

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

Date of decision: 16.05.2016

CWP No.28283 of 2013 (O&M)

Tarsem Lal

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.S.Dadwal, Advocate, for the petitioner.

Mr. Nikhil K. Chopra, Addl. AG, Punjab.

Mr. Y.P.Khullar, Advocate, for respondents No.2 to 7.

Mr. Gaurav Singla, Advocate, for
Mr. Sanjeev Gupta, Advocate, appointed as Amicus Curaie.

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

RAJIV NARAIN RAINA, J.

The petitioner has not been paid his pension since November, 2009 except for about 3 months on the hypothesis that his date of birth was not correct. He was retired by the Punjab State Electricity Board [now known as Punjab State Power Corporation Limited (PSPCL)] (for short 'the Board') on the assumption that he had over-stayed and was thus over paid for 4 years after he should have been retired on attaining the age of superannuation. Even after 7 years from the date he was shown the door and his pensionary benefits have not been released. The petitioner was served with a charge-sheet on the allegations that his date of birth was fudged, which allegation pertains to the

years 1979 and then 1993. There is no iota of doubt that the date of birth recorded in the service file of the petitioner, when he joined the Board as a daily-wager in the year 1972, was recorded as 17.05.1951. While serving the Board the petitioner was made a work-charged T-mate in 1977 and his services were regularized in the year 1979. At the time of retirement, the petitioner served as a Lineman, which is a Class III post. He retired on 31.05.2009.

Action against the petitioner was initiated on a complaint dated 15.10.2013 made by the PSPCL to the Police at Banga for registration of an FIR against him. The police entrusted the inquiry to the Deputy Superintendent of Police (Headquarters), Shaheed Bhagat Singh Nagar. Opinion of the District Attorney (Legal) was obtained by the Police according to which the view recommended was that since the original school leaving certificate of the petitioner was not on the service file, so no legal action was required to be taken. Consequently, the complaint was filed. The Deputy Superintendent of Police is a party to the petition and has filed a reply to this effect.

PSPCL has vehemently contested the case by filing a reply. It is averred that when the petitioner was promoted as Lineman in 1993, his record was examined and for some reason it was found that his service-book was misplaced. Therefore, he was asked to give fresh certificate of age proof in the year 1993. The petitioner was asked to furnish proof of age for the purpose of promotion as Lineman. The Sub Divisional Officer wrote a letter dated 27.12.1993 to the Executive Engineer that the petitioner has furnished a school leaving certificate and the same was sent to the office concerned. Trouble began for the petitioner, when a complaint was received from one Tarlochan Singh that the petitioner has given a false school leaving certificate as his age proof, but the petitioner has never attended school. The petitioner was asked by the Board to explain his position and make a statement. The petitioner made

a statement on 04.09.2009, where according to PSPCL he asserted that the school leaving certificate given to the Department is correct and the same is not fabricated. Apart from this fact, he made a statement that he will produce his discharge certificate of Military Service within a few days. The Director, Enforcement wrote letter dated 09.10.2009 to the Executive Engineer (Pensions) to stop pension till the petitioner furnishes the school leaving certificate. A preliminary inquiry was contemplated. On 17.11.2009, the Senior Executive Engineer wrote to the Head Mistress of the School from where the alleged school leaving certificate was issued to verify its authenticity. The Head Mistress replied by letter dated 23.03.2010 to the Executive Engineer informing that the alleged certificate was not issued by the School authorities nor any such person by name Tarsem Lal ever studied in the school. This is how the charge-sheet was issued to the petitioner on 30.05.2013 (Annex P-5). The petitioner replied to the charge-sheet on 02.07.2013, where he took the stand that he never gave any school leaving certificate rather he gave only an affidavit as proof of age. He is an illiterate person. He is poor and the father of seven children. The Inquiry Officer was appointed to enquire into the charge-sheet, but the proceedings have been kept in abeyance due to the pendency of the present writ petition.

The petitioner is alleged to have played fraud with the respondents by producing forged and fabricated school leaving certificate. This Court has heard the respective counsel at great length on at least three different dates and attention has been drawn to the documents placed on record and they have been perused carefully. This Court had even ordered presence of the Head Teacher, Government Primary School, Dihana (Hoshiarpur) in Court with the original school record for the relevant period. Mr. Daya Ram, Head Teacher of

the School has appeared. He is not able to enlighten this Court on the true state of facts.

On the other hand, Mr. Dadwal appearing for the petitioner states that his client had nothing to do with Village Dhiana, as his native village is Bijjon, Hoshiarpur. It is his stand that the petitioner is an illiterate person and has never attended the school where they say he read and there was thus no occasion for him to furnish a school leaving certificate. This Court had summoned File No.7 mentioned in the letter dated 22.03.2010 from the Head Teacher written to the Senior Executive Engineer/Enforcement, Nawanshahr.

Mr.Y.P. Khullar appearing for the PSPCL has taken the Court to extra ordinary lengths to show that fraud was committed by the petitioner and because of which he has served beyond the age of superannuation. However, he is at loss to establish commission of fraud by a finding of fact recorded in an administrative or quasi judicial proceeding to support his stand. Mr. Khullar admits that the issue relates back to the year 1972, then again to 1977 and on regularization of services of the petitioner in 1979. The last cause of action was in 1993, when the petitioner was promoted as Lineman. It is common ground that no charge-sheet was issued to the petitioner during service. The Police have given a clean chit to the petitioner on request by PSPCL to register an FIR against him. Then it is not in the scope of inquiry in writ jurisdiction to make fishing and roving inquiries as to the date of birth of the petitioner. The fact remains that on the service record of the petitioner, the date of birth is 17.05.1951. With this date of birth, he would superannuate in 2009 which he has.

The controversy in the present case is with respect to pension, which has been withheld since 2009 except for the three months when it was paid before action was taken stopping his pension without recording reasons in

writing and communicating the same to the petitioner. There is no order in writing withholding pension and other dues. It is pointed out that Rule 3.12 of the Punjab Civil Services Rules defines three conditions to be fulfilled to qualify for pension i.e. (i) the service must be under Government; (ii) the employment must be substantive and permanent; & (iii) the service must be paid by Government. Since the Punjab Civil Services Rules applies to the PSPCL, then the term 'Government' has to be read as 'Corporation'.

In the present case, the petitioner fulfills the aforesaid three conditions. Accordingly, the petitioner is entitled for pension. It is not the case of the respondent – PSPCL that the petitioner does not fulfill the aforesaid three pre-conditions disentitling him for pension. The only contention of the respondent is that the petitioner has submitted a wrong certificate of date of birth and has worked beyond the age of superannuation. The contention is without any basis and without evidence. There is no evidence produced by the respondent PSPCL that the petitioner's date of birth is other than 17.05.1951. Therefore, the Court has no margin left except to proceed on the hypothesis that the date of birth entered in the service file is the correct one. This date can only be disbelieved by a finding recorded in departmental proceedings or by a court declaration since grave misconduct is imputed against the petitioner. If misconduct is imputed, then inquiry becomes sine qua non of fairness-in-action. If the allegation goes unsubstantiated by proof then suspicion however grave is not enough to deprive the petitioner of his valuable rights. Not even on preponderance of probabilities can the charge go home. Even assuming that the contention of the PSPCL is true and correct even then no recovery can be made from the petitioner from the salary paid to him during the disputed period because the petitioner for the disputed period i.e. beyond the age of superannuation (on assumption in the mind of PSPCL) is entitled to get

pension, which is based on length of service provided the three conditions are fulfilled (supra). In any case, pension cannot be denied for all times to come. The best case for PSPCL would be that approximately 50% of the salary of the petitioner for the disputed period can be adjusted towards pension while the balance amount can be treated as salary earned by the petitioner for the period he discharged his duties and earned his salary. It is not disputed nor could be that the petitioner has actually worked for the disputed period and earned salary by his labour till he reached the age of superannuation in 2009. No complaint has been made by PSPCL with regard to the duties performed during the disputed period relating to his work and conduct. Thus, the PSPCL cannot recover the salary of the petitioner for the period in question.

Mr. Nikhil K. Chopra, learned Additional Advocate General, Punjab, representing the proforma party, the respondent State, has resolved the issue and placed before the Court two decisions, which have direct bearing on this case. The first is Jagat Singh Vs. Union of India, 1991 (2) SCT 697, where the Court dealt with a similar issue regarding the correctness of date of birth. It was urged in the case before the learned Single Judge that the petitioner therein was born on 11.03.1916 and as such should have retired on 31.03.1974. It was argued by the employer that his retention in service beyond 31.03.1974 up to 05.01.1978 was wholly illegal and on account of the petitioner's default in not producing the Army Discharge Certificate at the time of his entry into service to establish the date of birth. It was further averred that the petitioner had not been confirmed on the correct date of his retirement and as such was not entitled to pension and gratuity. The Court found it untenable that Jagat Singh had served GREF for a period of more than 15 years from 1962 to 1978. He had been confirmed as driver in May, 1974. If his correct date of birth had been known, the petitioner would have superannuated on 31.03.1974, when he

attained the age of 58 years. The issue which fell for consideration was whether the petitioner was entitled to payment of pension and gratuity. The petitioner was governed by the provisions of Rule 49 of the Central Civil Service Pension Rules, 1972, which prescribed completing qualifying service of not less than 10 years to entitle employee to pension. The petitioner had admittedly completed 10 years of service. Even if he is deemed to have superannuated/retired on 31.03.1974, he had by then completed more than 12 years of service. His case then would fall under Rule 49. The Court held the petitioner entitled to pension on the hypothesis that he had superannuated on 30.03.1974. The Court refused to go into the disputed questions of fact and held that even on the facts admitted by the Department the petitioner had rendered 12 years of service up to 1974 thereby entitling him to pension and gratuity on the basis of minimum qualifying service of 10 years rendered. A direction was issued to the respondents to release pension and gratuity excluding the period alleged to be beyond the period of superannuation. The Court held that continuance in service beyond the age of superannuation was on account of some mistake and beyond the scope of this Court to fix the responsibility for the mistake and thus the Court thought just and fair to hold that the petitioner was entitled to pension on the hypothesis that he retired on 31.03.1974. The Court further held that for the period from 01.04.1974 to 05.01.1978, the period the petitioner actually earned his salary, could not be recovered.

The second case brought to light by Mr. Chopra is Baldev Kumar Vs. State of Punjab, 1998 (2) SCT 246: 1998 (4) SLR 500: 1998 (2) RSJ 91, which also is a case of correction of date of birth in the background similar to the present one, though not on facts but on the monetary principal. This was a case where the petitioner made fervent attempts to get her date of birth

corrected in the service record. However, the point in issue was that the petitioner had continued in job for six years after superannuation due to non-correction of date of birth. The Court had declined the prayer for correction of date of birth. The respondent-State of Punjab did not bring any fact or circumstance on record to show that the petitioner committed any fraud or misrepresentation due to which she was paid salary for six years. The Court held that the salary paid shall not be recoverable. However, the extra period would not be counted for pension or other retirement benefits.

I would respectfully follow the dicta laid down in the two rulings, but I do not feel persuaded enough to exclude the disputed period and to rule it out of consideration for the purposes of calculating qualifying service for pension there being no conclusive evidence that the date of birth in the service record was incorrect. The aforesaid decisions to this extent deserve to be distinguished because there is not even an iota of evidence to prove that the date of birth is other than 17.05.1951. On a mere complaint of a co-villager Tarlochan Singh after the petitioner had superannuated was not sufficient material to work to the disadvantage of the petitioner. The attempt of PSPCL has been to create a case in the illusion of disputed questions of fact are involved and therefore the writ court should not intervene. The petitioner was issued a charge-sheet, but this Court did not pass any restraint order prohibiting PSPCL to continue with the inquiry and if it has been kept in abeyance pending the writ petition, then it shows that PSPCL itself is not serious in the matter sufficient to have proceeded against the petitioner and brought the inquiry to its logical end.

Since fraud has not been established as a fact nor can it be inferred, then Rule 2.2(b) of the Punjab Civil Services Rules would come to the rescue of the petitioner being beyond the limits prescribed for taking action.

And having regard to the fact that the pension has been withheld since 2009 without an order in writing pending inquiry initiated against the petitioner after retirement on a complaint by a third party regarding his date of birth, then there appears to be no valid or cogent reason to withhold pension. Also paying due regard to the settled position that pension is a constitutional right to property protected by Article 300A of our Constitution it cannot be withheld except by procedure established by law. Moreover, pension is paid for service rendered over long period of time and can be denied only on dismissal or a cut can be imposed in pension for causing financial loss to employer, which is nobody's case here.

As a result of the above discussion, the petition is allowed. The petitioner would be treated as having superannuated in 2009. He would have a right to retain salary for the disputed period and if not paid, it would have to be made good. The petitioner would be entitled to arrears of pension and pensionary benefits as are admissible as per rules. The arrears of pension be calculated and paid to the petitioner within two months from the date of receipt of certified copy of this order. The petitioner would be entitled to interest on delayed pension and other admissible dues, which would accrue at 12% p.a. since withholding pension has been patently illegal and an unconstitutional act of the respondents which is in aggravated form retaining money without an order in writing containing reasons for denial.

16.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE