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

CWP No.467 of 2018

Date of decision: March 6, 2020

Roshan Lal Ahuja

...Petitioner

Versus

State of Punjab and another

...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Harnaresh Singh Gill**

**Present: Mr. R.K.Malik, Senior Advocate, with
Mr. Sunil Hooda, Advocate, for the petitioner.**

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Rajeev Kawatra, Advocate,
for respondent no.2.

Rakesh Kumar Jain, J.

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the orders dated 25.04.2017, 29.11.2017 and 17.11.2016, declining the retiral benefits to him.

In brief, the petitioner has averred that he was enrolled as an Advocate vide Enrollment No.P-583 and continued to practice upto the date of his appointment as a Presiding Officer, Fast Track Courts on 18.12.2003. Though the appointment letter was issued in favour of the petitioner, appointing him as Presiding Officer, Fast Track Court in the State of Punjab on 18.12.2003 but the petitioner joined as such against the said post only on 08.03.2004. Thereafter, in the year 2008, in order to absorb the officers already working as Additional District & Sessions Judge (Ad hoc)-cum-Presiding Officer in the Fast Track Courts, respondent no.2 decided to hold a

suitability test followed by an interview. The petitioner also participated in the said selection/absorption process, but failed to achieve the required bench mark and was, thus, not absorbed in the regular cadre of Additional District and Sessions Judges. However, he continued to serve as Additional District & Sessions Judge (Ad-hoc)-cum-Presiding Officer in the Fast Track Court on the terms extended from time to time till 31.03.2011 when he was relieved from the said post. After having been relieved from the post of Additional District & Sessions Judge (Ad-hoc)-cum-Presiding Officer in the Fast Track Court on 31.03.2011, the petitioner joined as the President, District Consumer Disputes Redressal Forum, Ludhiana on 22.07.2011.

Thereafter, the Supreme Court, in the case of **Brij Mohan Lal vs. Union of India and others**, (2012) 6 Supreme Court Cases 502, afforded one more opportunity to those Fast Track Court officers who were not absorbed earlier. The petitioner also opted to appear in the suitability test in view of the directions of the Supreme Court for absorption in the regular cadre and was appointed on 27.07.2015 in the regular cadre of Additional District & Sessions Judge, joined as such on 28.07.2015 and superannuated on 31.07.2015. However, on the representation of the petitioner, his absorption in the regular cadre of Additional District & Sessions Judge was made effective notionally from 01.08.2012 instead of 28.07.2015.

After his superannuation on 31.07.2015, the petitioner made a representation to respondent no.2 for grant of consequential benefits etc. on his absorption in the regular cadre of Additional District & Sessions Judges in the State of Punjab. The said representation was duly considered by respondent no.1 on 30.05.2016 and declined the same by recording the following reasons:-

“Meeting note and representation perused. Shri Roshan Lal Ahuja alongwith other Advocates was appointed as Additional District & Sessions Judge (Ad hoc)-cum-Presiding Officer in the Fast Track Court in the State of Punjab. He joined on 08.03.2004. Next recruitment to the post of Additional District & Sessions Judges by way of direct recruitment from Bar was made in the year 2008. In order to absorb the officers already working as Additional District & Sessions Judge (Ad hoc)-cum-Presiding Officer in the Fast Track Courts, High Court decided to hold a suitability test followed by interview. The Selection Committee further decided that to be absorbed in the regular cadre of ADJ from the Fast Track Courts, the Bench mark would be 50% or above marks in aggregate. In this selection process, Shri Roshan Lal Ahuja Participated but failed to achieve the bench mark. He was thus not absorbed in the regular cadre of ADJ. He continued to serve as Additional District & Sessions Judge (Ad hoc)-cum-Presiding Officer in the Fast Track Court on the terms extended from time to time and finally upto 31.03.2011.

Hon'ble Supreme Court in Brij Mohan Lal vs. Union of India & others (2012) 6 Supreme Court Cases 502 (also known as Brij Mohan Lal-II) vide order dated 19.04.2012 afforded one more opportunity to those Fast Track Courts officers who were not absorbed earlier. Shri Ahuja also opted for appearing in the suitability test in view of directions of Hon'ble Supreme Court for absorption in the regular cadre. In the light of observation of Hon'ble Supreme Court in judgment Brij Mohan Lal-II dated 19.04.2012, Sh. R.L.Ahuja was given opportunity to appear in the suitability test for absorption in regular cadre of Additional District & Sessions Judge. On qualifying the same, he was appointed on 27.7.2015 to the regular cadre of Additional District & Sessions Judge and he joined on 28.07.2015. He superannuated on 31.07.2015. Hon'ble Supreme Court in Brij Mohan Lal-II case has not fixed any time frame within which the process for absorbing after determining the suitability, was to be completed. Nevertheless, the process was to be completed within a reasonable time. Owing to administrative exigencies, the test of Shri Ahuja could not be held within a reasonable time from the date of Apex Court order i.e. 19.04.2012. The Committee is of the view that

three months period would have been reasonable time to conduct the test. Accordingly, the Committee resolves that Shri Roshan Lal Ahuja shall be deemed to have been notionally absorbed in regular cadre as Additional District & Sessions Judge in the State of Punjab w.e.f. 01.08.2012 (i.e. after expiry of three months period from the date of Hon'ble Supreme Court's orders).

Shri Ahuja failed to qualify the overall merit in the year 2008, so, he cannot, for any purpose, claim parity with those Fast Court Officers who were absorbed in the regular cadre of Additional District & Sessions Judge in the State of Punjab through suitability test held in the year 2008.

As regards the consequential monetary benefits, in the meeting dated 21.04.2016 this Committee resolved to find out from Shri Ahuja whether he was gainfully engaged after he was relieved from the post of Presiding Officer of Fast Track Court, and, if so, during which period and on what terms and conditions, till he was appointed as Additional District & Sessions Judge. Shri Roshan Lal Ahuja vide his letter dated 4.5.2016 has submitted that he was appointed as Presiding of the District Consumer Disputes redressal Forum at Ludhiana vide letter dated 14.7.2011 passed by the Department of Food, Civil Supplies and Consumer Affairs, Government of Punjab in the same pay scale of District Judge. Thereafter, he joined on the aforesaid post on 22.07.2011. he continued to serve in the Consumer Forum till 27.07.2015 and resigned from the post on that day after receiving a letter of absorption/appointment as additional District & Sessions Judge from this Court whereupon he joined as Additional District & Sessions Judge, Sri Fatehgarh Sahib on 28.07.2015.

Thus, Shri Roshan Lal Ahuja was whole time in service and gainfully engaged during the relevant period hence he did not suffer any pecuniary disadvantage. The Committee, therefore, is of the considered view that he is not entitled to any pecuniary benefits for the period from which he is notionally deemed to be in service i.e. 01.08.2012 till his superannuation. Representationist be informed accordingly.”

Learned counsel for the petitioner has challenged the aforesaid

decision of respondent no.2 arguing that in the aforesaid decision, the only

aspect of entitlement of the petitioner to any pecuniary benefit for the period from which he was notionally deemed to be in service i.e. 01.08.2012 till the date of superannuation i.e. 31.07.2015 has been examined and considered, whereas the aspect of entitlement of the petitioner for pension, gratuity, leave encashment, retrial benefits etc. has not even been touched at all. He has drawn our attention to Rule 19 of the Punjab Superior Judicial Service Rules, 2007 to contend that 10 years of practice of the petitioner at the Bar shall have to be counted towards service qualifying for pension and other retrial benefits and, thus, after taking into consideration 10 years of practice at the Bar, the petitioner is entitled to the pension, gratuity and leave encashment etc.

In response thereto, counsel for respondent no.2 has submitted that since the petitioner remained gainfully engaged for the period from which he is notionally deemed to be in service i.e. 01.08.2012 till his superannuation, therefore, he is not entitled to any pecuniary benefits. Further, it is submitted that even if petitioner's qualifying service is counted w.e.f. 08.03.2004, the date when he joined as Additional District and Sessions Judge (Ad-hoc)-cum-Presiding Officer, Fast Track Court, even then he is not covered under the Old Pension Scheme and only covered under the new 'Defined Contributory Pension Scheme' and not entitled to the pension etc. under the Old Pension Scheme.

After hearing learned counsel for the parties and examining the available record, we have found that while declining the request of the petitioner vide order/minutes dated 30.05.2016, respondent no.2 has not discussed at all as to whether the case of the petitioner falls within the ambit of Old Pension Scheme or new "Defined Contributory Pension Scheme" and also

did not discuss the issue of grant of gratuity, leave encashment and other retrial benefits but only decided the issue of disentitlement of the petitioner to any pecuniary benefits for the period from which he is notionally deemed to be in service i.e. 01.08.2012 till his superannuation.

Thus, keeping in view the aforesaid facts and circumstances, we dispose of the present writ petition with a direction to respondent no.2 to re-consider the case of the petitioner to the extent as to whether the petitioner falls within the ambit of Old Pension Scheme or new “Defined Contributory Pension Scheme” and whether he is entitled for grant of gratuity, leave encashment and other retrial benefits or not.

(Rakesh Kumar Jain)
Judge

March 6, 2020
vinod*

(Harnaresh Singh Gill)
Judge

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