

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

(887)

CWP-15529-2008

Date of Decision : December 08, 2023

Baljit Singh**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Sumeet Jain, Advocate, with
Ms. Nandita Aggarwal, Advocate, for the petitioner.

Mr. Tapan Kumar Yadav, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 08.04.2008 by which, the petitioner has been compulsorily retired w.e.f. 08.07.2004.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner was appointed as a Conductor with the respondent-Transport Department on 10.02.1976. While working on the said post, the disciplinary proceedings were initiated against the petitioner on 31.12.1998. In the said proceedings, the Enquiry Officer found the petitioner innocent vide his enquiry report dated 21.08.2001. Without there being any disagreement note submitted or put to the petitioner, a show cause notice was issued as to why, the services of the petitioner be not

terminated. The said show cause notice was served on 24.08.2001 and ultimately vide order dated 15.10.2001, the services of the petitioner was terminated.

4. The order terminating the services dated 15.10.2001 was challenged by the petitioner by filing civil suit. The said civil suit was decreed by the trial Court vide judgment and decree dated 30.03.2006. The order terminating the services as well as show cause notice issued to the petitioner were held to be bad and the same were set aside and the respondents were directed to treat the petitioner to be in continuous service of the respondent-Department and was also held entitled for full back wages.

5. In pursuance to the judgment dated 30.03.2006 passed by the trial Court, the petitioner submitted a joining report but the same was not accepted.

6. Aggrieved against the decision of the civil suit, an appeal was preferred by the respondent-Department which appeal also came to be dismissed by the Appellate Court on 03.10.2006. Despite dismissal of the appeal also, the petitioner was not allowed to join the duties. The orders passed by the trial Court as well as the lower Appellate Court were challenged by the respondents by filing RSA No.2395 of 2007, which RSA also came to be dismissed by this Court on 14.12.2007. It may be noticed that by the time, RSA was dismissed, the petitioner had already attained the age of superannuation on 31.07.2007.

7. From the pleadings, it is clear that the order terminating the services of the petitioner was held to be bad and the petitioner was held entitled to be treated to be in continuous service with all consequential benefits including the back wages, which order had already been upheld by

this Court. On the date, the said order had been upheld, the petitioner had already retired from service hence, the claim of the petitioner is that the service benefits including the pensionary benefits be released to him along with interest.

8. Rather than allowing the petitioner to rejoin and extend the benefit, the respondents passed an order on 08.04.2008 compulsory retiring the petitioner with retrospective effect from 08.07.2004 by not giving him the extension beyond the age of 55 years, which age the petitioner attained on 08.07.2004. The said order is under challenge in the present writ petition.

9. Learned counsel for the petitioner argues that once the order passed by the trial Court dated 30.03.2006 allowing the benefit to the petitioner to be in continuous in service, no order contrary to the said relief could be passed by the respondents especially when the said relief was upheld to this Court as the Regular Second Appeal No.2395 of 2007 filed by the respondents had already been dismissed hence, any order contrary to the relief upheld by this Court, could not have been passed by the respondents.

10. Learned counsel for the petitioner submits that on the date when the relief granted by the trial Court dated 30.03.2006 was upheld i.e. vide order dated 14.12.2007, the petitioner had already attained the age of superannuation hence, the only action required on the part of the respondents was to comply with the directions of the trial Court, which had already attained finality i.e. to treat the petitioner in service for all intents and purposes and grant him the arrears along with all the consequential benefits.

11. Learned State counsel, on the other hand, submits that even if

the petitioner was to be reinstated in service, then also, the Department was within its jurisdiction to pass an order as to whether, the petitioner was liable to be granted extension beyond the age of 55 years or not keeping in view the facts and circumstances of the present case hence, once the Department has exercised the said jurisdiction, the same cannot be treated as arbitrary and illegal.

12. I have heard learned counsel for the parties and have gone through the record with their able assistance.

13. The question which arise for determination in the present petition is that whether the respondents could have passed any order taking away the benefit which has been granted by the trial Court, which order has already been upheld by this Court.

14. It is a matter of fact, which is clear from the facts narrated hereinbefore that vide order dated 30.03.2006, the petitioner was to be treated in continuance service of the respondent-Department with all consequential benefits. The said order was upheld when the RSA filed by the State was dismissed by this Court on 14.12.2007. By the impugned order, the service of the petitioner has been curtailed from 31.07.2007 to 08.07.2004. This was not permissible. Rather, the said order amounts to over-reaching the judgment of the competent Court of law, which is not at all permissible. Once, on the day when the RSA filed by the State was dismissed, upholding the order of the trial Court dated 30.03.2006, granting the benefit to the petitioner to be in continuance service of the respondent-State with full back wages, the order dated 08.04.2008 cannot be treated as a valid order so as to modify the relief granted by the competent Court of law, which has already attained finality.

15. Even otherwise, the order dated 08.04.2008 states that the

petitioner is not fit to be retained in service beyond the age of 55 years so as to be compulsory retired. For this action also, the respondents have to have a subjective opinion whether, an employee is entitled to continue beyond the age of 55 years or not.

16. From the facts narrated hereinbefore, it is clear that the services of the petitioner were terminated vide order dated 15.10.2001. Till the passing of the order dated 08.04.2008, the petitioner remained out of service but was to be treated in service by way of presumption keeping in view the relief granted by the trial Court. Once, the petitioner has not been allowed to discharge the duties by the respondents keeping in view the illegal order of termination, it does not lie with the respondents to merely contend that the petitioner was not entitled to continue in service beyond the age of 55 years. No material was available with the respondents to pass such kind of an order especially when the respondents never allowed the petitioner to join back service after his services were terminated on 15.10.2001, which order has already been set aside by the competent Court of law being arbitrary and illegal. That being so, even on merit, the order dated 08.04.2008 was passed by the respondents beyond their jurisdiction as no order could have been passed on the basis of the service which the petitioner has rendered prior to the passing of the impugned order of termination.

17. Even otherwise, the order of pre-mature retirement could have been passed only in case the employee has not attained the age of superannuation but in the present case, the impugned order has been passed on 08.04.2008 and by that time the petitioner had already crossed the age of 58 years, hence, in the facts and circumstances of the present case, no order curtailing the service of the petitioner could have been passed and that too

contrary to the relief granted by the competent Court of law which has already attained finality.

18. The present petition is allowed. The impugned order dated 08.04.2008 is set aside. The petitioner is to be treated in service for all intents and purposes upto 31.07.2007 and he will also be entitled for all the benefits as extended by the competent Court of law including the arrears for the said period and the pensionary benefits of the petitioner will also be computed by treating the petitioner to have been retired on 31.07.2007 and all the arrears for which the petitioner become entitled for, be computed and released to the petitioner within a period of two months.

19. From the facts, it is clear that the benefits for which the petitioner has become entitled for, have been curtailed by passing an order which was beyond the jurisdiction of the respondents, hence, the arrears, which will be given to the petitioner under this order, will also carry interest @ 6% per annum keeping in view the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***. The relevant paragraph of the said judgment is as under:

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

20. Hence, all the arrears will carry interest from the date the amount became due till the actual payment of the same.

21. The present writ petition is allowed in above terms.

December 08, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes