

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-1768-1992

Date of decision: 25.04.2024

STATE OF PUNJABAppellant
VERSUS

HARI PARSHAD DEWANRespondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Vipin Pal Yadav, Addl. A.G. Punjab
for the appellant-defendant-State.

Mr. Shubham Pathania, Advocate for
Mr. Prateek Gupta, Advocate
for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

1. The appellant-defendant-State of Punjab is in appeal against the judgment and decree dated 01.02.1992 passed by the Additional District Judge, Chandigarh whereby he has reversed the judgment and decree dated 12.06.1986 passed by the Sub Judge, First Class, Chandigarh in Civil Suit No. 262-A dated 19.11.1984 whereby the suit of the respondent-plaintiff for permanent injunction was dismissed.
2. Briefly summarized the facts of the present case are that the respondent-plaintiff filed the Civil Suit for permanent injunction for restraining the appellant-defendant/State of Punjab from superannuating the respondent-plaintiff on attaining the age of 58 years on 30.11.1984 and for a declaration that he is entitled to be retained in service upto the age of 60 years.

3. It was averred in the suit that the respondent-plaintiff joined service in erstwhile princely State of Nabha on 05.01.1948 as a Stenographer and his date of birth was recorded as 04.11.1926. According to the rules and regulations applicable at the time of joining of services by the respondent-plaintiff in Nabha State, the prescribed age of retirement was 60 years. Thereafter, when Pepsu was formed, the State of Nabha merged with it. On 01.11.1956, Pepsu merged with the State of Punjab. The respondent-plaintiff averred that by virtue of the covenant entered into between the merging states, he is entitled to be retained in service upto the age of 60 years and cannot be superannuated on attaining the age of 58 years. Hence, the instant suit was filed.

4. Reply was filed by the appellant-defendant-State of Punjab to the effect that according to the service rules of Pepsu, the age of retirement was 55 years and after merger of Pepsu with Punjab on 01.11.1956, the respondent-plaintiff was to be governed by the Punjab rules as per which the employees were required to be retired at the age of 58 years. It was averred that all law and regulations that were in force within the State of Patiala were to become applicable to all the territories of Pepsu including erstwhile territory of the Nabha State when Pepsu was formed on 01.09.1948 and that all the employees of Pepsu, irrespective of their previous region of employment, were to be retired on attaining the age of 58 years. When Pepsu merged with the State of Punjab on 01.11.1956 the respondent-plaintiff like many others was given an option to opt for the rules of Pepsu or Punjab rules. The respondent-plaintiff opted for the Punjab rules under which the age of superannuation was 58 years and as such, he was estopped from

averring that he is still entitled to continue in the service till attaining the age of 60 years as per the erstwhile rules of Nabha State.

5. After pleadings were completed and issues were framed, parties led their respective evidence.

6. On consideration of the evidence led by the respective parties, the Sub Judge, First Class, Chandigarh recorded a finding that it could not be said that on the re-organisation of the State in 1956 when Pepsu merged with Punjab, the rules of erstwhile Nabha State fixing age of retirement of 60 years had any further application. Reliance was placed on a Division Bench judgment of the Punjab and Haryana High Court in CWP-2481 of 1980 as per which the rules of the State of Punjab were to become applicable with effect from the year 1956 as per which the age of retirement was fixed at 58 years. The suit was accordingly dismissed vide judgment and decree dated 12.06.1986.

7. Aggrieved thereof, an appeal was preferred by the respondent-plaintiff before the District Judge, Chandigarh. The said appeal was allowed vide judgment and decree dated 01.02.1992. The Additional District Judge, held that it was undisputedly a case that the respondent-plaintiff had been appointed as a permanent Stenographer in the erstwhile State of Punjab w.e.f. 05.01.1948 and his date of birth being 04.11.1926, he was to retire on attaining the age of 60 years as per Article XVI of the Covenant Ex.P1 as under. It was thus held that Article XVI of the Covenant would protect the rights of the plaintiff and service conditions with the Pepsu State could not be changed to his disadvantage without payment of reasonable compensation or of proportionate pension.

8. Aggrieved thereof, the present appeal was filed.

9. Learned counsel for the appellant has contended that the judgment of a Division Bench of this Court in CWP-2481 of 1980, squarely applied to the facts of this case and that as per the said judgment, the employees of the erstwhile Nabha State merged with the other State to form Patiala and East Punjab States Union known as Pepsu on 20.08.1948. It became a B-Class State after the promulgation of the Constitution of India on 26.01.1950. The Raj-Pramukh of Pepsu framed service rules, which were notified on 18.01.1951 which were framed under proviso to Article 309 of the Constitution of India. As per the said service rules, the age of retirement was reduced from 60 years to 58 years. It was later that Pepsu merged with the State of Punjab in 1956 and that the age of 58 years having been prescribed under the 1951 rules, hence, the respondent-plaintiff had superannuated on attaining of the said age itself.

10. Counsel for the respondent-plaintiff has reiterated his contention as have been noticed by the ADJ, Chandigarh and has claimed that his service terms cannot be altered to his disadvantage.

11. I have heard learned Counsel for the parties and have gone through the evidence with their able assistance.

12. The reliance of the respondent is solely on the Clause XVI of the Covenant Ex. P1 executed at the time of merger of State of Nabha with PEPSU.

13. It is further seen that the Additional District Judge, Chandigarh has placed reliance on the Article XVI of the Covenant Ex. P1 which was executed between Rulers of the erstwhile princely States at the time of the formation of Pepsu wherein it had guaranteed the continuance of service on the conditions that were not to be lesser advantageous than those on which

they were serving. It is also not been in dispute that the service rules were thereafter modified by the service rules notified by the Pepsu State in 1951. There is nothing on record that the said service rules whereby the age was reduced from 60 to 58 years was ever challenged by the respondent-plaintiff in an appropriate proceeding. The above service rules were applicable as on the date when the Pepsu merged with the State of Punjab in the year 1956 and there is no reference to any saving clause under which Article XVI of the Covenant between State of Nabha & Pepsu was saved or protected. Hence, the appellant-defendant-State of Punjab is governed by the agreement as stood on the date of its merger. The service rules having been already modified thereby reducing the age of superannuation from 60 to 58, hence, the successor State i.e. the appellant-defendant –State of Punjab would be bound to discharge liability and on the service rules as were in force on the date of merger. It is not in dispute that the said covenant had a binding force, however, the said binding force is only with respect to the signatories to the said agreement and as the State of Punjab was not a signatory to the said covenant. There are no documents available on record on the basis whereof the terms and conditions incorporated in the said covenant may be extended or held binding and applicable even in respect to the State of Punjab.

14. I hence, find that the judgment and decree passed by the Additional District Judge, Chandigarh giving prominence to Article XVI of the covenant executed with the State of Nabha at the stage of merger with Pepsu cannot override the subsequent merger of Pepsu with the State of Punjab and be given effect to notwithstanding the subsequent rules modified

by the Pepsu State, which had already been held binding on all employees of PEPSU, at the time of merger in the State of Punjab.

15. For the foregoing reason, the present appeal is allowed. The judgment and decree dated 01.02.1992 passed by the Additional District Judge, Chandigarh is set aside and the judgment and decree dated 12.06.1986 passed by the Sub Judge, First Class, Chandigarh is restored.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 25, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No