

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

RSA No.1482 of 1995(O&M)

Date of decision: 2.9.2019

Air Marshal Shivdev Singh through LR

.....Appellant

VERSUS

State of Punjab and another

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. G.S. Dhaliwal, Advocate for the appellant.

Mr. A.A. Pathak, Addl. A.G. Punjab for the respondents.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit filed by the appellant/plaintiff for declaration and recovery was dismissed by the trial Court vide judgment and decree dated 06.10.1983 and appeal preferred by unsuccessful plaintiff/appellant was dismissed by the Additional District Judge, Chandigarh on 02.01.1995.

Indisputably, the appellant/plaintiff retired from Indian Air Force on 31.03.1973. He was appointed as Member of Punjab Public Service Commission, Patiala (in short 'PPSC') vide notification dated 24.04.1973. He was to be governed by PPSC (Conditions of Service), Regulations 1958 (in short 'the Regulations'). Under Regulation 5 of the Regulations, the pay of Chairman and Members of PPSC was to be fixed.

The grievance of the appellant/plaintiff is that he was entitle to the last pay

drawn at the rate of Rs.3300/- per month but the respondents have wrongly deducted an amount equivalent to pension which he initially received at the rate of Rs.970/- per month and subsequently revised to Rs.1100/- per month with retrospective effect. In this way, the appellant was deprived of salary amounting to Rs.93,367.92p. The respondents were wrongly charging rent at the rate of Rs.330/- per month being 10% of Rs.3300/-.

The trial Court, by dealing with Regulation 5(1) of the Regulations Ex.P1 and relying upon document produced by the respondents/defendants, referred to in para 11 of the judgment, determined issues No.1 to 3 against the plaintiff and consequently, the suit was dismissed leaving the parties to bear their own costs. As has been noticed hereinbefore, appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Chandigarh.

Counsel for the appellant, at the outset, would inform that he confines his submissions only to the issue of deduction qua pension being wrongly made from his salary fixed by the State of Punjab as a Member of PPSC appointed after retirement of the appellant from Indian Air Force. It is argued with vehemence that in view of Regulation 5(1), reproduced in judgment of the trial Court, pension to be paid to the appellant and DCRG was only to be kept in abeyance but the same could not be deducted from the pay fixed by the respondents on the basis of last drawn pay. It is further argued that since the respondents have wrongly deducted amount of pension out of salary during the period the appellant remained as Member of PPSC, the appellant is entitle to recover the suit amount more than Rs.93000/-. In support of his contention, he has relied upon judgment of

this Court **Jaswant Singh Basur Vs. Punjab State, 1968 Current Law Journal 757.**

Counsel representing the respondents, on the contrary, has supported consistent findings recorded by the Courts with the submission that the same are based upon correct interpretation of Regulation 5(1) and proviso (1) appended thereto. It is further argued that the appellant cannot be allowed double the benefit i.e. pay protection on the basis of last pay drawn as member of Indian Air Force as well as pension for the period when he remained working as Member of PPSC. Counsel would state that the judgment relied upon by counsel for the appellant has got no bearing on the facts of the case at hand as the same was decided in view of peculiar facts and circumstances of the given case.

I have heard counsel for the parties, perused the paper-book and records.

Before advertng to the submissions made by counsel for the parties, it is appropriate to extract a relevant part of Regulation 5 of the Regulations, quoted thus:-

"5(1) The Chairman shall receive pay at the rate of Rs.2750/- per mensem and such of other members at the rate of Rs.2250/- per mensem. They shall also be entitled to get such other allowances as may be admissible from time to time, to Government Servants getting similar pay.

Provided that:-

(i) If the Chairman or a member at the time of appointment as such is a retired Government employee, he shall draw the pay of Chairman or member as specified above or the pay last

drawn by him immediately before retirement, whichever is greater and his pension together with the amount calculated on the basis of his death – cum- retirement gratuity, shall be held in abeyance."

A perusal of the aforesaid extract leaves no manner of doubt that if the Chairman or a member at the time of appointment as such is a retired Government employee, he shall draw the pay of a Chairman or member either in view of Section 5(1) or the pay last drawn by him immediately before retirement which is more but his pension and amount calculated towards death – cum- retirement gratuity shall be held in abeyance. Meaning thereby that pension and death – cum- retirement gratuity shall be payable to him only after he ceases to be a Chairman or member of the PPSC. In other words, he shall not be entitle to pension for the period he remains as Chairman or a member of PPSC. It is difficult to accept contention of the appellant that as a member of the PPSC, he was both entitle to the benefit of last drawn pay with allowances admissible to government servants getting similar pay plus pension to be paid as a retiree from Indian Air Force. Since the appellant received the pension as a retiree from Indian Air Force even during the period when he was working as Member of PPSC, the respondents have rightly deducted the amount of pension drawn by him while making payment of his salary fixed on the basis of last drawn pay plus other allowances. I would hasten to add that the appellant knowing fully well the implications of proviso (i) appended to Regulation 5(1) of the Regulations rightly informed his department about revision of his pension from Rs.970/- to Rs.1100/- per month with a

request to make deduction of said amount of pension from his salary. Later, under some wrong legal advice, he involved the respondents in litigation and even carried the matter in appeal before this Court despite having lost legal battle before the Courts.

Counsel for the appellant has relied upon judgment of this Court in **Jaswant Singh Basur's case** (supra) but the same has no bearing on the facts of the case at hand in view of its peculiar facts and circumstances. In the said case, Jaswant Singh Basur was an IPS Officer. He was appointed as Chairman PPSC with effect from 24.04.1961 when he was still in service as a member of Indian Administrative Service. He retired from Indian Administrative Service on 24.03.1962 and on attaining the age of 60 years, he retired from PPSC on 23.11.1966.

Regulation 5(1) of the Regulations with three provisos appended thereto have been reproduced in para 3 of the judgment. Perusal of Regulation 5 of the Regulations would reveal that there was no provision in the Regulation with regard to pay protection on the basis of last drawn pay by a retiree. This Court in para 7, in view of proviso (i) to Regulation 5(1) of the Regulations, has held that if a retired government servant is appointed as Chairman, he can draw his fixed full salary of Rs.2250/- throughout the term of his office but in that case his pension for the period he serves on the Commission is not to be paid to him or his pay is reduced by the amount of the pension drawn by him. This clearly indicates that if a retired Government servant is appointed as Chairman, he cannot draw anything more than the maximum salary of Rs.2250/- fixed for the Chairman under this Regulation. Para 8 of the judgment relates to proviso (2) pertaining to the case of an officer who has not retired from

service but while continuing in government service he is appointed as a Chairman or member of PPSC. Under this proviso, the Chairman is entitled to receive not the fixed salary of Rs.2250/- but the last salary which he was drawing on his grade on the date of his appointment plus Rs.200/- as additional pay subject to the condition that his total monthly salary in no case shall exceed Rs.2250/-. Again the intention clearly is that the Chairman shall not receive anything more than the maximum salary fixed in the opening part of Regulation 5(1). In para 10, it has been held that none of the three provisos, however, covers the petitioner's case as there is nothing in Regulation 5 or any other Regulation of the PPSC or in any other Regulations which regulates the emoluments or salary of the government official who retires from his parent department while still serving as a member or Chairman of the Commission. In those circumstances, it was held that had the intention been that a member from services who retires from parent service during the term of his office as Chairman or member of PPSC should not receive his pension and should be subject to deduction of an amount equal to death- cum- retirement gratuity so long as he continues to serve in the Commission, the Bench failed to see why this could not be specifically stated in these Regulations.

Since in the case at hand, the appellant cannot equate his case vis-à-vis the case of Jaswant Singh Basur in view of facts on record that he had already retired from service prior to his appointment as member of PPSC, therefore, he cannot derive any advantage to his contention from what has been held in **Jaswant Singh Basur's case** (supra). In this view of the matter, it can safely be held that reliance upon the judgment in **Jaswant Singh Basur's case** (supra) is highly misplaced and contention raised by

the appellant by citing Jaswant Singh Basur’s case (supra) is misconceived and untenable.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

SEPTEMBER 2, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no