IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-328-2017 (O&M) in
CWP-351-2015
Date of Decision:22.01.2020

Muni Ram Ranga ... Appellant

Vs.

State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE JASWANT SINGH

HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Mukul Sharma, Advocate assisted by
Mr. C.S. Singla, Advocate
for the appellant.

Mr. D.S. Nalwa, Addl. A.G. Haryana.

SANT PARKASH, J.

The present intra-court appeal under Clause X of Letters Patents is directed against order dated 17.01.2017 passed by the learned Single Judge in CWP No.351 of 2015 whereby writ petition filed by the petitioner was dismissed.

In brief, it was the case of the petitioner that vide notification dated 31.12.2007, he along with some other State Information Commissioners was appointed as Information Commissioner and joined the duties on 03.01.2008 for the period of 5 years and retired on 03.01.2012. In view of the notification dated 22.04.2008 (Annexure P-3) and as per the terms and conditions mentioned therein, the salary allowances and other facilities were to be paid to the petitioner as per Section 16(5) (b) of the Right to Information Act, 2005. However, some guidelines were issued by the Government of Haryana Annexure P-5 in June 2014 after the retirement of the petitioner whereby terms and conditions in respect of grant of pensionary benefits to the State Commissioners were amended while laying down as under:

"(A) The Terms and Conditions in case the State Information Commissioners are retired Government Officers:

(i) Additional; pension in respect of a State Information Commissioner shall be fixed after deducting the pension one is drawing already from any Government.

(ii) The maximum limit of the total annual pension shall be Rs.4,80,000.

(B) The Terms and Conditions in case the State Information Commissioners are other than the retired Government Officer:-

State Information Commissioner who at the time of appointment as such was not in the service of the Central or a State Government and who has not retired from Government service any time prior to joining this position, shall on his ceasing to hold the office, be paid a pension for his life after rendering a service of a minimum three years as the State Information Commissioner Chief Information Commissioner with following condition:-

(i) The specific provision for determining pension will be made by the Administrative Department in the rules, as the service under reference being a separate service carrying a maximum of 5 years of service with it. The rule of minimum period of 10 years of service required for pension is relaxed to that extent.

(ii) Entitlement for additional pension at the age of 80, 85, 90, 95 and 100 year will be as per rules applicable in respect of the State Government pensioners.

(iii) The Pension may be worked out @ 50% of the last pay drawn will be reduced pro rata, where the pensioner had less than the maximum required qualified service (i.e. 28 years) for full pension as pere rules applicable in respect of State Government pensioners.

(iv) No such pension shall be payable to the State Information Commissioner if he has been removed from his office."

By way of filing the writ petition, the petitioner has sought parity relating to pensionary benefit with the Chief Secretary to the State which was dismissed vide the impugned order by observing as under:

"I am of the view, that perusal of the letter shows that after considering the facts and circumstances and with a view to bring the terms and conditions of the serving Information Commissioners at

par with Chief Secretary of the State, both while in service as well as after retirement, has been under consideration for long. Now the Government has decided to fix the terms and conditions of serving Information Commissioners as provided in Annexure P-5. It shows that the terms and conditions as mentioned in letter of June 2014 Annexure P-5 are fixed prospectively, there is no mention that these will also apply to the retired Information Commissioners and if so, from which retrospective date, so as to lay down, which of the retired Commissioners are eligible and which are not eligible. The language of letter Annexure P-5 makes it clear that it has prospective effect whereby the Government had altered the terms and conditions of the State Information Commissioners. Therefore, the petitioner cannot claim parity under Article 14 of the Constitution of India to claim the benefit of said terms and conditions which were not in force when the petitioner was in service. The Government is always competent to issue any guidelines or terms and conditions with prospective effect and there is no illegality in the same as has been held by the ***Supreme Court in Government of Andhra Pradesh & others*** *v.* ***N. Subbarayudu and others****; 2009 (2) SCC (L&S) 172.*

Learned counsel for the petitioner has also relied upon the judgment of ***D.S. Nakara and others v. Union of India****; (1983) 1 Supreme Court Cases 305 which is regarding the pension to the Central Government Servants as per Civil Services (Pension) Rules, 1972. Apparently, these pertains to the regular Govt. servants and for that purpose the same criteria cannot be applied to a person who has fixed term as in the case of civil servants. In order to qualify for pension, some minimum service is always prescribed. As observed above, petitioner does not have qualifying service for the purpose of pension as in the case of Chief Secretary of the State. It being so, I do not find any merit in the contention of the learned counsel for the petitioner that the petitioner is also entitled to pension after his retirement.*

Dismissed."

Feeling dissatisfied with judgment dated 17.01.2017, the appellant has filed the instant Letters Patent Appeal.

Learned counsel for the appellant contends that the appellant is entitled to pension from the date the State Government vide its Circular of June 2014 (P-5) has granted pension to the Information Commissioners retiring from there onwards. It is contended that denial of pension to those Information Commissioners who retired before June 2014 is totally irrational and does not stand to the test of Article 14 of the Constitution.

On the other hand, learned State counsel opposed the contention raised by the learned counsel for the appellant by contending that issuing of any notification or fixing cut off date by the concerned authority of the Government keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances are within the domain of the concerned authority of the Government and the Court should not normally interfere with the issuance of the notification of fixing of cut off date by the Government unless such order appears to be on the face of it blatantly discriminatory and arbitrary. In support of his argument, he relied upon the judgment of the Supreme Court in the case of ***Government of Andhra Pradesh and others*** v. ***N. Subbarayudu and others***; 2008 (2) S.C.T. 425.

We have heard learned counsel for the parties and perused the case file with their able assistance.

The scope of the instant LPA is limited to the extent whether the judgment under appeal is permissible in law and in consonance with the settled cannons of law.

The matter to equate the terms and conditions of serving Information Commissioners at par with Chief Secretary of the State, both while in service as well as after retirement, was under serious consideration since long. Vide a letter of June 2014 (Annexure P-5), the State Government made the job of Information Commissioner pensionable. The contention of learned counsel for the petitioner that the case of the petitioner should be considered under these instructions, is totally misconceived. This notification/letter nowhere stipulates that it would be applicable retrospectively. It is the domain of the concerned authority to fix cut off date keeping in view of the various aspects. Had the intention of the Government been to make it applicable retrospectively, it would have been specifically mentioned therein. In the absence of any retrospective effect, the said notification/letter cannot be made applicable in the case of the petitioner automatically. The petitioner cannot claim parity under Article 14 of the Constitution unless it is proved on record that the cut off date fixed by the Government was blatantly discriminatory and arbitrary.

Taking into consideration the totality of the circumstances, we do not find any illegality or infirmity in the impugned judgment passed by the learned Single Bench.

Resultantly, this appeal is dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

22.01.2020
rajeev

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**