it relates back to 25.01.2015, which was the date of the initial punishment, would, thus, mean that on the date of retirement, the employee was suffering from a disqualification, as per the instructions.

In such circumstances, this Court is of the opinion that it need not go into the issue as to whether the matter could be re-examined, as per Clause 4, which the authorities have declined to do so, in view of the fact that even if the said benefit is to be given, after re-examination also, the major penalty under the 1990 Rules still continues being in force.

The issue of right of extension has already been considered in the cases of Government employees, in CWP-3847-2015 titled *Iqbal Mohammad Vs. State of Punjab & others,* decided on 24.04.2015 and CWP-3826-2015 titled *Romesh Garg Vs. State of Punjab & others,* of even date, wherein it has been held that extension in service is a mere concession and the same can be unilaterally withdrawn regarding employees who are facing disciplinary action for major penalty. The said view was upheld by the Division Bench in LPA-776-2015 titled *Ashok Arora Vs. State of Punjab & others,* decided on 20.05.2015, by holding that the view taken by the Learned Single Judge was correct statement of law and no elaborate discussion was required. Another Division Bench had in CWP-11994-2013 titled *Lal Chand Goyal Vs. Punjab State Agricultural Marketing Board & others,* decided on 10.02.2014, also held in the same terms that there is no legal right vested in an employee to seek extension in service.

Accordingly, finding no merit in the present writ petitions, the same are, hereby, dismissed.

(G.S. SANDHAWALIA)
JUDGE

FEBRUARY 12th, 2016
sailesh