

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

CWP No. 7050 of 2016 (O & M)

Date of decision: 29.04.2016

Dr. Mangal Singh Sandhu

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate,
with Mr. Manhar S. Saini, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 4818 of 2016

The present application has been filed for impleading applicants as respondents no. 2 and 3 in the main writ petition.

In view of the averments made in the application, the same is allowed.

Applicants are impleaded as respondents no. 2 and 3 in the main writ petition.

Amended Memo of Parties is taken on record.

CWP No. 7050 of 2016

The petitioner challenges the order dated 31.03.2016 (Annexure P-11) whereby, the extension in service has been curtailed without taking the final decision on the reply dated 11.03.2016 in response to the charge sheet. Challenge has also been raised to the suspension order dated 05.10.2015 (Annexure P-9) on the ground that it has gone beyond the prescribed period of six months.

It is a matter of record that the petitioner was due to retire on 30.04.2014 as Joint Director, Agriculture. As per the instructions of the Government, he was given extension in service for one year till 30.04.2015. Vide order dated 19.03.2015 (Annexure P-4), further extension of service for one year was given from 01.05.2015 to 30.04.2016. During the second extension, an FIR dated 02.09.2015 was lodged against him under the provisions of the Fertilizers Act, Insecticides Act, 1968 and Prevention of Corruption Act, 1988 etc. In public interest, the officiating charge of the Director, Agriculture was withdrawn from the petitioner, since he was Joint Director, Agriculture. Resultantly, he was suspended on 05.10.2015 (Annexure P-9) under Rule 4 of Punjab Civil Services (Punishment & Appeal) Rules, 1971 (in short 'the Rules') (Annexure P-9). Now, vide the impugned order dated 31.03.2016 (Annexure P-11), the extension granted to him till 30.04.2016 has been curtailed and he has been relieved from service on 31.03.2016.

The same has been done in pursuance of the fact that instructions dated 30.04.2015 have been issued by the Government that where any proceedings are pending under Rule 8 of the Rules, then the extension is to be withdrawn with effect from the last date of the month in which the order was passed. Similar issue was also subject matter of consideration before this Court in ***Gurmeet Singh Randhawa vs. State of Punjab and others, 2015 (4) SCT 437*** wherein, the employee's second extension had been curtailed on account of the registration of two CBI cases against him. The issue was discussed threadbare and it was noticed that in *CWP No. 3847 of 2015, Iqbal Mohammad vs. State of Punjab* decided on 24.04.2015, it had been held that extension in service was a mere

concession and could be curtailed without grant of opportunity of hearing. It was further noticed that similar view had also been taken by a Division Bench of this Court and also in *CWP No. 3826 of 2015, Romesh Garg vs. State of Punjab* decided on 24.04.2015. The said view has been upheld by the Division Bench in *Ashok Arora vs. State of Punjab and others* decided on 20.05.2015. The relevant portion of the judgment in *Gurmeet Singh Randhawa's case (supra)* reads thus:-

*“6. A Coordinate Bench of this Court in the case of **Iqbal Mohammad** (supra) had examined the issue threadbare including the issue that the curtailment of the extension period was not violative of the principles of natural justice, on account of the fact that the extension of service itself was a concession. It was accepted that the extension was under the discretion of the employer and it could be unilaterally withdrawn and the instructions had been issued, in public interest, whereby employees who are facing disciplinary action for major penalty could be relieved by way of a policy decision taken. The argument that curtailment of extension in service was bad in law being in violation of the principles of natural justice was rejected on the ground that once the extension was by concession, it could be unilaterally withdrawn. The relevant portion of the judgment reads as under:*

“Principles of natural justice would be attracted to the facts of a case, where some legal right is adversely effected, but in the facts of the case in hand, once the Apex Court has, through a catena of judgments (some of which have been referred to earlier), held that an employee has no right, much less a vested or legal right to continue beyond the age of

superannuation, then curtailment of such period would not attract the principles of natural justice and the same can be done through a unilateral decision taken by an employer.

The extension in service in the case of the petitioners has been curtailed on the ground that they face departmental action which could entail major penalty. It is admitted by the petitioners that at the time, the orders impugned by them were passed, they were all facing disciplinary action which could lead to the imposition of a major penalty. Their cases are thus covered by the instructions impugned by them. In view of such admission, I fail to understand what prejudice has been caused to the petitioners on account of non-issuance of a notice to them before ordering them to be relieved. The extension of service, as observed earlier, is by way of a concession given by an employer to its employee and any concession so granted can be unilaterally withdrawn. That being so, there is no question of violation of principles of natural justice for curtailment of period of extension of service already granted.”

*7. Vide a judgment of even date, the said Coordinate Bench had also disposed of another set of cases whereby extension had been declined to the employees in CWP No.3826 of 2015 titled Romesh Garg Vs. State of Punjab & others decided on 24.04.2015. The view in **Romesh Garg's case** (supra) was approved by the Division Bench of this Court in LPA No.776 of 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 the correct statement of law and no elaborate discussion was required. The instructions dated 30.04.2015, vide which the Government had further clarified and superseded the instructions dated 30.10.2014 and 07.01.2015, were challenged before the Division Bench in CWP No.10911 of 2015 titled Lal Chand Vs. State of Punjab decided on 06.07.2015, wherein it has been held that the instructions do not have any retrospective effect but are only with immediate effect and the extension in service beyond the age of retirement was sort of incentive and employees with a clean slate record were to be retained and two distinct separate classes have been created. Relevant portion of the observations of the Division Bench read as under:

“(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.”

8. Keeping in view the above settled position, the argument, thus raised that the petitioner was entitled for any hearing and that they have substantive right, stands already decided against the petitioner in the abovesaid cases and further upheld by the Division Benches and therefore, there is no scope for interference in the present set of cases. Accordingly, all the writ petitions are, hereby, dismissed. It is, however, made clear that wherever there were any interim orders passed by this Court in favour of the petitioners, they would be entitled for the financial benefits, as per the terms of extension order, till today. Accordingly, all the interim orders passed, hereby, stand vacated.”

The curtailment in the extension period, thus, is not liable to be interfered with keeping in view the above and it is accordingly upheld.

Resultantly, the second argument of counsel for the petitioner that he was liable to be reinstated since 6 months had expired on 05.04.2016 is also without any basis. The extension has been curtailed prior to that and since the said decision has been upheld, the second argument which is now being raised cannot be accepted. The argument that the private respondents no. 2 and 3 who have now been impleaded have been acting in a mala fide manner is also prima facie not tenable since they are not the part of the decision making process which is at a higher level and since they are only Joint Directors. Therefore, no interference is called for and the present writ petition is dismissed in limine.

29.04.2016
shivani

(G.S. SANDHAWALIA)
JUDGE