

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

CM Nos.2460-61-C of 2017 in/&
RSA No.1226 of 2008 (O&M)
Date of decision: 21.04.2017

Guru Nanak Dev University

.... Appellant

VS

Ajit Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.S.Rekhi, Advocate
for the appellant.

Mr. V.K.Sandhir, Advocate
for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

Statute 96 of Guru Nanak Dev University Calendar prescribes that if any case does not come within the purview of the statute contained in the Chapter in which the provision falls then it may be decided in accordance with the rules made by Punjab Government for its officers etc. Therefore, the Punjab Civil Services Rules apply where University statutes are silent.

Mr. Rekhi admits that there is no direct law on the subject in the Calendar on the moot issue arising for opinion and therefore, Punjab Civil Services Rules apply to the University.

The few necessary material facts are narrated. The plaintiff-respondent served in the BSF from 06.01.1961 to 02.03.1981 i.e. for 20 years and 02 months. He was granted BSF pension on retirement. He was re-employed in the University as a Security Guard on 18.04.1981 and

superannuated from the post on 31.12.2002 having served the University for 21 years 8 months. Independently, both periods qualify for pension in the respective organizations. The dispute began when plaintiff retired from the University service. The University clubbed both the periods totaling 41 odd years and calculated pension payable on that basis and deducted the BSF pension from the amount of pension.

Feeling aggrieved, the plaintiff approached the Civil Court, which granted no relief to the plaintiff. He carried first appeal under Section 96 of the CPC in the Court of learned Additional District Judge, Amritsar. The appeal succeeded. The trial court order was set aside.

Short point for argument was dependent on the construction of Rules 7.19 and 7.22 of Punjab Civil Services Rules, Volume II Chapter VII. These rules reads as follows:

“7.19 The Rules in Section II of this Chapter do not apply to a Military Officer, Departmental Officer, Warrant Officer or Non-Commissioned Officer or Soldier who is taken into or allowed to continue in Civil employment after he has been granted a pension under Military Rules. His employment for service in the Civil Department will not be affected by his Military pension.

7.22 Except as provided in Section II, a Govt. employee, who, having been discharged with a pension, is subsequently re-employed, may not count his new service for a separate pension. Pension (if any) is admissible only for the new service combined with the old, the whole being counted as one service.”

The Lower Appellate Court correctly interpreted these rules and found that the stand of the University in trying to bring its case under Rule 7.22 independently of the rights under Rule 7.19 was wrong and held that Rule 7.22 did not apply. The first appeal court commended the view that the University had committed an error in combining the total service and then deducting BSF pension therefrom. The appeal Judge noted that Rule 7.22 is applicable to only cases of re-employment of a government employee. "Government Employee" in Rule 7.22 meant an employee of the Punjab Government and not the University. I would say that this is the correct interpretation placed on the language of the rule because Punjab Civil Services Rules are obviously designed for its own employees and not employees of other institutions which might adopt the PCS rules to apply to their services. The Lower Appellate Court concluded that other employees are not covered by the rules unless adopted by the defending department or organization in case of litigation.

Adoption there may be, ascribed to Statute 96 and even assuming that both the above noticed rules apply, then on that premise, the result indicated by the mind of the University in rejecting the claim of the plaintiff cannot be achieved. Let us take an example. Supposing the service in the University and BSF independently possess sufficient length of service qualifying for pension, then the University would have no legal and valid reason to club both the periods justifying BSF pension to be deducted therefrom in making the calculation for the total pension. Once university employee is not entitled to pension due to lack of length of service, then what would happen to BSF pension? It would still be payable. If both services qualify for pension then the right to pension is independent of each

service under different employers. This is the fallacy caused by misinterpretation of Statute 96 and Rules 7.19 and 7.22 by the University because an employee is empowered to draw pension from University service separately. If such an interpretation is placed as by the University to reduce the pension entitlement, it will create an anomaly while the rights of respondent, who served two organizations, one under Central Government in Para Military Forces and other in University will get mixed to make a murky cocktail.

Mr. Sandhir for the respondents submits that the issue is no longer *res integra* and is covered against the University itself in CWP No.6126 of 2009 titled Mukhtiar Singh vs. Guru Nanak Dev University, Amritsar decided on 16.11.2011 where both the rules have been considered, dealt with and interpreted. Learned Single Judge while dealing with these two rules relied on the decision in Mukand Singh vs. Punjab Agricultural University, Ludhiana and another, 2009 (3) SCT 729 which was a case involving Rule 7.23 and 7.19. Single bench held that deduction of military pension from the pension computed and calculated by the university was bad ruling that Mukand Singh would be entitled to both military pension as well as the pension for the service rendered to the University.

Learned counsel for the respondent is right in his contention. These two cases cover his case and accordingly rightly resulted in the dismissal of the University appeal and having read the judgment appealed from I have no hesitation in dismissing the appeal and upholding the order of the lower appellate court, which is in sync with the decisions in *Mukand Singh* and *Mukhtiar Singh* cases.

Mr. Rekhi submits that an LPA is pending against the decision

in *Mukhtiar Singh* and Mukhtiar Singh has died which may render the appeal ineffective for a decision on merits on the construction of Rule 7.22 on which its case is founded.

On the other hand, Mr. Sandhir, submits that the University has implemented the order passed in *Mukhtiar Singh's* case. An affidavit of the Registrar, Guru Nanak Dev University, Amritsar put in this appeal endorses the fact that the decision has been implemented and takes away the teeth of the letters patent appeal.

I am one with the opinion of the successive courts below and accordingly, the present appeal fails and is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

21.04.2017
sonia

- | | |
|--|------------|
| 1. <i>Whether speaking/non-speaking?</i> | <i>Yes</i> |
| 2. <i>Whether reportable/non-reportable?</i> | <i>No</i> |