

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

LPA-1476-2017 (O&M)

Date of Decision: December 09, 2019

Naresh Kumar and others

... Appellants

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present: Mr. A.K. Chopra, Senior Advocate with
Mr. Sushil Jain, Advocate,
for the appellants.

RAVI SHANKER JHA, CHIEF JUSTICE, (ORAL)

CM-3152-LPA-2017

For the reasons stated in the application, same is allowed. Delay of
2 days in re-filing the appeal is condoned.

LPA-1476-2017

This Letters Patent Appeal has been filed by the appellants-
petitioners being aggrieved by judgment dated 02.05.2017 passed in CWP-
9220-2017 dismissing the writ petition filed by the petitioners claiming the
benefits under the old pension scheme and not under the new pension scheme
and also challenging the communication dated 04.01.2016 rejecting the
representation / legal notice dated 28.08.2015 filed by the petitioners.

Learned senior counsel appearing for the appellants-petitioners submits that the petitioners were appointed as Gram Sachivs pursuant to the order passed by this Court in CWP No. 16376 of 1999 decided on 31.01.2007. It is stated that the petitioners having been selected by the Haryana Subordinate Services Selection Board as Gram Sachivs in the year 1999, had approached this Court by filing various writ petitions i.e. CWP No. 16376 of 1999 and other connected petitions, claiming appointments as Gram Sachivs pursuant to the selection held in the year 1999. It is stated that said writ petitions were allowed directing the authorities to issue appointments to the petitioners with stipulation that they shall get pay only from the date they join on the post of Gram Sachivs and shall have no claim of the back seniority or pay. Learned senior counsel for the appellants submits that in such circumstances, the petitioners were entitled to be treated in service from the year 1999 and accordingly, the old pension scheme which was prevailing at that time should be applied to the petitioners. Learned senior counsel submits that the respondent-authorities, by treating the petitioners, who have been appointed as Gram Sachivs pursuant to the order passed by this Court in CWP No. 16376 of 1999, denied the benefit of the old pension scheme and applied the new pension scheme to the petitioners. Learned senior counsel submits that once this Court had directed the authorities to absorb the petitioners pursuant to the selection process that was undertaken in the year 1999 and have granted appointments to the petitioners pursuant to such selection, they should be treated as persons in service at that time. More so, as the delay in appointments were not on the part of the petitioners, but on the part of the State. Learned senior counsel relied upon a decision of the Delhi High Court rendered in

W.P.(C)-2810/2016 – Inspector Rajendra Singh and others vs. Union of India and others, decided on **27.03.2017** in support of the said contention.

We have heard learned senior counsel for the appellants and have perused the impugned order passed by the learned Single Judge. We have also perused the judgment passed by the learned Single Judge in CWP No. 16376 of 1999.

From the perusal of the judgment passed by the learned Single Judge in CWP No. 16376 of 1999, it is apparent that the petitioners' named appeared in the select list pursuant to selection process undertaken by the Haryana Subordinate Services Selection Board for appointment on the post of Gram Sachiv in the year 1999. However, no appointments were made by the authorities. As no such appointments were made, the petitioners approached this Court in the year 1999 praying for a direction to the authorities to issue orders of the appointment pursuant to the select list. The learned Single Judge of this Court allowed the writ petitions filed by the petitioners observing that it would be appropriate for the Government that the candidates selected for the posts of Gram Sachivs in the year 1999, be first absorbed "now" i.e. on the date of disposal of the petition in the year 2007 against available vacancies and then the remaining available posts be filled by further selection process. While making the aforesaid observation and direction, the learned Single Bench further directed that the petitioners would get pay only from the date they join on the post of Gram Sachivs and shall have no claim of the back seniority or pay. It is also an admitted and undisputed fact that subsequent to the order passed by this Court, the petitioners were granted appointments in the year 2007 as well as benefit in seniority from the date of appointments and that the

petitioners accepted the orders of appointment and permitted the situation to continue as it was till 28.08.2015 whereupon they served the respondents authorities the legal notice claiming benefit of the old pension scheme on the ground that they shall be treated to be appointed since 1999, which was rejected by the authorities vide communication dated 04.01.2016. After rejection of that claim, the petitioners approached this Court by filing a writ petition i.e. CWP No. 9220 of 2017, which has been dismissed by the learned Single Judge vide the impugned judgment. The learned Single Judge has observed that the observations made by this Court in CWP No. 16376 of 1999 to the effect that the petitioners would get pay only from the date they joined the post and shall have no claim of back seniority or pay, cannot be construed to mean that the petitioners were directed to be appointed in the year 1999.

We are in respectful agreement with the aforesaid finding recorded by the learned Single Judge on two reasons. Firstly, that the learned Single Judge in CWP No. 16376 of 1999 had itself observed and directed that the petitioners should be absorbed “now” against available vacancies. “Now” apparently means the day of disposal of the petition, which was in the year 2007. Secondly, pursuant to the orders passed by this Court in the aforesaid writ petition, the petitioners were appointed in the year 2007 and apparently, were joined in service in the year 2007 which was duly accepted by them and was not agitated at any point of time.

In view of the aforesaid circumstances, we are of the considered opinion that the finding of the learned Single Judge that the petitioners are not entitled to any benefit under the old pension scheme by treating them that they have been appointed in the year 1999 is in accordance with law and does not

suffer from any illegality or perversity in the order passed by the learned Single Judge warranting interference in it. The decision relied upon by the learned senior counsel in the case of **Inspector Rajendra Singh** (supra) of the Delhi High Court also does not render any assistance to the petitioners.

In view of the peculiar facts and circumstances of the petitioners' case, namely, that the petitioners were, in fact, granted appointment pursuant to the direction issued by this Court in CWP No. 16376 of 1999 in the year 2007 and accepted the same and having continued in service since then, the claim made by the petitioners is wholly misconceived.

Accordingly, present appeal is dismissed.

(Ravi Shanker Jha)
Chief Justice

December 09, 2019
vkd

(Rajiv Sharma)
Judge

Whether reasoned / speaking : Yes / No
Whether reportable : Yes / No