IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23862 of 2014
Date of Decision: 29.02.2016

Shashi Bhushan Nagpal ... Petitioner

Versus

State of Punjab and others ... Respondents

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

Present: Petitioner in person.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J.

1. The challenge in this petition is to the order dated March 20, 2014 (Annex P-34) whereby the claim of the petitioner for protection and re-fixation of pay was rejected by the District Treasury Officer (DTO), Sangrur. The petitioner prays that the order be quashed and a direction be issued to the respondents to protect his pay. The claim and its rejection is to be considered in the light of relevant facts narrated next.

2. The petitioner started his career in Central Government service on appointment as an Upper Division Clerk/Auditor in the office of the Accountant General, Punjab at Shimla in 1970. While he was in service he applied for the post of Assistant Treasury Officer (ATO) advertised by the Punjab Public Service Commission, Patiala, the recruitment process of which was spread over 1977-78. His name was recommended by the Commission and he joined service under offer letter dated May 19, 1978 in

the pay-scale of Rs.300-25-600. The letter of appointment stipulated that he will be on probation for a period of two years and his services will be governed by the Punjab Treasury Establishment Subordinate Services (Class-III) Rules, 1962. He accepted the terms and joined service on June 01, 1978. It was not a stipulation in the appointment letter that his pay on the previous post will be protected. Even the petitioner did not request such a condition to govern his service at the time of joining under the State Government that his pay may be protected, drawn from the office of the Accountant General Punjab at Shimla under the Central Government. The appointment was against direct quota post. He was not appointed by way of transfer from Central Government to State Government service. No request was made by the State Government to the Central Government to fill direct recruitment posts by way of transfer of an incumbent already in Central Government service.

3. On completion of probation period and on passing the departmental examination prescribed in the rules for confirmation, the petitioner for the first time requested pay protection claiming that his pay be fixed at Rs.500/- as per his entitlement in the pay scale Rs.300-25-600 (Central Pay Scale). The petitioner in his list of events says he resigned from service of the Punjab Government on April 18, 1994 and took to the profession of law. However, before he retired from service the revised master pay scale was notified on December 24, 1992 but he missed out on giving an option for the revised scale and left service of the Punjab Government. While practicing as a Lawyer, the petitioner staked his claim for rationalized pension for those pensioners who retired before January 01,

1996. The petitioner applied for the arrears but the department declined the claim holding that he was not a retired employee but a person who took voluntarily retirement on April 17, 1994. The petitioner did not call in question the rejection of the plea in a court of law.

4. The next milestone on which the petitioner wants to take advantage was a policy which came in force on November 15, 2000 granting pay protection to those who joined service in open/transfer selection wherein pending cases up to December 15, 1998 were also to be decided in view of the policy at Annex P-17. This request for pay protection was also rejected.

5. The petitioner builds his case for relief of pay protection from Central to State Government service in the following manner:-

He argues in person that he cannot be treated as a direct recruit but by way of transfer. He bases his claim on an endorsement beneath letter of appointment to the post of Assistant Treasury Officer dated May 19, 1978 (Annex P-2) which forwards a copy of the appointment letter to the Senior Deputy Accountant General (Administration), Punjab, Chandigarh (Central Government office) with a request that the official may kindly be relieved to enable him to join duty as ATO within the time allowed. It is inferred from this that the Punjab Government asked his previous office in Central Government to relieve him and, therefore, the appointment is by way of transfer. The argument is misconceived and is to be noticed and rejected. There can be no doubt that the petitioner applied in direct recruitment to Punjab Government service through a public advertisement to fill advertised vacancies of ATOs in direct quota based on the recommendations of the Commission. The appointment is thus a fresh appointment made for the first time under the Punjab Government and the endorsement relied upon is only an enabling request to the previous office to relieve the petitioner to join as ATO within the prescribed period. The case for pay protection is again falsified by the letter dated May 31, 1978 issued in the office of the Accountant General, Punjab, Chandigarh informing Punjab Government that he has been relieved from duty w.e.f. May 31, 1978 AN to enable him to join the Treasury Office, Hoshiarpur, his place of posting. There is a vital revelation in this letter to the effect that while in Central Government service the petitioner was a quasi-permanent Auditor. To wit the contents of the letter deserve to be reproduced:-

> *"Consequent upon his appointment as Asstt. Treasury Officer in the office of the Treasury Office, Hoshiarpur, Shri Shashi Bhushan Nagpal, a quasi-permanent auditor (Date of appointment 27.4.70) of this office has been relieved of his duties w.e.f. 31.5.78 (A.N.) to enable him to join in the above office.*
>
> *Shri Nagpal should either revert within a period of two years or be should resign Leave salary and pension contribution would be paid either by the Punjab Government or by Shri Nagpal himself as mutually agreed upon."*

6. Para.2 of this letter clearly indicates that leave salary and pension contribution would be paid either by the Punjab Government or by Sh. Nagpal himself as mutually agreed upon. This also removes the foundation of the argument that he came by transfer.

7. The second argument raised by Mr. Nagpal is that the letter dated May 31, 1978 (supra) records that on leaving he should either revert within a period of two years or he should resign. This condition has to be read corresponding to right of lien in the fresh appointment. It protects the

petitioner to the extent in case the probation period is not cleared he would still have the right to revert as a quasi-permanent Auditor in Central Government service. It is a well recognized principle of service jurisprudence that a Government servant cannot be left without a lien. The lien ends either on appointment to the post or to the higher post on confirmation or substantive promotion. We are not concerned with promotion in this case but only direct recruitment. It is not the case that the petitioner did not clear his probationary period or was reverted. He continued in Punjab Government service till he tendered his request for premature retirement which was accepted in 1994. On confirmation or deemed confirmation the case may well be that the lien of his previous post in Central Government service snapped severing his links with the office of the Accountant General, Punjab a Central Government office forever.

8. His third argument is built on Rule 2 (c) of 1962 Rules which define the meaning of direct appointment. The provision reads as follows:-

> *"Rule 2 (c) Direct appointment means an appointment made otherwise than by promotion within cadre of the same service or by transfer of an official already in the service of a State Govt. or of the Union."*

9. The rules may permit appointment by way of transfer of an official already in the service of State Government or of the Union as falling within the meaning of direct recruitment but on the facts of the present case such an occasion never arose. The petitioner was not appointed by transfer as it evident from the letter of appointment. The petitioner remains a direct recruit, appointed otherwise than by promotion within the cadre of the same service. Rule 9 (1) prescribes that members of the service recruited by direct

appointment shall remain on probation for two years and those recruited otherwise for a period of one year. Rule 9 (3) lays down that on completion of the period of probation of any member of the service the appointing authority may confirm his appointment, if permanent vacancy exists.

10. The fourth argument is built on proviso to Rule 11 Note (2) which reads as follows:-

> *"Rule 11* ***Note****:- Rule was amended on 14.06.1996 by notification. As per notification pay of member of the service.*
>
> *(2) Members of the service recruited in the manner prescribed in sub rule (ii) of clause (a) of Sub rule (I) of rule 7 shall draw the minimum of the time scale of pay during the period of their training and probation.*
>
> *Provided ******
>
> ***Provided further that where a person, who is already in Govt. service is recruited to the service by direct appointment, he may be granted in accordance with the provision of Punjab Civil Service Rules a pay higher pay than that admissible under this sub rule****."*

11. From the proviso, it is argued that expression "Government service" refers also to service of the Union/Central Government and, therefore, the petitioner is entitled to protection of higher pay from the previous service than the pay admissible under the sub rule. I am not enamoured by the argument and would reject it as untenable since the expression "Government service" in the rule means only the Punjab Government service and not service of the Union. In any case, as per the showing of the petitioner at page 6 of the paper book Rule 11 was amended on June 14, 1996 while the petitioner took premature retirement on April 17, 1994. An amendment to the rules of service was notified on June 14, 1996.

12. The fifth argument is built on Rule 4.4 of the Punjab Civil Service Rules, Volume 1 Part 1 relating to protection of pay as provided by the second proviso to amended Rule 11 (2). Rule 4.4 (b) clearly refers to Government employee which means an employee of the State Government transferred from one department to the other under the State Government. Therefore, this argument also does not hold water. The petitioner has not even pleaded in the petition that while in service of the Central Government he applied through proper channel an issue raised by the learned counsel for the State. The relieving order Annex P-3 dated May 31, 1978 at page 37 of the paper book has to be read in isolation as only enabling the petitioner to embark on a career with the Government of Punjab in the department of Treasuries and Accounts. It is not open to be disputed that the petitioner was a quasi-permanent Auditor and was not in service pension scheme but on contributory pension fund scheme which makes the vital difference that he did not come from pensionable job to another pensionable job.

13. Moreover, it is the categorical stand of the State in the written statement that the instructions dated November 15, 2000 (Annex P-17) for protection of pay are applicable to employees of the State Government and not those employees, who earlier worked in the office of the Accountant General Punjab, Shimla under the Union Government prior to joining under the State Government. It is also mentioned in the instructions that they are effective from the date of issue and not retrospectively while the petitioner is claiming benefit of protection of pay from June 01, 1978. He had taken voluntary retirement on April 17, 1994. The petitioner accepted the appointment as ATO with eyes wide open and knew that the scale of the

post of ATO was lower i.e. Rs.300-25-600 while the petitioner was working in the pay scale of Rs.330-560 under Central Government.

14. It is also the objection of the respondents that there is gross delay and laches in approaching the Court and trying to revive a stale claim. The claim is significantly putrid and moth-eaten and deserves not to be allowed to be resuscitated after several decades slipping by. The State cites authority of the Supreme Court on the point in **Chennai Metropolitan Water Supply and Sewerage Board and others** v. **T.T. Murali Babu**, (2014) 4 SCC 108. Besides, the petitioner is already before this Court in CWP No.46 of 2003 which is pending final adjudication but on a different point which does not but arise out of the same incident of direct recruitment. The State agrees that the benefit of revision of his pay and arrears etc. as well as pensionary benefits have already been paid as admissible on December 21, 2012 and accruing from the date of change of option permitted to the petitioner as has been explained in para.15 of the written statement which does not impact the decision in the instant petition which is for protection of pay w.e.f. 1978. The issue of revised option is not the subject matter of this petition and the plethora of pleadings and judgments cited on the issue have no relevance or connection whatsoever with the present case of pay protection. Therefore, those facts have not been traversed as there is no necessity to unnecessarily burden this judgment with facts of previous litigation either involving the petitioner or others, the order of which are all *in personam* and not *in rem* and are clearly distinguishable with reference to the present context and, therefore, there is no need to refer to them in any detail. As a learned Judge of this Court once put it long years ago when

faced with the mass of papers on a short point to be decided said that that "the case has more mass than merit." This petition can be described in the same manner. There is no merit found in this petition on the issue of pay protection and in the absence of any direct rule or instructions on the point covering the case of the petitioner he cannot be heard to succeed on the pleas raised and dealt with in this order. The right asserted is not open to declaration in the petitioner's favour and the petition is, accordingly, dismissed being devoid of merit.

(RAJIV NARAIN RAINA)
JUDGE

29.02.2016
manju