

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.8153 of 2016

Date of Decision:- 27.02.2017

Union of India & Ors.

...Petitioners

VERSUS

Chandigarh Administrative Tribunal & Anr.

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Sourabh Goel, Advocate for the petitioners.

Mr. Shrey Goel, Advocate for respondent No.2.

SUDIP AHLUWALIA, J.

The Union of India and its concerned officers being represented through the Principal Regional Vocational Training Institute for Woman, Panipat (Haryana) (Petitioner No. 4), in this Writ Petition, have prayed for setting aside the impugned Order/Judgment dated 13.8.2015 (Annexure P-3) passed by the Ld. Central Administrative Tribunal, Chandigarh Bench in O.A. No.060/01135/2015 filed by Respondent No.2.

2. Vide the impugned order, the Respondent's aforesaid Original Application in which, he had prayed for quashing of the Order dated 29.10.2014 (Annexure A-15) passed by Respondent No.1, as null and void, and for fixing his seniority with effect from 12.9.2002 along with all

consequential benefits under the Old Pension Scheme, which was operative at that time.

3. The Respondent/Applicant had applied for the post of L.D.C. in 1999 in response to the Advertisement issued by the Staff Selection Commission (SSC), for which he was subsequently selected. Vide letter dated 12.9.2002, the SSC recommended his case to Petitioner No. 4 for appointment. The Respondent thereafter repeatedly requested the Principal of the Institute to permit him to join his duties, but was informed telephonically that there was a ban on appointments in the Institute. In this manner, his appointment was delayed for more than one year and ultimately on 12.9.2003 he submitted a representation before Petitioner No.4 for return of his Dossier to the SSC to consider him for posting elsewhere. On 31.10.2003, Petitioner No.3/Deputy Director of Training also requested Petitioner No.4 to return the Respondent's Dossier, which was accordingly returned to the Deputy Regional Director, SSC, Chandigarh on 11.11.2003. The Deputy Regional Director thereafter on 24.11.2003 intimated that the purported ban on recruitment as originally informed by Petitioner No. 4 to the Respondent No.2 was not applicable on 99 posts, including the one for which he was selected. The Petitioner No.4 then requested the Petitioner No.3 to revive the post and allow him to issue appointment letter to Respondent No.2. Ultimately, the Memorandum dated 4.2.2004 regarding appointment to Respondent No.2 was issued and he thereafter joined his duties on 9.2.2004.

4. The Respondent No.2 then requested for consideration of his date of appointment with effect from 12.9.2002 i.e. when the SSC had issued the Dossier and recommended his name. No action was however,

taken on his prayer. Ultimately, his subsequent application to that effect was rejected vide order dated 29.10.2014 (Annexure A-15), and he was treated as covered under the New Pension Scheme, which had been introduced with effect from 1.1.2014.

5. The Ld. Tribunal allowed the O.A. by holding inter-alia -

“.....It is clear that the delay in the issue of appointment letter in favour of the applicant was due to the changing stand of the respondent department. Initially, the department had notified the vacancy of LDC to the SSC, but when the dossier was received by the Principal of the RVTI(W), Hissar, the applicant was informed that there was a ban on filling the posts, although it was clarified almost a year later that the ban did not apply to the post against which the name of the applicant had been recommended for appointment. In this view of the matter, the respondents are directed to treat the applicant as having joined as LDC in the RVTI Hissar on notional basis w.e.f. 01.10.2002. The applicant shall not be paid for the period for which he had not worked as LDC, but shall be entitled to seniority and pay fixation benefits from this date. Consequently, he shall also be treated as covered under the Old Pension Scheme as his notional date of joining shall be prior to 1.1.2004.”

6. Being aggrieved with the above decision, the Union of India by its concerned officers represented through the Petitioner No. 4, have filed this Writ Petition.

7. It has been contended that the Ld. Tribunal had wrongly passed the impugned order without appreciating the facts of the case, and by ignoring the settled position of law that a candidate has only a right to be fairly considered for appointment, but not any actual right of appointment.

8. It may be mentioned that on May 2, 2016, the Division Bench in which one of us (Surya Kant, J.) was a member, had directed inter-alia -

“The Tribunal appears to have given notional date of appointment to respondent No.2 for the limited purpose of bringing him within the ambit of old pension Scheme. However, if such

notional appointment adversely affect the seniority of any other employee, let the petitioners find out such a solution and file an affidavit to this effect.”

9. Subsequently, Mr. Sourabh Goel, Ld. Advocate for the petitioners has intimated us that the notional appointment authorized by the Tribunal in the impugned judgment however, does not affect the seniority of any other employee. Nevertheless, Mr. Goel still assailed the impugned decision by contending that the Respondent/Applicant was inordinately late in approaching the Tribunal in 2014 i.e. ten years after his actual appointment.

10. We are however, not impressed by the aforesaid submission raised on behalf of the Petitioners. As the Tribunal has rightly observed, the delay in the Respondent's appointment, which ran into a span of about 16 months, was in no way ascribable to him. Rather the petitioners (respondents) in the O.A. were themselves squarely responsible for the same. Had the Respondent No.2 been appointed any time within 15 months from the date when his name was recommended, he would have been covered by the Old Pension Scheme, which in this manner, was unfairly denied to him by default, inasmuch as the concerned Authorities did not allow him to join within a reasonable time, without any substantive justification. Even otherwise, it is well settled that pay, remuneration and pension etc. payable to employees constitute a recurring cause of action each month when the same become due, and so grant of notional relief in such circumstances is Judicially accepted.

11. In the present case, the only other factor which could have caused some consternation/embarrassment to the Authorities by accepting the impugned order of the Tribunal i.e. displacement of any other senior

person as a consequence of the Respondent's notional retrospective appointment has fortunately not arisen. We therefore, find no justification at all to interfere with the impugned Judgment of the Ld. Tribunal.

12. The Writ Petition is therefore, dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

27.02.2017
AS

<i>Whether speaking/reasoned</i>	<i>:</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>:</i>	<i>Yes/No</i>