

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

1186

Civil Writ Petition No.1512 of 2002

Date of Decision: March 4th, 2020

Buta Ram

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Yagyadeep, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for issuance of a writ of mandamus directing the respondents to grant him the retiral benefits treating him to be a regular employee in the light of the decision dated 20.05.1974 (Annexure P-4), whereby the services of the petitioner were regularized on the post of Cashier as per the Punjab Government letter dated 29.01.1973.

2. Petitioner has approached this Court assailing the action of the respondents, whereby his claim for the retiral benefits, when claimed by him, he was intimated that his services were regularized earlier vide order dated 20.05.1974 but in supersession thereof, a letter dated 16.01.1975 (Annexure R-2) was issued by the Director, Health and Family Planning, Punjab, whereby the order of regularization was changed by asserting that his pay would be drawn from the amalgamated fund and his services are regularized against the said post. This order is stated to have been conveyed to the petitioner. He, therefore, was not entitled to the grant of pension and other pensionary benefits. This letter dated 29.05.2001 (Annexure P-6) is

assailed by the petitioner.

3. It is the contention of learned counsel for the petitioner that the petitioner was appointed as Cashier on *ad hoc* basis by the Principal, Government Medical College, Amritsar, vide letter dated 26.10.1971 (Annexure P-1). His services were extended from time to time by the Director, Research and Medical Education. In this letter dated 29.06.1973 (Annexure P-2), not only the services of the petitioner but other officials as well i.e. Shri Charan Singh, Smt. Vijay Lakshmi and Shri Vijay Kumar, Clerks, who were also working in the Medical College, Amritsar, were extended. His services were regularized with effect from 01.01.1973 as per the Punjab Government Instructions on completion of one year i.e. 01.01.1974 subject to fulfilling the conditions. The said order of regularization of the services of the petitioner was issued on 20.05.1974 (Annexure P-4). Petitioner, on the basis of these orders, continued to serve the respondents and it is at the stage of his superannuation that he put forth his claim for the grant of retiral benefits, which has been rejected by the respondents as per the communication dated 29.01.2020 (Annexure R-3) appended along with the reply.

4. Counsel for the petitioner contends that the services of the petitioner having been regularized vide order dated 20.05.1974 (Annexure P-4), the same could not have been deregularized without issuing him a notice. The supersession of the said order vide communication dated 16.01.1975 (Annexure R-2) is unsustainable being violative of principles of natural justice. His further contention is that merely because the petitioner is drawing his salary from the amalgamation fund does not

change the nature of his post as it is an admitted position that the petitioner was working against the sanctioned post regularly from the initial inception and, therefore, his claim is covered by the policy instructions of the Government of Punjab letter dated 29.01.1973 under which his claim was duly considered by the competent authority and order dated 20.05.1974 (Annexure P-4) of regularization passed. He, thus, contends that the impugned order cannot sustain and deserves to be set aside, whereby in supersession of his regularization order, a subsequent order dated 16.01.1975 (Annexure R-2) has been passed without following the principles of natural justice. The consequential benefits of grant of retiral benefits is also claimed by the petitioner.

5. On the other hand, learned counsel for the State, on the basis of the reply which has been filed, could not dispute the fact that the services of the petitioner were regularized vide communication dated 20.05.1974 (Annexure P-4). However, he contends that that said order was superseded vide order dated 16.01.1975 (Annexure R-2). The said order was duly conveyed to the petitioner and petitioner had accepted the same and has not agitated the said aspect and now at this belated stage, the claim of the petitioner cannot be accepted. His further contention is that his initial appointment also indicated that he was appointed against the post under the amalgamation fund and the salary would be drawn from the amalgamation fund. The said funds are at the level of the college itself and, therefore, the post sanctioned against that fund is not entitled to the pensionary benefits. His further contention is that the claim of the petitioner, which he has subsequently submitted to the Principal of the College, which has been duly

forwarded to the Government, has been considered and rejected on 12.09.1990. This communication was also forwarded to the petitioner. He, thus, contends that the claim as made by the petitioner cannot be accepted.

6. I have considered the submissions made by the counsel for the petitioner and with their assistance, have gone through the pleadings.

7. The factum that the services of the petitioner were regularized vide order dated 20.05.1974 (Annexure P-4) on the post of Cashier is not disputed. The plea which has been taken is that the said order stands superseded by a subsequent order dated 16.01.1975 (Annexure R-2). The factum that the petitioner has not been given a notice prior to passing the order of supersession of regularization of his services has not been disputed, however, what has been projected by the respondents is that the order of supersession was duly conveyed to the petitioner. The fact remains that the petitioner, prior to his order of regularization having been changed, was not given an opportunity to explain his stand, meaning thereby that while passing the order dated 16.01.1975 (Annexure R-2), whereby the civil right of the petitioner for regularization of his services having been withdrawn, the principles as laid down in various judgments passed by this Court and the Hon'ble Supreme Court stand violated. *Audi alteram partem* is one of the principles, which has been well entrenched by now and, therefore, the same was required to be followed prior to passing of the order taking away the established benefits/right upon the petitioner.

8. That apart, petitioner admittedly has served the respondents from the initial date of appointment as a Cashier. Merely because he has been drawing his salary from the amalgamation fund would not be a ground

enough to deny him the benefit of pensionary benefits, especially when his services have been regularized, which have been superseded which has the effect of practically deregularizing his services vide order dated 16.01.1975 (Annexure R-2) without following the principles of natural justice.

9. In view of the above, the present writ petition is allowed.

10. Impugned order dated 29.05.2001 (Annexure P-6) vide which the retiral benefits have been denied to the petitioner as well as the order dated 16.01.1975 (Annexure R-2) vide which it was intimated that his pay would be drawn from the amalgamated fund and his services are regularized against the said post in supersession of the letter/order dated 20.05.1974 (Annexure P-4), being violative of the principles of natural justice, are hereby quashed.

11. Petitioner is held entitled to the grant of the retiral benefits. The dues be released to the petitioner within a period of four months from today.

12. Copy of this order be given *dasti* to the counsel for the parties under signatures of Bench Secretary of this Court.

March 4th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No