

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25270 of 2015
Decided on : 05.02.2016

Ravinder Bhushan

... Petitioner

Versus

Punjab Water Supply & Sewerage Board

... Respondent

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

Present : Mr.Dhiraj Chawla, Advocate, for the petitioner.

Mr.Vijay Kumar Kaushal, Advocate, for the respondent.

G.S. Sandhawalia , J. (Oral)

Petitioner challenges the order dated 27.11.2015 (Annexure P8) whereby he has been denied one year's of extension in service, as per Government instructions (Annexures P2 to P7). Further, a writ of mandamus is prayed for allowing the petitioner to continue in service by granting one year's extension, as per Clause 2 of the instructions, which reads 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of retirement, instructions were issued bearing memo No.22/2/2012-F.P.2/43 dated 23.01.2013 wherein clause 7 thereof is withdrawn and it has been decided that those Govt.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.”

Despite being served for 07.01.2016, reply had not been filed, even by 21.01.2016, when the case was again fixed. Today also, a request has been made for time. However, keeping in view the order which the Court is going to pass, it does not feel necessary to give another opportunity to file reply.

The reason for denial of extension, while attaining the age of 58 years on 30.11.2015, to the petitioner who was working as Sub Divisional Engineer on Current Duty Charge, was that there was a punishment of stoppage of one increment, without cumulative effect, imposed upon the petitioner on 30.09.2014 (Annexure P1). Accordingly, the respondent-Board came to the conclusion that since the affect of the punishment would continue till 31.03.2016, the petitioner was not entitled for extension. Reliance was placed upon the instructions dated 30.04.2015 that extension cannot be granted to an employee who has been punished under the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short, the '1970 Rules'), as a consequence of disciplinary proceedings under Rule 8.

A perusal of Clause 2 of the instructions dated 30.04.2015 (Annexure P7), reproduced above, would go on to show that where a major penalty had been inflicted and the affect of the same has been going on at the time of the retirement, in those cases, the employee will not be considered for extension in service, in terms of the Finance Department's instructions dated 08.10.2012 and 20.09.2013. Reference has also been made to Rule 8 of the 1970 Rules. It is not disputed that

where there is a decision to charge-sheet or the charge-sheet has been issued under Rule 8 for major penalty, the employee can be denied the said extension.

In the present case, as noticed, it is not disputed that though proceedings had been initiated against the petitioner under Rule 8, but eventually an order had been passed by the authorities for a minor punishment. In such circumstances, once the departmental proceedings were finalized and the minor punishment had been imposed, the reasoning given by placing reliance upon the instructions and the fact that the effect of minor punishment is continuing, is without any basis.

The vires of the said instructions were the subject matter of consideration in ***CWP No.10911 of 2015 titled as 'Lal Chand Vs. State of Punjab and others'***, decided on 16.07.2015. The vires were upheld by holding that the instructions were not arbitrary. It was noticed by the Division Bench that extension is a sort of reward or encouragement and the employee having a clean slate record on the one hand and those who were submitted to major disciplinary action, constitute two separate distinct classes. Relevant portion 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.”

Thus, it is apparent that the whole purpose of the instructions is that where there is a major penalty, liable to be imposed or has been imposed and the charge sheet has been issued or the effect of the major punishment is still continuing and a major penalty has been given during the last 3 years, then such an employee will not be considered for extension in service.

In the present case, as noticed, the punishment has been scaled down to stoppage of one increment, without cumulative effect and therefore, the bar under the instructions, as such, apparently, does not arise. This aspect seems to have been lost by the respondents while passing the impugned order dated 27.11.2015 (Annexure P8) which is, thus, in contradiction to the instructions dated 30.04.2015 and cannot stand judicial scrutiny and the same is, accordingly, quashed. The said authority shall reconsider the issue, again, within a period of 4 weeks from the date of the receipt of a certified copy of this order.

With the above-said directions, the present writ petition stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

FEBRUARY 05, 2016
sailesh