Sr.No.583

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6848 of 2002 (O&M)
Reserved on : 17.10.2022
Pronounced on: 24.11.2022

Lajwanti …Petitioner

Versus

The State of Haryana and others …Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Kanwal Goyal, Advocate
for the petitioner.

Mr. R.D. Sharma, D.A.G., Haryana.

***

ARUN MONGA, J.(ORAL)

Petition herein, *inter alia,* is for issuance of a writ in the nature of Mandamus directing the respondents to release pension to the petitioner from 14.08.1968 to 10.02.1997 for the services rendered by her late husband Vishnu aka Bishan @ Vishan Dass till 1968 and also to grant her family pension w.e.f. 11.02.1997.

2. Succinct facts first as pleaded in the petition. Petitioner's husband Bishan Dass @ Vishan Dass was appointed as Patwari in Bahawalpur State in Undivided India (Present day in Pakistan) on 14.07.1936 against a permanent post and he worked there till 06.01.1948. After partition in 1947, he was appointed as Clerk in the Rehabilitation department on 06.03.1948 and worked on various posts. On 18.07.1950 he was appointed as Canal Patwari in the Irrigation Department in

erstwhile State of Punjab. Vide letter dated 24.01.1964 (Annexure P-2), the Chief Engineer, Irrigation Work, Punjab conveyed to the Superintending Engineer, Patiala Circle, I.B., Patiala that in accordance with Instructions dated 23.06.1954 services rendered by Sh.Vishan Dass and 2 other employees prior to partition be counted towards pension and any break of service caused by the partition should be ignored when determining the total length of service. On numerous representations moved by husband of the petitioner and other employees, the Superintending Engineer, Patiala recommended regularization of their services by acknowledging that husband of the petitioner was a displaced employee from Bahawalpur State (Annexure P-8). From November 1966 till 14.07.1968, the husband of the petitioner was employed in the State of Haryana and he retired as Canal Patwari from Irrigation Department on 14.07.1968. He moved representation seeking release of pension but to no avail. He then filed Civil Suit in 1990, which was decreed in his favour. In appeal, it was remanded back to trial Court due to defect of non service under Section 80 CPC. Husband of petitioner died on 10.02.1997. Thereafter, suit filed by LRs of Sh. Bishan Dass was dismissed in 2001 due to defect of non-service u/s 80 CPC and in appeal the same was dismissed as withdrawn with liberty to file a fresh suit after serving statutory notice (Annexure P-10). Thereafter, LRs of Bishan Dass served notice upon the respondent department and vide reply dated 24.01.2002, their claim was rejected. Hence, the instant writ petition.

3. In the written statement, reliance is placed on Rule 3.12 PCS Vol.II contained in Annexure R-1 and it is *inter alia* pleaded that the employment of the husband of the petitioner was not against any substantive and permanent post. Further, per Annexure R-2 read with

notification dated 05.12.1969 contained at Annexure R-3, only such temporary/officiating employees are entitled to pension on par with the permanent government employee who retire on or after 5.2.1969.

4. I have heard learned counsel for the parties.

5. Before proceeding further it would be appropriate to reproduce relevant portion of Section 86 & Fifth Schedule of the 1956 Act and Sections 58 & Fourteenth Schedule of the 1966 Act, which are as under:-

> *"**The States Re-organization Act, 1956***
>
> ***86. Pensions***.—*The liability of the existing States in respect of pensions shall pass to, or be apportioned between, the successor States in accordance with the provisions contained in the Fifth Schedule.*
>
> ***THE FIFTH SCHEDULE***
> ***APPORTIONMENT OF LIABILITY IN RESPECT OF PENSIONS***
>
> *1. Subject to the adjustments mentioned in paragraph 3, the successor State or each of the successor States shall, in respect of pensions granted before the appointed day by an existing State, pay the pensions drawn in its treasuries.*
> *2. Subject to the said adjustments, the liability in respect of pensions of officers serving in connection with the affairs of an existing State who retire or proceed on leave preparatory to retirement before the appointed day, but whose claims for pensions are outstanding immediately before that day, shall be the liability of the successor State, or, if there be two or more successor States, of such one of them as the Central Government may by order specify.*
> *3. In any case where there are two or more successor States, there shall be computed, in respect of the period commencing on the appointed day and ending on the 31st day of March, 1957 and in respect of each subsequent financial year, the total payments made in all the successor States in respect of the pensions referred to in paragraphs 1 and 2. That total representing the liability of the existing State in respect of pensions shall be apportioned between the successor States in the population ratio and any successor State paying more than its due share shall be reimbursed the excess amount by the successor State or States paying less.*
> *4. (1) The liability in respect of the pension of any officer serving immediately before the appointed day in connection with the affairs of an existing State and retiring on or after*

that day, shall be that of the successor State granting the pension; but the portion of the pension attributable to the service of any such officer before the appointed day in connection with the affairs of that existing State shall, if there be two or more successor States, be allocated between them in the population ratio, and the Government granting the pension shall be entitled to receive from each of the other successor States its share of this liability.

(2) If any such officer was serving after the appointed day in connection with the affairs of more than one successor State, the successor State or States other than the one granting the pension shall reimburse to the Government by which the pension is granted an amount which bears to the portion of the pension attributable to his service after the appointed day the same ratio as the period of his qualifying service after the appointed day under that successor State bears to the total qualifying service of such officer after the appointed day reckoned for the purposes of pension.

(3) In reckoning the said total qualifying service, any service of such officer before the appointed day in connection with the affairs of the Union under the administrative control of the Lieutenant-Governor or Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh shall be added as if the said service had been service after the appointed day in connection with the affairs of the successor State to that existing State.

5. Any reference in this Schedule to a pension shall be construed as including a reference to the commuted value of the pension.

The Punjab Reorganization Act, 1966

58. Pensions*.—The liability of the existing State of Punjab in respect of pensions shall pass to, or be apportioned between, the successor States in accordance with the provisions contained in the Fourteenth Schedule.*

APPORTIONMENT OF LIABILITY IN RESPECT OF PENSIONS

1. Subject to the adjustments mentioned in paragraph 3, each of the successor States shall, in respect of pensions granted before the appointed day by the existing State of Punjab, pay the pensions drawn in its treasuries.

2. Subject to the said adjustments, the liability in respect of pensions of officers serving in connection with the affairs of the existing State of Punjab who retire or proceed on leave preparatory to retirement before the appointed day, but whose claims for pensions are outstanding immediately before that day, shall be the liability of the State of Punjab.

3. There shall be computed, in respect of the period commencing on the appointed day and ending on the 31st day of March, 1967, and in respect of each subsequent *financial year, the total payments made in all the successor States in respect of the pensions referred to in paragraphs 1 and 2. That total representing the liability of the existing State of Punjab in respect of pensions shall be apportioned between the successor States in the population ratio and any successor State paying more than its due share shall be reimbursed the excess amount by the successor State or States paying less.*

4. The liability of the existing State of Punjab in respect of pensions granted before the appointed day and drawn in any area outside the territories of the existing State shall be the liability of the State of Punjab subject to adjustments to be made in accordance with paragraph 3 as if such pensions had been drawn in any treasury in the State of Punjab under paragraph 1.

5. (1) The liability in respect of the pension of any officer serving immediately before the appointed day in connection with the affairs of the existing State of Punjab and retiring on or after that day, shall be that of the successor State granting the pension; but the portion of the pension attributable to the service of any such officer before the appointed day in connection with the affairs of the existing State of Punjab shall be allocated between the successor States in the population ratio, and the Government granting the pension shall be entitled to receive from each of the other successor States its share of this liability.

(2) If any such officer was serving after the appointed day in connection with the affairs of more than one successor State, the successor State or States other than the one granting the pension shall reimburse to the Government by which the pension is granted an amount which bears to the portion of the pension attributable to his service after the appointed day the same ratio as the period of his qualifying service after the appointed day under the reimbursing State bears to the total qualifying service of such officer after the appointed day reckoned for the purposes of pension.

6. Any reference in this Schedule to a pension shall be construed as including a reference to the commuted value of the pension.

6. Having thoughtfully pondered over the rival contentions vis-à-vis the applicable Service Rules, I am of the view that petition deserves to be allowed. I shall proceed to record my findings in the succeeding paragraphs.

7. First and foremost applicable rule 3.12 of the Punjab Civil Services Rules Vol. II which is of relevance be seen as is reproduced hereinbelow:-

> *"3.12. The service of a Government employee does not qualify for pension unless it conforms to the following three conditions:–*
> *First.–The service must be under Government.*
> *Second.–The employment must be substantive and permanent.*
> *Third.–The service must be paid by Government. These three conditions are fully explained in the following rules.*
> *Note.–The question whether service in a particular office or department qualifies for pension or not is determined by the rules which were in force at the time such service was rendered; orders subsequently issued declaring the service to be non-qualifying, are not applicable with retrospective effect.* "

Perusal of the above shows that there are three pre requisites for according the pension i.e.

a) The service must be in the Government
b) Employment must be substantive and permanent
c) Salary must have been paid by the Government.

8. Concededly the services of the petitioner were hired as Patwari which is a Government job, though of course in Bahawalpur state in the erstwhile undivided State of Punjab (present day Pakistan). He continued to serve as such from 14.07.1936 until partition in 1947 which is also factually not controverted as is borne out from his appointment letter contained at Annexure P-1 and letter dated 24.01.1964 issued by Chief Engineer, Chandigarh, Punjab to Superintendent Engineer, Patiala Circle (Annexure P-2). The said letter was written in the context of counting the past service of the petitioner's husband and other similarly situated employees. As regard the permanency of the job of the petitioner's husband, the same too is not under dispute as the post of

Patwari is substantive and permanent in nature and it is nobody's case that the services were hired on contract or on adhoc basis.

9. Furthermore, in the context of continuity of service to be granted to the petitioner after partition/independence i.e. 1947 followed by reorganization of the States in India, reference may at this stage be had to following relevant statutory provisions:-

Section 115 of the States reorganization Act, 1956

> *115. Provisions relating to other services.*
> *(1) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Lieutenant- Governor or Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.*
> *(2) Every person who immediately before the appointed day is serving in connection with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State, unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other successor State.*
> *(3) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (2) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.*
> *(4) Every person who is finally allotted under the provisions of sub- section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon between the Governments concerned, and in default of such agreement, as may be determined by the Central Government.*
> *(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to--*
> *(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and*

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.
(6) The foregoing provisions of this section shall not apply in relation to any person to whom the provisions of section 114 apply.
(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State: Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub- section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

Section 82 of the Punjab Re organization Act 1966

82. Provisions relating to other Services.
(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Punjab shall, on and from that day, provisionally continue to serve in connection with the affairs of the State of Punjab unless he is required, by general or special order of the Central Government, to serve provisionally in connection with the affairs of any other successor State.
(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.
(3) Every person who is finally allotted under the provisions of sub- section (2) to a successor State shall, if he is not already serving therein, be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.
(4) The Central Government may, by order, establish one or more advisory committees for the purpose of assisting it in regard to--
(a) the division and integration of the services among the successor States; and
(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.
(5) The foregoing provisions of this section shall not apply in relation to any person to whom the provisions of section 81 apply.
(6) Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of

> *Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State: Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub- section (1) or sub- section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."*

9.1 Both the above aforesaid provisions being relevant have to be read together in consonance and needless to say in a harmonious manner so as to be meaningfully interpreted qua the same. Perusal of the said provisions reveals the following:

I. No service condition can be put on an employee to his or her detriment.

II. Continuation of condition of service in the former states has to be protected unless of course the said service conditions are changed with the prior approval of Central Government.

10. In the instant case, there is nothing on record to show that any prior approval of Central Government was sought for changing the service conditions of the husband of the petitioner to his detriment. Necessarily, therefore the nature of appointment and post of canal Patwari held by the husband of the petitioner in erstwhile Punjab and subsequently in Haryana have to be treated as same i.e. permanent in nature.

11. In the aforesaid background, let us now examine the admissibility of the claim of pension to the petitioner. Once again the answer is not far to see in light of the policy decision dated 29.08.1958 (Annexure P-3). The relevant extract of which is hereinbelow:-

> *"4- Pensions sanctioned under para I will be paid from respective date of retirement of the individuals. As regards persons who have since died, the arrears of pensions or gratuity if any admissible, will be payable to their legal* heirs of member of their family in accordance with the extent orders. In either case, the recipient (2) will be required to

execute an agreement bond in the appropriate form (Vide Annexures I and II).

5- The sundry procedural instructions issued by the Ministry of Home Affairs in connection with the provisional pension payment scheme for displaced Government servants from Sind and N. W. F. P. which are not inconsistent with the orders contained in this Ministry's 0. M. dated the 23rd August, 1957, will be applicable Mutatis mutandis to the grant of pension to displaced employees of Bahawalpur State also."

12. Perusal of the aforesaid reflects that the Central Government had taken a wholesome decision to pay pension to all the displaced employees of the erstwhile State of Bahawalpur who retired/ would retire from service from Government of India. Thus, once the benefit of pension was being given to the Central Government employees as well as those of State of Punjab, it flies in the face of the functionaries of the State of Haryana to deny the same benefit to the husband of the petitioner on the ground of his being engaged by Bahawalpur State, then by Punjab and therefore, *ipso facto* not entitled to pension.

13. In this context, Section 83 of the Punjab Re-organization Act, 1966 in any case renders the stand taken by the State of Haryana to a complete nullity. Said Section is reproduced hereinbelow:-

"*83. Provisions as to continuance of officers in the same posts. Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Punjab in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, that successor State: Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office."*

Reading of the aforesaid provision of 1966 Act clearly conveys that every person who immediately before the appointed day was holding or discharging duties on any post or in connection with the affairs of the then State of Punjab shall continue to hold the same post in the successor State. Not only that but he shall also be deemed to have been duly appointed to the said post by the successor State.

14. What thus emerges from the interpretation and the applicability of the aforesaid provisions is that the petitioner shall be deemed to be an employee of Haryana Government and also deemed to have been appointed on the permanent post of Patwari.

15. As regards continuity in Service vis-à-vis his original appointment in State of Bahawalpur, the same too has to be accorded to the petitioner in view of the decision taken by the erstwhile State of Punjab. Reference may be had to a decision taken by undivided State of Punjab vide letter dated 24.01.1964 (Annexure P-2) which envisages that there would be no break in service of the employees displaced due to the partition of the country. The said decision in fact was taken in tune with the policy decision dated 28.08.1958 (Annexure P-3) of the Union of India, which states as below:-

> "No. 47(7) EV/57,
> Government of India
> Ministry of Finance, (Department of Expenditure).
> New Delhi-2, the 28th August, 1958.
> *OFFICE MEMORANDUM*
>
> ***Subject: Payment of person to Displaced employees of the Late Bahawalpur State retiring from the service of Government of India.***
>
> *Representations have been made to Government from time to time on behalf of displaced employees of the late Bahawalpur State who, after migration, secured employment under the Government of India, for the grant of pension to*

VANDANA
2022.12.02 11:32
I attest to the accuracy and integrity of this document

them in respect of the pensionable service rendered in the Bahawalpur State might be treated on a per, with the displaced Government servants of Sindh and N. W. F. P. in the matter of grant of pension and that the scheme Governing the grant of pension to displaced Government servants from Sindh and N. W. F. P might be made applicable to the displaced employees of the Bahawalpur State also.

2- The matter has been carefully considered. There are recognizable differences between the service rendered under a princely State like Bahawalpur and the service rendered in what was formally known as British India, and the Government of India are unable to concede that the service rendered under the Late Bahawalpur State is on a per with service rendered under the Sind/N. W. F. P. Government. However, recognizing that purely on humanitarian grounds the case of Bahawalpur employees deserves favourable consideration, the president has been pleased to decide, on ex-gratia grounds that displaced employees of the late Bahawalpur state, and who were in permanent and pensionable service of that State and who on migration of India after the 14th August, 1947, and who are secured employment under the Government of India, may be granted pension, on retirement from the service of the Government of India, in accordance, with the service conditions prescribed under this Ministry's *Office Memorandum no. F47/ (3)-EV/57, dated the 23rd August, 1957 as clarified in his Ministry's Office Memorandum no. F47(1) EV/58, dated 22nd May, 1958. 3- In case where service records are not available, the unverified service rendered in the Bahawalpur State will be verified in accordance with the procedure laid down in this Ministry's office Memorandum no. F47(4)-EV/57, Dated the 29th November, 1957.*

4- Pensions sanctioned under para I will be paid from respective dated of retirement of the individuals. As regards persons who have since died, the arrears of pensions or gratuity if any admissible, will be payable to their legal heirs of member of their family in accordance with the extent orders. In either case, the recipient (2) will be required to execute an agreement bond in the appropriate form (Vide Annexures I and II).

5- The sundry procedural instructions issued by the Ministry of Home Affairs in connection with the provisional pension payment scheme for displaced Government servants from Sind and N. W. F. P. which are not inconsistent with the orders contained in this Ministry's 0. M. xx dated the 23rd August, 1957, will be applicable Mutatis mutandis to the grant of pension to displaced employees of Bahawalpur State also

6- It is requested that steps may be taken to bring the contents of this office memorandum to the notice of all displaced employees of the late Bahawalpur State who may be serving in ørder or under the Ministry of Home Affairs

> *etc. including those on leave preparatory retirement, foreign services etc.*
> *7.In so far as per ions serving in the Indian Audit Accounts Department are concerned these orders have been issued consultation with the comptroller and auditor General of India.*
>
> sd/- (G. P. Gulati),
> Deputy Secretary to the Govt. India."

16. Apart from the statutory provisions which have been totally misinterpreted by the respondents, the case of the petitioner is even otherwise squarely covered by the Supreme Court judgment rendered in '***Dhan Raj Vs. State of J & K and others'*** reported as ***1998 (4) SCC 30***, relevant of which is as below:-

> *"Even otherwise, we do not find any justifiable criteria for the State Government to draw the line between those who retired earlier and those retired after 9th June, 1981. Both such set of employees were equally placed in the same Undertaking/Corporation temporary in character and all having served in the organisations for more than 20 years. In fact, appellants have served with the Government for more than 30 to 40 years. The person serving for such a long period earns his legitimate expectation. It is not something which e seeks as a begging bowl. It is inappropriate for a State Government to take up a stand to get its own order to be held illegal, by giving restrictive interpretation to deny benefit to its own employees who had worked for such a long period. In fact, in the Constitution Bench decision of this court in D.S. Nakara and Others Vs. union of India, [1983 (1) SCC 305], this Court held that criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after specified date while depriving the benefits to those retiring prior to that date was violative of Article 14. Even otherwise, while considering the question of grant of pensionary benefits the State has to act to reach the constitutional goal of setting up a socialist State as stated and the assurance as given in the Directive principles of State Policy. A pension is a part and parcel of that goal, which secures to a person serving with the State after retirement of his livelihood. To deny such a right to such a person, without any sound reasoning or any justifiable differentia would be against the spirit of the constitution. We find in the present case the stand taken by the State Government to be contrary to the Said spirit. In the aforesaid D.S. Nakara (supra), this court has very clearly recorded the following :-*

> *"Para 36. - Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially o security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of Security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life."*

17. Keeping the views as above in mind, criterion of date of enforcement of the scheme entitling benefits of retirement to those retiring after specified date while depriving the benefits to those retiring prior to that date is a sheer violation of Article 14 of the Constitution of India. Learned counsel for the petitioner has further argued that husband of the petitioner had worked continuously for over 18 years after he had re-joined service in 1950. The continuous length of service itself shows that the post was permanent in nature. Consequently, the petitioner is entitled for grant of pension for 35 years of service rendered by her late husband.

18. In the parting, I may hasten to add here that I do not find any substance in the objection raised by learned State counsel that writ petition is hit by res judicata in view of the filing of the earlier civil suit on the same cause of action. Husband of petitioner during his lifetime had filed a civil suit bearing CS No.284 of 1990 claiming pension which was decreed on 05.11.1993. Thereafter, the State had filed an appeal and the case was remanded and since the husband of the petitioner died on 10.02.1997, the petitioner alongwith her son

Harish Kumar were substituted as LRs who then filed a civil suit seeking arrears of family pension. The said civil suit was dismissed on 25.07.2000 by the Court of Sh. K.K. Goyal, Civil Judge (Junior Division), Chandigarh primarily on account of non service under Section 80 CPC. Even the dismissal was with liberty to file fresh one on same cause after necessary compliance of advance service of notice. There is no such requirement akin to section 80 *ibid,* to institute a writ petition. Hence no *res judicata*.

19. In view of the aforesaid discussion and the reasons contained in the preceding part of the judgment, the petition deserves to be allowed. It is so ordered. Consequent benefits be released within period of 3 months with interest of 5 % per annum with effect from the date same are found to be due and payable until the final remittance thereof.

(ARUN MONGA)
JUDGE

November 24, 2022
Ashish/vandana

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