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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24985-2016 (O&M)

Date of Decision: 31.10.2023

GIRISH KUMAR SHARMA

.....Petitioner

V/s.

UNION OF INDIA & OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Ashok Kumar Nabhewala, Advocate for the petitioner.

Mr. Rajiv Joshi, Advocate for respondent No.4.

Mr. Varlin Gupta, Advocate for respondent No.3.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this petition had challenged the order dated 29.11.2016 whereby he was relieved from duties with effect from 31.12.2016 from the post of Chairman, Permanent Lok Adalat (Public Utility Services), Faridkot on completion of 65 years of age.

2. Learned counsel for the petitioner has submitted that the petitioner was a retired District & Sessions Judge and he was appointed as the Chairman of the Permanent Lok Adalat vide order dated 09.07.2014, for a period of one year, extendable every year till a maximum of five years term. Vide order dated 03.07.2015, the term of petitioner was extended for a period of one year, extendable for a period of maximum five years in total. Vide another order dated 11.07.2016, the term of the petitioner was further extended till further orders.

3. Learned counsel for the petitioner submits that vide notification dated 22.06.2016, the Permanent Lok Adalat (Other Terms and Conditions of

Appointment of Chairman and Other Persons) Rules, 2003 (hereinafter referred to as “the PLA Rules, 2003”) were amended and brought into force on the date of its publication in the official gazette. As per the said amendment, Rule 4 Sub-Rule (2) was substituted wherein it was provided that the Chairman and Members shall hold office for a period of five years or till the age of 65 years, whichever is earlier.

4. Clarification was sought by the Punjab State Legal Services Authority, Chandigarh from the National Legal Services Authority with regard to the applicability of the said notification on the existing Chairmen and the Members of the Permanent Lok Adalat (PUS) and in answer to the said clarification, the Member Secretary, National Legal Service Authority informed that the Hon’ble Executive Chairman, National Legal Service Authority has been pleased to clarify that the said notification would also apply to those who are in service at the time when amendment was made. Based on such opinion, the petitioner was relieved from his duties before he could complete his tenure solely on the ground that he had completed the age of 65 years. It is also informed that similarly situated other persons had also approached this Court, and in *CWP No.15808 of 2016*, an interim order was passed staying the operation of the relieving orders with respect to other Chairmen and Members working at various Permanent Lok Adalats.

5. Learned counsel for the petitioner has also taken this Court to the interim order passed in the connected Writ Petition and further stated that so far as the said connected petitions are concerned, since the interim order was passed and concerned Chairmen/Members continued till they completed

their tenure whereafter the Writ Petitions were declared as having become infructuous. However, in the present case, no entire order was passed and therefore, learned counsel for the petitioner submits that if the Writ Petition is allowed, the petitioner would be entitled to relief of remuneration up to the date he completes his tenure of five years.

6. Learned counsel for the petitioner has argued that so far as the notification dated 22.06.2016 is concerned, the same does not have retrospective effect. The amendment specifically mentions to have come into force on the date of its publication in the official Gazette i.e. 22.06.2016. Therefore, those who are holding office of the Chairman or Member would not be affected by the amendment and they would continue to serve as per their tenure of appointment.

7. Learned counsel for the petitioner has taken this Court to un-amended Rule 4 (2) of the PLA Rules, 2003. Learned counsel for the petitioner submits that the Rule which has been amended by the Central Government can only affect those who are appointed on or after the date of notification i.e. 22.06.2016 and not those who were to be governed by their tenure of appointment in terms of earlier Rule.

8. He strongly relies on judgments passed by the Hon'ble Supreme Court in the case of J.S.Yadav Vs. State of Uttar Pradesh and Another; 2011 (6) SCC 570 and P. Venugopal Vs. Union of India; 208 (5) SCC 1.

9. Learned counsel for the petitioner has also relied on the observation made by the co-ordinate Bench of this Court, while granting interim relief to the other similarly situated persons. He further submits that

the petitioner was entitled to continue up to maximum period of five years and therefore, he would be entitled to the benefit of salary and allowances of the post of Chairman beyond the date when he was relieved up to the period he completed five years.

10. *Per contra*, learned counsel appearing for the respondents submits that petitioner had not been regularly appointed. Initially, he was appointed vide order dated 09.07.2014, for a period of one year, extendable every year to maximum of five years term or till the regular appointment as a Chairman, Permanent Lok Adalat from serving District And Sessions Judge or Additional District And Sessions Judge whichever is earlier. Further, he submits that terms and conditions of the service of the petitioner were to be governed as per the provisions of the PLA Rules, 2003. While extending the service for period of one year vide order dated 03.07.2015, it was again pointed out that the terms and conditions are subject to the provisions of the PLA Rules, 2003 and the Instructions/Rules to be framed by the authority from time to time.

11. Learned counsel for the respondents has taken this Court to the extension order dated 11.07.2016 to submit that the extension of the petitioner's service as a Chairman was till further orders and as per the final decision on notification dated 22.06.2016. The petitioner was conveyed a copy of the notification dated 22.06.2016 and it was specified that terms and conditions of services shall be governed by the provisions of the PLA Rules 2003 as well as final decision on the notification and Instructions/Rules to be framed by the competent authority from time to time.

12. The order of 11.07.2016 was accepted without any demur by the petitioner and the same is not under challenge before this Court. The petitioner was, thus, required to be relieved in terms of the notification dated 22.06.2016 which specified the terms of office of the Chairman to be five years or till the age of 65 years whichever is earlier. The clarification sought from the National Legal Services Authority also apprised that the services of the existing Chairmen and Members would be governed by the amendment. Learned counsel for respondents further submits that the Writ Petition has in fact become infructuous in view of the fact that no interim order was passed in his favour and he stands already relieved.

13. I have carefully considered the submissions of the counsel for the parties.

14. It would be apposite to quote the provisions of the PLA Rules, 2003, Rule 4 (2) which stood before amendment, which reads as under:-

“Rule 4(2)

The Chairman and other persons shall hold office for a term of five years and shall not be eligible for reappointment.”

15. Vide notification dated 22.06.2016, the aforesaid Rule has been substituted as under:-

“Rule 4(2)

The Chairman and other persons shall hold office for a term of five years or till the age of 65 years, whichever is earlier.”

16. The facts which have come on record and as noticed hereinabove reflects that the petitioner was originally appointed for a term of one year vide order dated 09.07.2014. His term was extended by another one

year vide order dated 03.07.2015. Although, no order was passed on 04.07.2016, when his earlier term ended, but another order was passed on 11.07.2016 extending the tenure of the petitioner's appointment as a Chairman till further orders and in terms of the final decision relating to notification dated 22.06.2016, the same was also made subject to terms and conditions of the PLA Rules, 2003.

17. The issue which this Court has to examine is "*whether the notification dated 22.06.2016 substituting Rule 4 Sub-Rule 2 of the PLA Rules of 2003, would be applicable to the existing Chairmen and other Members who were holding the office as on the date notification was published i.e. 22.06.2016.*"

18. The submission of learned counsel for the petitioner is that if the new amendment is applied, it would amount to applying the notification retrospectively as the tenure of the petitioner was already fixed prior to issuance of the notification dated 22.06.2016 for a period of five years as per the un-amended Rule and therefore, the petitioner was entitled to be continued up to the period of five years. It is his further submission that although the period of one year was mentioned in the appointment order in the year 2014, which was again extended in 2015, in fact the appointment or the tenure of service as a Chairman was to be treated to be of five years and there was a right of getting an extension even after completion of the one year period under the orders supra. He relies on J.S. Yadav (Supra) to submit that wherever there is a tenure posting, the same cannot be curtailed merely

because of any amendment made in the provisions and the notification unless it is made retrospective expressly.

19. In J.S.Yadav supra, brief facts which were before the Hon'ble Supreme Court are that the petitioner therein was appointed as a Member of the State Human Right Commission for a period of five years on 01.07.2006 and his appointment was up to 30.06.2011. While he was holding the post, notification was issued on 28.05.2008, which provided that a person was required to have seven years of experience as a District & Sessions Judge while such a provision did not exist at the time of his appointment. Since, the petitioner therein had been appointed on the post of District & Sessions Judge only w.e.f. January 2003, he did not complete seven years service as District & Sessions Judge on the date when he was appointed i.e. 01.07.2006. His other contention was that the period of services rendered by him as an Additional District & Sessions Judge ought to be also counted for the purpose of seven years experience as a District & Sessions Judge. The arguments raised before the Court was relating to the amendment issued vide notification dated 28.05.2008 whereby earlier provisions under the Protection of Human Rights Act, 1993 were repealed and new provisions were added.

20. Considering Section 6 of the General Clauses Act, 1897, Article 236 of the Constitution of India, and also considering the provisions of Section 26 of the Protection of Human Rights Act, 1993 which provided that neither the salary or allowances nor other terms and conditions of the services of a Member shall be varied to his disadvantage after his appointment, the

Hon'ble Supreme Court in the case of J.S.Yadav Vs. State of Uttar Pradesh and Another; 2011 (6) SCC 570 as under:-

***“10.** The High Court dealt with the issue elaborately and came to the conclusion that ordinary and natural meaning is not to be controlled by supposed intention of the Legislature. A court cannot stretch the language of a statutory provision to bring it in accord with the supposed legislative intent underlying it, unless the words are susceptible of carrying out that intention. Thus, considering the object and purpose of the amendment, it cannot be held that experience of the appellant as Additional District Judge could also be taken into consideration as that of a District Judge.*

***15.** The question does arise as to whether the State could issue the Notification making a declaration that the appellant ceased to be the member of the Commission and whether the said Notification could take away the accrued rights of the appellant?*

***16.** The appellant had joined as a member of the Commission vide order dated 29.6.2006 under the Act 1993. [Section 26](#) of the Act 1993 specifically provided that neither the salary and allowances nor other terms and conditions of service of a member shall be varied to his dis-advantage after his appointment. The submission so made on behalf of the appellant in this regard has not been considered by the High Court taking into consideration the provisions of [Section 26](#) at all. As the appellant was fully eligible and competent to be appointed under the Act 1993 and he had duly been appointed and worked for about 2 years including the period after the commencement of the [Amendment Act](#) 2006, the declaration that he ceased to hold the post as a Member of the Commission, is in flagrant violation of the statutory provisions contained in [Section 26](#) of the Act 1993 itself. Needless to say that "the expression 'terms of service' clearly includes tenure of service". (Vide: [Dr. D.C. Saxena v. State of Haryana & Ors.](#), AIR 1987 SC 1463). The view taken by the High Court in this respect is not in*

consonance with the statutory provisions. The amendment would apply prospectively, particularly in view of the fact that the [Amendment Act](#) 2006 does not expressly or by necessary implication suggest that such a drastic step is permissible giving retrospective effect to the 2006 [Amendment Act](#).

***17.** An employee appointed for a fixed period under the Statute is entitled to continue till the expiry of the tenure and in such a case there can be no occasion to pass the order of superannuation for the reason that the tenure comes to an end automatically by afflux of time. (Vide: [Dr. L.P. Agarwal v. Union of India & Ors.](#), AIR 1992 SC 1872; and [State of U.P. & Anr. v. Dr. S.K. Sinha & Ors.](#), AIR 1995 SC 768). ”*

21. In **P. Venugopal Vs. Union of India**; 208 (5) SCC 1, the apex Court had examined the issue with regard to tenure of petitioner therein as a Director of AIIMS, which was for a period of five years and until further orders. Amendment of Section 11 of the AIIMS Act, 1956 was brought into force whereby it was laid down that the Director would hold office for a term of five years from the date on which he entered upon his office or until he attained the age of 65 years, whichever is earlier. The Supreme Court has held as under:

“32. From the above quotation, as made in para 16 of the said decision of this Court, it is evident that this Court has laid down that the term of 5 years for a Director of AIIMS is a permanent term. Service Conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise at all. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. The appointment is for a tenure to which principle of superannuation does not apply. "Tenure" means a term during which the office is held. It is a condition of holding the office. Once a person is appointed to

a tenure post, his appointment to the said post begins when he joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure.”

22. Having noticed the aforesaid judgments, this Court finds that the amendment which has been brought into force vide notification dated 22.06.2016 substitutes the earlier Rule which existed in the statute. Thus, with effect from the date the notification came into force, any person holding the post of Chairman or Member could hold office for a term of five years or till he attains the age of 65 years, whichever is earlier. The appointment of the Chairman was subject to the PLA Rules, 2003. Since, the earlier provision is no more existing and is substituted by the new amended Rule, the appointment given to the petitioner on 11.07.2016 i.e. after the notification dated 22.06.2016 would not be governed by the Rule which was existing as on the date when the petitioner's services were extended till further orders vide order dated 11.07.2016. His previous service rendered as a Chairman ended on completion of one year from 03.07.2015 to 02.07.2016.

23. The argument raised by the learned counsel of the petitioner that the petitioner having a right to continue from 2014 onwards for five years is also liable to be rejected as the conditions of appointment did not provide him a tenure of five years at any given point of time. Thus, the facts of the present case are different from the facts of the case of J.S. Yadav (supra) and they are also different from the facts from the case of P.N. Venugopal (supra) wherein the original appointment order itself mentioned the tenure of a

particular period i.e. five years. A presumption in law cannot be made when the same is not found in the orders issued by the authority.

24. The appointment orders issued to the petitioner specifically mention of appointment of one year each time. Thereafter, in July, 2016, the appointment is till further order subject to the final decision relating to notification dated 22.06.2016.

25. The respondents are at liberty to take clarification from the superior authorities and reach a particular interpretation. Such an interpretation is found to be in consonance with law and is not required to be altered or interfered with by this Court as the existing Chairmen or Members would have to be governed by the statute which exists or is in force. Not only the tenure of appointment, but other terms and conditions of service under the PLA Rules of 2003 as amended from time to time will govern such a person. This Court also notices that there is no similar/*pari materia* provision as Rule 26 of the National Human Right Commission Act, 1993 as noticed in the J.S. Yadav's case. Thus, the service conditions and tenure can be varied in accordance with the amendment which may be made in the rules.

26. This Court in the case of Justice Daya Chaudhary Vs. Union of India, Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs, Through its Secretary and Others; CWP No.15239 of 2023 decided on 03.10.2023 has taken a similar view which is as under:-

22. The word “substituted” used in the Rules of 2022, in ordinary course of language, would mean **to replace word or phrase or sentence by another**. As per the Cambridge

Dictionary, “substitute” means **to use something or someone instead of another thing or person**. Thus, the earlier Rule 10 which was existing in the statute namely the Rules of 2020 stands replaced by the new Rule. The earlier Rule will no more be in existence, e.g. if a Coach of a Team is substituted by another Coach, in such circumstances, the previous Coach will have no say with regard to the team performance after the new Coach has been assigned against him. Similarly, the terms and conditions for office tenure of the President and Members, which were existing prior to notification dated 15.09.2022, shall have no further relevance or existence after coming into force of the terms of office of the President and Members as substituted by the new Rule 10. In fact, even if the State Government does not issue the orders correcting the age of the President or the Member in terms of the new Rule 10, their terms shall be in accordance with new Rule 10.

23. The interpretation of the Rule can also be understood by another example that suppose, if by way of an amendment, the age is decreased and tenure is also decreased, whether the concerned person holding the post can claim continuance of appointment on the basis of his original terms of appointment which provided for longer tenure or longer age as the case may be. The answer is “NO”. The appointment on a particular post is essentially governed by the Rules and the appointment order cannot be said to be a separate term of contract and it cannot be enforced dehors the existing amended Rules and therefore, the tenure would relate to the Rule governing the post as amended from time to time, unless the language of the Rule provides otherwise.

24. Having analyzed as above, this Court concludes that the action of the respondents in interpreting Rule 10 of the Rules of 2022, as amended by amendment which has come into force w.e.f. 15.09.2022, is wholly misconceived and erroneous. Therefore, letter dated 16.05.2023 issued by the Principal Secretary, Department of Food, Civil Supplies & Consumer

Affairs has no legal sanctity and the same deserves to be quashed. This Court further finds that the said letter stated to be on the approval of the competent authority also goes contrary to the opinion placed on record by the petitioner sent by the Principal Secretary, Department of Legal and Legislative Affairs, Punjab. Accordingly, it is held that the terms of office of the President and Members, who are holding the post at present or who may hold the post in future, shall be governed by the amended Rule 10 of the Rules 2020.

*25. Accordingly, this Writ Petition is **allowed** and it is directed that the respondents shall issue orders in accordance with Rule 10 of the Rules of 2020 as amended on 15.09.2022, and the petitioner, who is holding the post of the President of the State Commission, shall continue to hold office for a term of four years or upto the age of 67 years, whichever is earlier. The respondents would be obliged to allow her to continue on the post accordingly.”*

27. Keeping in view the above, no relief can be granted to the petitioner in this Writ Petition. Accordingly, the Writ Petition fails and the same is **dismissed**.

28. No costs.

29. All pending applications filed in this Writ Petition shall stand dismissed accordingly.

October 31, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes / No</i>
<i>Whether Reportable</i>	:	<i>Yes / No</i>