IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 351 of 2015 (O&M)
Date of decision: 17.01.2017

Muni Ram Ranga **..Petitioner**

Vs.

State of Haryana **..Respondent**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Mukul Sharma, Advocate for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

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KULDIP SINGH, J.(ORAL)

Petitioner was appointed as Information Commissioner, Haryana vide notification dated 31.12.2007 along with some other State Information Commissioners and assumed the office on 03.01.2008 for the period of 5 years. The petitioner retired on 03.01.2012. As per the terms and conditions mentioned in notification dated 22.04.2008 (Annexure P-3), the salary, allowances and other facilities are to be paid to the petitioner as per Section 16(5) (b) of the Right to Information Act, 2005. After the retirement of the petitioner, the Government of Haryana issued guidelines Annexure P-5 in June 2014 amending terms regarding grant of pensionary benefits to State Commissioners stating that now the Government had decided to fix the terms and conditions of State Commissioner.

The terms and conditions regarding State Information Commissioner who are retired from Government Officers and others were also laid down as under:-

"(A) The Terms and Conditions in case the State Information

Commissioners are retired Government Officers:-

(i) Additional pension in respect of a State Information Commissioner shall be fixed after deducting the pension one is drawing already from any Government.

(ii) The maximum limit of the total annual pension shall be Rs. 4,80,000.

(B) The Terms and Conditions in case the State Information Commissioners are other than the retired Government Officer:-

State Information Commissioner who at the time of appointment as such was not in the service of the Central or a State Government and who has not retired from Government service any time prior to joining this position, shall on his ceasing to hold the office, be paid a pension for his life after rendering a service of a minimum three years as the State Information Commissioner Chief Information Commissioner with following condition:-

(i) The specific provision for determining pension will be made by the Administrative Department in the rules, as the service under reference being a separate service carrying a maximum of 5 years of service with it. The rule of minimum period of 10 years of service required for pension is relaxed to that extent.

(ii) Entitlement for additional pension at the age of 80, 85, 90, 95 and 100 year will be as per rules applicable in respect of the State Government pensioners.

(iii) The Pension may be worked out @ 50% of the last pay drawn will be reduced pro rata, where the pensioner had less than the maximum required qualified service (i.e. 28 years) for full pension as per rules applicable in respect of State Government pensioners.

(iv) No such pension shall be payable to the State Information Commissioner if he has been removed from his office".

The claim of the petitioner is that he is entitled to pension on his retirement as applicable to the Chief Secretary of the State.

In the reply, State has not denied the fact that State Information Commissioners were appointed under Section 15(2) and 16(5) of the Right to Information Act, 2005. In view of above position, it was also admitted that salary and allowances and other terms and conditions of service of Information Commissioner shall be the same as that of the Chief Secretary of the State Government. It is stated that service conditions of Chief Secretary, of the State is governed by All India Service Rules. The Chief Secretary is required to render certain years of qualifying service to avail the pension.

I have heard learned counsel for the parties.

Admittedly Section 16 (5) (b) of Right to Information Act, 2005, provides that the salary, allowances and other terms and conditions of service of the Information Commissioner shall be the same as that of Chief Secretary to the State Government. Assuming that even for the purpose of pension, the same rules as applicable to the Chief Secretary of the State Government are to be applied, even then Chief Secretary is eligible for pension on completing minimum qualifying regular service, which is 10 years. The petitioner worked only for 5 years and even if the same terms and conditions are applied in case of the petitioner, even then the petitioner does not qualify for pension. The second contention of the petitioner is that he retired on 03.01.2012 and after about 6 months the letter Annexure P-5 was issued which now provides for a certain amount of pension to the State Information Commissioner other than retired Government Officer who retired from service, the relevant extract of which have been reproduced as above.

The contention of the learned counsel for the petitioner is that the Government cannot make distinction between the retired Information Commissioners and serving Information Commissioners to fix the pension.

I am of the view, that perusal of the letter shows that after considering the facts and circumstances and with a view to bring the terms and conditions of the serving Information Commissioners at par with Chief Secretary of the State, both while in service as well as after retirement, has been under consideration for long. Now the Government has decided to fix the terms and conditions of serving Information Commissioners as provided in Annexure P-5. It shows that the terms and conditions as mentioned in letter of June 2014 Annexure P-5 are fixed prospectively, there is no mention that these will also apply to the retired Information Commissioners and if so, from which retrospective date, so as to lay down, which of the retired Commissioners are eligible and which are not eligible. The language of letter Annexure P-5 makes it clear that it has prospective effect whereby the Government had altered the terms and conditions of the State Information Commissioners. Therefore, the petitioner cannot claim parity under Article 14 of the Constitution of India to claim the benefit of said terms and conditions which were not in force when the petitioner was in service. The Government is always competent to issue any guidelines or terms and conditions with prospective effect and there is no illegality in the same as has been held by the **Supreme Court in Government of Andhra Pradesh & Ors. Vs. N. Subbarayudu & Ors 2009(2)SCC(L&S) 172**.

Learned counsel for the petitioner has also relied upon the judgment of **D.S. Nakara and Others Vs. Union of India(1983)1 Supreme Court Cases 305** which is regarding the pension to the Central Government Servants as per Civil Services (Pension) Rules, 1972. Apparently, these pertains to the regular Govt. servants and for that purpose the same criteria cannot be applied to a person who has fixed term as in the case of civil servants. In order to qualify for pension, some minimum service is always prescribed. As observed above, petitioner does not have qualifying service for the purpose of pension as in case of Chief Secretary of the State. It being so, I do not find any merit in the contention of learned counsel for the petitioner that the petitioner is also entitled to pension after his retirement.

Dismissed.

(KULDIP SINGH)
JUDGE

January 17, 2017
Poonam (II)

Whether speaking/ reasoned: Yes

Whether Reportable: Yes