IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 29.04.2023

CWP No.9668 of 2020(O&M)
Date of Decision: 16.05.2023

Sunil Katyal

......Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Himanshu Arora, Advocate
for the petitioner.

Mr. Samarth Sagar, Addl., A.G., Haryana.

****

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India for the issuance of an appropriate writ in the nature of certiorari, quashing the letter dated 28.06.2019 issued by the respondent No.1, whereby benefit of pension given to the Information Commissioner and Right to Service Commissioner has been withdrawn. Further writ in the nature of certiorari has also been prayed for quashing the

order dated 01.10.2019 passed by the respondent No.1, whereby grant of retiral benefits to the petitioner has been declined being totally illegal, arbitrary and discriminatory.

[2]. The petitioner was appointed as Commissioner in the Haryana Right to Service Commission along with two other persons namely Sh. Sarban Singh, IAS (Retd.) and Sh. Amar Singh vide notification dated 27.07.2014. The aforesaid appointment was made in exercise of powers conferred by Sub Section (1) of Section 13 of the Haryana Right to Service Act, 2014. The Government of Haryana on the basis of recommendation of the Committee was pleased to appoint the petitioner and others as Commissioners in the Haryana Right to Service Commission. The terms and conditions of their appointments were circulated later on.

[3]. In pursuance of aforesaid notification dated 27.07.2014, the petitioner and other appointees assumed the charge of their offices. As per provisions of Section 15(4) of the Haryana Right to Service Act, 2014, the salaries and allowances of the petitioner and others were fixed vide order dated 10.04.2015 having endorsement of 13.04.2015. The salaries and allowances payable to the petitioner and other terms and conditions of the service of Commissioners were decided to be the same as those of the State Information Commissioners as laid down in Sub Section (5) of Section 16 of the Right to

Information Act, 2005. The appointees were also entitled to the pensionary benefits and leave encashment as applicable and admissible to the State Information Commissioners in the State Information Commission, Haryana as laid down in Sub Section 5(b) of Section 16 of the Right to Information Act, 2005. The aforesaid terms and conditions were issued with the concurrence of the Finance Department conveyed vide UUO No.2/21/2014-5FG/4704 dated 01.04.2015. Terms and conditions No.3 and 10 as contained in the aforesaid order dated 10.04.2015/13.04.2015 are reproduced hereasunder:-

3.	Salary, allowances and other facilities	The salary and allowances payable to and other terms and conditions of service of the Commissioners shall be the same as that of the State Information Commissioners, as laid down in sub section (5) of Section 16 of the Right to Information Act, 2005, which is presently Rs.80,000/- fixed.
10.	Pensionary benefit and leave encashment	They will be entitled to pensionary benefits and leave encashment as per admissible to State Information Commissioners in the State Information Commission Haryana.

[4]. The Chief Secretary to Government of Haryana had issued instructions/circular dated 11.06.2014 to the Secretary, State Information Commission, Haryana on the subject of terms and conditions of service of State Information Commissioners

regarding grant of pensionary benefits to State Information Commissioners. As per instructions, it was conveyed that the Government has decided to fix the terms and conditions of service of State Information Commissioners. The terms and conditions in case the State Information Commissioners are retired Government officers, an additional pension in respect of a State Information Commissioner shall be fixed after deducting the pension one is drawing already from any Government and the maximum limit of the total annual pensions shall be Rs.4,80,000/-. The terms and conditions in case the State Information Commissioners are other than the retired Government officers, 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 at 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 Commission/Chief Information Commission with the following conditions:-

> (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 years 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 per 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.

As regards the earned leave encashment, the following shall apply:-

(i) In case of re-employement of a retired officer, as the State Chief Information Commissioner, he would be entitled for leave encashment after completion of his term of five years upto 300 days earned leave including the benefit of earned leave encashment already availed, while retiring, in other words, if leave of 300 days has already been availed, no more benefit of leave encashment will be available.

(ii) In case of appointment of a fresh (non-retiree) incumbent, he will be entitled for the benefit of unavailed earned leave encashment upto one half (1/2) of the earned leave credited to his account on completion of 150 days or the term whichever is earlier in terms of FD's letter No.11/12/98-4FR, dated 12th August, 1998.

[5]. This letter was also issued with the concurrence of the Finance Department. The petitioner has rendered service of five years as Commissioner in Haryana Right to Information Commission.

[6]. Perusal of the letter would indicate that the terms and conditions of service of State Information Commissioners were fixed and the terms and conditions of service of the State Information Commissioners were brought at par with those applicable to the Chief Secretary of the State Government both while in service and after retirement. Vide order dated 18.07.2019, Governor of Haryana was pleased to retire the petitioner and others namely Sh. Sarban Singh, IAS (Retd.) and Dr. Amar Singh from the post of Commissioners, Haryana Right to Service Commission on completion of five years w.e.f. 27.07.2019 afternoon as per terms and conditions of their appointments and provisions made under Section 15(1) of the Right to Service Act, 2014.

[7]. The case of the petitioner for grant of retiral benefits was forwarded by the competent authority/office of the Chief Commissioner, Haryana Right to Service Commission to the

Chief Secretary to Government, Haryana prior to his retirement vide memo No.6644 dated 29.05.2019. In the aforesaid letter, it was specifically stated that the petitioner is entitled for pensionary benefits as applicable to the State Information Commissioners, Haryana as laid down in Sub Section (5)(b) of Section 16 of the Right to Information Act, 2005. It was also recited in the aforesaid letter that the State Information Commissioner, Haryana is governed by the terms and conditions issued by the Chief Secretary to Government of Haryana as amended from time to time, therefore, the same is applicable in the case of Commissioners of Haryana Right to Service Commission and as per Government instructions dated 11.06.2014 issued by the respondent No.1, it was decided to give pensionary benefits to the Commissioners by dividing them into two parts i.e. service class and non-service class. The petitioner belongs to non-service class and has completed five years of service before his retirement. Different modalities were also suggested and fixed towards pension of the petitioner and other service benefits.

[8]. Though the specific provisions for determining the pension have not been made, but the terms and conditions were applied to the retirees, who also retired along with the petitioner while according retiral benefits to them.

[9]. Vide instructions dated 28.06.2019, Government of

Haryana decided to withdraw the instructions dated 11.06.2014 as amended further by letter dated 06.11.2015 with immediate effect. It was clarified that the Chief Secretary's instruction No.66/42/2016-2SIII dated 20.09.2018 will not be applicable to the Right to Information Commission, Haryana.

[10]. In view of above, the case of the petitioner for grant of retiral benefits has been declined vide order dated 01.10.2019 by the respondent No.1 by holding that the petitioner is not entitled for pensionary benefits, except leave encashment.

[11]. Learned counsel for the petitioner submitted that the impugned action is illegal. Once the petitioner has already successfully completed the tenure and has earned the retiral benefits and co-appointees of the petitioner who had retired along with the petitioner have already been accorded the retiral benefits, the terms and conditions of appointment of the petitioner cannot be withdrawn with retrospective effect. Learned counsel referred to the cases of Sh. Yoginder Paul Gupta, SIC and Sh. Hemant Atri, SIC, who had retired on 09.07.2018 and 02.11.2018 respectively have been granted retiral/pensionary benefits. Learned counsel also referred to the letter of implementation dated 30.10.2018 in respect of retiral dues of Hemant Atri and letter dated 27.01.2020 in case of Dr. Amar Singh, who was also appointed along with the petitioner and had retired on the same date on which the petitioner had

retired i.e. 27.07.2019. In case of aforesaid Dr. Amar Singh, the retiral/pensionary benefits have been paid even after withdrawal of letter dated 11.06.2014 on 28.06.2019. In the aforesaid order dated 27.01.2020, granting pensionary benefits to Dr. Amar Singh, it has been mentioned that he was appointed on 27.07.2014 and had retired on 27.07.2019 after completion of five years as Commissioner, Haryana Right to Service Commission. As per terms and conditions issued regarding grant of pensionary benefits to the Commissioners vide letter dated 13.04.2015 and advice given by the Finance Department dated 23.01.2020, Dr. Amar Singh, Commissioner (Retd.) was also entitled to the pensionary benefits. It is only the petitioner who has been left and the impugned action in declining the pensionary benefits to the petitioner is illegal, *mala fide* and discriminatory.

[12]. *Per contra*, learned State counsel opposed the case of the petitioner by submitting that in view of guidelines dated 11.06.2014, it was clearly specified that the pensionary benefits will be admissible subject to the condition that a specific provision will be made to this effect in the rules by the Administrative Department. However, no such rules have been framed till date. Therefore, the petitioner is not entitled for pensionary benefits. The Finance Department vide its letter dated 05.09.2017 has issued clarification regarding grant of

statutory benefit of Death-cum-Retirement Gratuity and further allowed the pension to two State Information Commissioners namely Sh. Hemant Atri and Sh. Yoginder Paul Gupta. Administrative Department has further advised that in future, the grant of pension and DCRG to Sh. Hemant Atri and Sh. Yoginder Paul Gupta, who are not Government employees at the time of appointment as SICs, may not be quoted as precedent. Government of Haryana vide letter dated 28.06.2019 has decided to withdraw the letter dated 11.06.2014, whereby pensionary benefits were allowed to State Information Commissioners and thereafter, Government of India has notified the Rules on 24.10.2019, governing the terms and conditions of State Information Commissioners, whereby pension has not been provided for non-Government serving Information Commissioners.

[13]. Since there is no rule governing the situation in case of the petitioner, therefore, the petitioner is not entitled to any relief. It has also been submitted that Sh. Sarban Singh and Dr. Amar Singh, Commissioners/co-appointees and co-retirees with the petitioner were granted pensionary benefits after taking into account their past Government service as per letter dated 11.06.2014. The petitioner is non-retired Government officer of State Government and there are no rules for grant of pensionary benefits to such State Government Commissioners. None of the

State Information Commissioners, who never remained in Government service, except Sh. Hemant Atri and Sh. Yoginder Paul Gupta have been paid any pensionary benefits and those two persons had retired prior to the letter of withdrawal dated 28.06.2019. With reference to the aforesaid facts, the respondents have decided the case of the petitioner.

[14]. I have heard learned counsel for the parties.

[15]. Evidently, the petitioner and his co-appointees namely Sh. Sarban Singh and Dr. Amar Singh were governed by the same terms and conditions of their appointments. According to the terms and conditions of the appointment dated 10.04.2015, the appointees were entitled to pensionary benefits and leave encashment as applicable to the State Information Commissioners in the State Information Commission, Haryana. The terms and conditions were issued as per concurrence of the Finance Department dated 01.04.2015. The terms and conditions of the appointment of the petitioner were duly approved by the Finance Department and the letter dated 11.06.2014 was only in respect of two categories of appointees i.e. terms and conditions in case of State Information Commissioners, who are retired Government Officers and terms and conditions in case of State Information Commissioners other than the retired Government officers. The aforesaid letter dated 11.06.2014 has been uniformly applied to all the retirees.

Sh. Yoginder Paul Gupta, SIC and Sh. Hemant Atri, SIC, who had retired on 09.07.2018 and 02.11.2018 respectively had already completed five years of successful service under the category of Commissioners other than the retired Government officers. Even after issuance of letter of withdrawal dated 28.06.2019, the case of Dr. Amar Singh has been considered for grant of pensionary benefits vide order dated 27.01.2020. The letter of withdrawal dated 28.06.2019 was in the context of completely withdrawing the instructions dated 11.06.2014, covering the terms and conditions of the appointments of retired Government officers as well as other than retired Government officers on the post of State Information Commissioners. Dr. Amar Singh was also appointed as Commissioner, Right to Service Commission along with the petitioner and Sh. Sarban Singh. All the retirees have been granted pensionary benefits, except the petitioner.

[16]. As per Section 16(5) as substituted by Act No.24 of 2019, the salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and State Information Commissioner, shall be such as may be provided by the Central Government. Prior to its substitution, Sub Section 5 was to the following effect:-

> *"(5) The salaries and allowances payable to and other terms and conditions of service of-*

(a) The State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) The State information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or would pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Proved also that the salaries, allowances and

> *other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment."*

[17]. Perusal of Sub Section (5) of Section 16 of The Right to Information Act, 2005 as applicable at the time of retirement of the petitioner would show that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and State Information Commissioner shall not be varied to their disadvantage after their appointment. According to Section 15(1)(4) of the Haryana Right to Service Act, 2014, the salaries and allowances payable to and other terms and conditions of service of the Chief Commissioner and the Commissioners shall be the same as those of the State Chief Information Commissioner and the State Information Commissioners, respectively as laid down in Sub Section (5) of Section 16 of the Right to Information Act, 2005. The aforesaid provisions have not been repealed so far and therefore, any executive instructions in the form of letter dated 28.06.2019, will not take away the accrued right of the petitioner, which accrued to the petitioner in view of his terms and conditions settled on 10.04.2015 and crystallized on the date of his retirement dated 27.07.2019.

[18]. Learned State counsel has placed reliance upon ***P.***

Singarvelan and others Vs. District Collector, Tiruppur, (2020) 3 Supreme Court Cases 133, Chariman, Railway Board and others Vs. C.R. Rangadhamaiah and others, (1997) 6 Supreme Court Cases 623 and ***State of Uttarakhand and another Vs. Archana Shukla and others, (2011) 15 Supreme Court Cases 194***.

[19]. There is no dispute with regard to the preposition as held in ***P. Singarvelan and others' case (supra),*** but the facts of the afroesaid case are not attracted to the facts of the present case, inasmuch as that, in the aforesaid cited case, there was a dispute with regard to grant of selection grade and special grade scales, which were granted to many similarly placed employees. The case was decided by the respondent-State on the ground that the initial grant of the claimed pay scale to some drivers was on account of an error on the part of the official of some Government Department. It was submitted that the applicable scales were not the one which were claimed by the petitioners/appellants in that case. In that context, it was held that the appellants in that case, were not entitled to the scales and they cannot claim such relief on the strength of Article 14 of the Constitution of India when the same was found to be not lawfully acceptable. It is well settled principle of law that a person cannot invoke Article 14 of the Constitution of India to

claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place. Article 14 of the Constitution of India embodies the concept of positive equality alone and not negative equality.

[20]. In the present case, the petitioner has set up a case of positive equality viz-a-viz those who had retired prior to executive instructions dated 28.06.2019 i.e. Sh. Yoginder Paul Gupta and Sh. Hemant Atri and co-retirees namely Sh. Sarban Singh and Dr. Amar Singh, who have also been granted benefit of pensionary benefits. Dr. Amar Singh has been granted pensionary benefits subsequent to the letter of withdrawal dated 28.06.2019, therefore, it cannot be presumed that the petitioner is not entitled to any such relief in the first place and parity to claim the same relief is not based on any violation of Article 14 of the Constitution of India.

[21]. In case of ***Chairman, Railway Board and others's case (supra),*** the Court was dealing with retrospective amendment affecting vested or accrued rights of Government employees. Retrospective amendment of statutory rules, adversely affecting pension of employees, who had already retired on the date of notification was held invalid.

[22]. In the instant case, the terms and conditions of service as issued by the competent authority on 10.04.2015 with the concurrence of the Finance Department dated 01.04.2015 have

not been altered in any manner and by relying upon the same terms and conditions, Dr. Amar Singh has been granted pensionary benefits even after letter of withdrawal dated 28.06.2019. It is not a case of amendment of any pre-existing rule, no rules were framed in respect of category of the petitioner and cases of the appointees were governed by the service conditions as framed and approved at the time of appointment of the appointees. Under Right to Information Act, 2005 as applicable on the date of retirement of the petitioner, the salaries, allowances and other conditions of service of the State Chief Information Commissioners and State Information Commissioners, shall not be varied to their disadvantage after their appointments.

[23]. In view of Section 15(4) of the Haryana Right to Service Act, 2014, the salaries and allowances payable to and other terms and conditions of service of the Chief Commissioner and the Commissioners shall be the same as those of the State Chief Information Commissioner and the State Information Commissioners, respectively as laid down in Sub Section (5) of Section 16 of the Right to Information Act, 2005, therefore, in the absence of any such amendment in the Right to Information Act, 2014, the right of the petitioner to claim pension is not hampered by any such letter of withdrawal dated 28.06.2019, which was never extended to withdraw any terms and conditions

of appointment of the petitioner dated 10.04.2015, which was issued after the concurrence of the Finance Department dated 01.04.2015. Accordingly, the facts involved in ***Chairman, Railway Board and others's case (supra),*** are on different context and the ratio is not applicable to the present case.

[24]. Similarly, ***State of Uttarakhand and another's case (supra)*** relates to the case where the conflict is between the law and equity and in that context, it was held that if no rule exists, equity may make it away.

[25]. In the instant case, there is no rule framed in pursuance of letter dated 11.06.2014, therefore, no rule existed and principle of equity has to prevail, particularly in view of the fact that all the appointees have been granted benefits of pension, except the petitioner. The rule framed by the Central Government at a subsequent stage will not take away the legal and vested right of the petitioner to claim pension in view of his terms and conditions of the appointment. The equity will make its way as there is no provision in the rule, rather the provision in terms of Section 15 of the Right to Information Act makes its abundantly clear that Section 16 of the Right to Information Act, 2005 will apply in the instant case and the salaries, allowances and other conditions of the service of the petitioner shall not be varied to disadvantage after his retirement, therefore, the ratio of ***State of Uttarakhand and another's case (supra)*** is also

not applicable to the instant case.

[26]. For the reasons recorded hereinabove, I am of the considered opinion that the impugned action, declining the prayer of the petitioner for grant of pensionary benefits is wholly unsustainable and the same is liable to be quashed. This writ petition is accordingly allowed. The impugned letter dated 28.06.2019 issued by the respondent No.1, thereby withdrawing the letter dated 11.06.2014 is hereby quashed. The right of the petitioner to claim pension shall remain unfettered by any such executive instructions. Petitioner is entitled for pension and other service benefits in accordance with law. Let the benefits be released to the petitioner along with arrears within a period of two months from the date of receipt of certified copy of this order. There shall be interest at the rate of 6% per annum on the arrears of pension and other unpaid dues from the date of accrual i.e. after three months from the date of retirement till final realisation of the amount.

16.05.2023 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**