

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

141

CWP-16330-2023

Date of Decision: 31.07.2023

Navpreet Singh Mehmi and others

.... Petitioners

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Ms. Shikha, Advocate
for the petitioners.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for quashing the order dated 26.07.2023 (Annexure P-6), whereby the petitioners have been removed from the post of non-official members of the Punjab State Commission for Scheduled Caste, 2006.

2. Learned senior counsel appearing for the petitioners submits that the petitioners are members appointed as non-official members of the Punjab State Commission for Scheduled Caste Chandigarh. They were appointed, vide order dated 04.07.2019 and 22.05.2020. The appointment order states that their appointment is under Section 3(2)(b) and Section 4 of the Punjab State Commission for Scheduled Caste Act, 2004, as amended from time to time.

3. Learned senior counsel for the petitioner further submits that as

per the existing provisions in terms of the Amendment Notification dated 29.09.2006, Section 4 sub-section 1 was substituted and it was provided that the Chairperson and non-official members shall hold office for a period of six years provided that whereas a Chairperson attains the age of 70 years before the expiry of aforesaid term of six years, he shall vacate his office on the day on which he attains such age. It is submitted that an amendment was made to the Punjab State Commissioner for SC Act by notifying Punjab State Commission for SC (Amendment Act 2003), the same was notified on 24.04.2013 and Section 4 was amended, which is as under:-

“In the Principal Act, in Section 4

(i) in the margin, for the words and signs “Chairperson”, Senior Vice-Chairperson, Vice-Chairperson, the word “Chairperson” shall be substituted;

(ii) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:-

“(1) The Chairperson and non-official members shall hold office for a period of three years which may be extendable up to two years:

Provided that where the Chairperson and non-official members attain the age of sixty five years before the expiry of the aforesaid term of three years, he shall vacate his office on the day on which he attains such age.

(2) the Chairperson and non-official members may, at any time, by writing and addressed to the Government, resign from the office of the Chairperson or of the office of the member, as the case may be;

(iii) in sub-section (3), for the words and signs “Chairperson or senior Vice-Chairperson or Vice-Chairperson”, the word “Chairperson” shall be substituted;

(iv) in sub-section (4), in the proviso, for the words and signs “Chairperson, the Senior Vice-Chairperson or the Vice-Chairperson, as the case may be, the word “Chairperson” shall be substituted; and

(v) in sub section (5), for the words and signs “Chairperson, the Senior Vice-Chairperson, the Vice-Chairperson, the word “Chairperson” shall be substituted.”

4. Learned senior counsel for the petitioners further submits that the amendment could not have been applied on the petitioners and the respondents-State applying the said Amendment of 2003, has issued an order to remove the non-official members, vide order dated 26.07.2023. He further submits that the respondents have given a retrospective effect to the Amendment Act of 2023 and the existing non-official members were to be governed by the three amended provisions of the Act which required the non-official members to continue for a period of six years or upto the age of 70 years, whichever is earlier.

5. I have heard learned senior counsel for the petitioner at length and have considered the submissions. This Court finds the arguments to be wholly misconceived.

6. The conditions of appointment on a statutory post in a statutory Commission, would be governed by the provisions of the Act. The very nature of appointment of the petitioner is to be considered in accordance with the provisions of the Act as they may be amended from time to time. In fact, the order of appointment itself mentions the said aspect while giving appointment to the petitioner.

7. Even otherwise, any appointment which has been made in terms of the conditions laid down in an Act, will be governed by any amendments which may be made in the Act. Thus, initially at the time of appointment, the term was for a period of six years as above, and has been later on amended to be a term of 3 years extendable upto 2 years, the said new amendment on the Act will apply on all the existing members holding post in a statutory Commission. The appointment of members of a statutory

Commission have to be understood differently from those who are appointed by way of service contract. It is at the pleasure of the Governor that a person is nominated/appointed as a Member of the statutory Commission.

8. In view of above, the claim of the petitioners based on the judgment passed in the case of '**Govinddas and others Vs. The Income Tax Officer and another**', 1977(SC) 552, is found to be misconceived. The law relating to a statutory right created on being appointed and conditions of appointment in service matters and other post having been non-statutory character, are to be understood differently in the case of '**Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others**' (1997) 6 SCC 623, the Constitutional Bench examined the aspect regarding retrospectivity at length and reached to the following conclusion:-

"In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni & Ors., (supra)."

9. However, question of retrospectivity does not arise at all in the

present case. The movement the new amendment has been made in the Act, the tenure of appointment of non-official members would stand governed by the Amendment. The submission of learned senior counsel that the amendment has been made solely to remove the petitioners, cannot be accepted, as there cannot be any mala fide attached to an amendment. The law has been settled by the Hon'ble Apex Court in the case of '**State of Punjab Vs. V.K. Khanna'** 2001(2) SCC 330 & **Assistant Excise Commissioner, Kottayam and others Vs. Esthappan Cherian and another**, 2021(10) Scale 308, wherein this Supreme Court held as under:-

*"15. Another equally important principle applies: in the absence of express statutory authorization, delegated legislation in the form of rules or regulations, cannot operate retrospectively. In **Union of India v. M.C. Ponnose**, 1970 SCR (1) 678, this rule was spelt out in the following terms:*

"The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect.

*16. The principle has been affirmed in many decisions such as **Hukum Chand v Union of India**, (1973) 1 SCR 896, **Regional***

Transport Officer v. Associated Transport Madras, (1980) 4 SCC 597; Federation of Indian Mineral Industries v. Union of India, (2017) 16 SCC 186 and recently, in Union of India v. G.S. Chatha Rice Mills, 2021(2) SCC 209.”

10. In the present circumstances and having regard to the principle of restrospectivity, this Court is of the view that it has nowhere been stated that the rule must be applied retrospectively.

11. Therefore, keeping in view the aforesaid findings, the present petition is found to be meritless and accordingly, the same is dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

31.07.2023
D.Bansal

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