



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15609 of 1999 (O&M)
Date of decision: 29.07.2024

Bahadur Singh
.....Petitioner
Versus
P.R.T.C. and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Vikas Chatrath, Advocate
with Ms. Priya Kaushik, Advocate
for the petitioner.

Mr. Manu Loona, Advocate
for Mr. Karan Singla, Advocate
for the respondents.

NAMIT KUMAR J. (Oral)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India, for claiming the following reliefs:-

- “i) to call for the complete record of the case;*
- ii) to issue an appropriate writ, order or direction especially in the nature of certiorari quashing the impugned order, dated 08.06.1995 (Annexure P-3) passed by the respondent No.2 vide which the petitioner has been retired retrospectively w.e.f. 31.12.1994, on the plea that the date of birth of the petitioner should have been December, 1936 instead of 20.07.1938 as entered in his Service Book and the appeal filed by the petitioner before Respondent No.1 which has been rejected vide order dated 09.08.1999 (Annexure P-7) which is in violation of the law*

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laid down by the Hon'ble Supreme Court in the matter of State of Orissa versus Dr. (Miss) Bina Pani De, as reported in AIR 1967 SC 1269 against the principle of natural justice and without holding an enquiry and also in view of the fact that the petitioner cannot be retired retrospectively vide order dated 08.06.1995 (P-1) w.e.f. 31.12.1994 as the petitioner had worked till 08.06.1995 as Driver with the Pepsu Road Transport Corporation which is in violation of the law laid down by the Hon'ble High Court as the order of retirement of the petitioner cannot be issued retrospectively, which is being arbitrary, discriminatory and illegal.

iii) It is further prayed that writ of Mandamus be issued to the respondents to consider the case of petitioner for superannuation w.e.f. 31.07.1996 instead of 31.12.1994 as the entry of the date of birth of the petitioner in his service book is 20.7.1938 and the petitioner cannot be retired w.e.f. 20.07.1938 and the petitioner cannot be retired w.e.f. 31.12.1994 retrospectively vide order dated 8.6.95 (Annexure P-3) on the plea that date of birth of the petitioner should have been December, 1936 as the petitioner was issued Driving License LTV/HTV/MTV in December, 1956 and thus his Date of Birth should have been December, 1936 whereas the date of birth entered in his service book is 20.07.1938 which cannot be changed by the respondents at the fag end of his service and also in view of the law laid down by the Apex Court in various judgments and also to grant the revised pensionary benefits to the petitioner i.e. pension, gratuity and leave encashment, group insurance, commutation of pension, etc. superannuating the petitioner w.e.f. 31.7.96 (A.N.) instead of w.e.f. 31.12.1994.”

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2. The brief facts, as have been pleaded in the petition, are that the petitioner had worked as a Cleaner/Helper with various transport companies and later on, he applied for a Driving License while he was working in a transport company at Calcutta and was issued Driving License No.D/No.18000/Cal/56-57 of LTV/MTV/HTV from RAC/MV Calcutta and the Driving License of the petitioner was renewed from time to time, when he attained the age of 20 years for driving Heavy Transport Vehicle i.e. Trucks and Buses. The petitioner while he was working at PRTC Ludhiana Depot, Ludhiana, got his license renewed from the Licensing Authority, Motor Vehicles, Ludhiana on 05.12.1996, which was renewed upto 01.09.1997. It has further been pleaded that there were vacancies of Bus Drivers in PRTC and petitioner applied for one of the post of Bus Driver as he fulfilled the requisite qualification and he appeared for the driving test, which was followed by interview and finally, petitioner was selected and appointed as Bus Driver in PRTC, Patiala and joined his services on 01.09.1970 as Bus Driver at the age of 32 years and was allotted Driver No.497 and his date of birth was recorded in his service book as 20.07.1938 and he was to be superannuated on 31.07.1996 on attaining the age of 58 years but he was retired vide impugned order dated 08.06.1995 w.e.f. 31.12.1994 retrospectively on the assumption that his date of birth should have been December, 1936 because the Driving License for heavy vehicles cannot be issued before the age of 20 years.

3. Before passing the order dated 08.06.1995, the petitioner

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was issued a show cause notice dated 01.03.1995 by the General Manager, PRTC, Patiala, to give the proof of his date of birth. The petitioner applied to the Registrar (Birth and Deaths), Bathinda for a copy of Birth Certificate, which was issued to him, in which his date of birth was mentioned as 18.05.1938. The petitioner was called for personal hearing on 10.03.1995 but however, personal hearing could not take place on the said date and the case was adjourned to various dates and finally the petitioner was heard on 19.09.1995 by the Managing Director, PRTC, Patiala and the petitioner filed an affidavit regarding his date of birth as 20.07.1938 whereas as per Birth Certificate issued by the Registrar (Birth and Deaths), Bathinda, his date of birth was 18.05.1938. He did not apply for changing his date of birth. Hence, the petitioner should have been allowed to continue in service till the date of superannuation i.e. 31.07.1996 but the Managing Director, PRTC, Patiala, has retired him from service w.e.f. 31.12.1994 retrospectively vide order dated 08.06.1995.

4. The petitioner had filed an appeal against the order dated 08.06.1995 before the Chairman, PRTC, Patiala. During the pendency of the appeal, the petitioner has been granted pension vide order dated 21.04.1998 w.e.f. 31.12.1994 after a period of 03 years and 04 months from the date of order and when the appeal of the petitioner was not decided, he filed CWP No.3156 of 1999, titled as “Bahadur Singh vs PRTC and others” and the same was disposed of by the Division Bench of this Court vide order dated 09.03.1999 by issuing direction to

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respondent No.1 to decide the appeal expeditiously preferably within a period of 03 months from the date of furnishing of a certified copy of the order. The said appeal was rejected by respondent No.1 vide order dated 09.08.1999 (Annexure P-7). Hence, the present writ petition.

5. On issuance of notice of motion, written statement on behalf of the respondents – Corporation has been filed wherein the claim of the petitioner has been opposed and prayed for dismissal of the writ petition.

6. During the course of arguments, learned counsel for the petitioner has restricted his claim to challenge the order dated 08.06.1995 (Annexure P-3) whereby the petitioner was ordered to be retired from service of the Corporation with retrospective effect i.e. w.e.f. 31.12.1994. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***"P.D. Goel vs High Court of Himachal Pradesh through its Registrar General"***, 2017(4) SCT 55, wherein while setting-aside the compulsorily retirement order, it was held as under:-

"8. Having regard to the contentions urged, the only question for consideration is whether retiring the appellant retrospectively on completing the age of 58 years is justified in law.

9. This Court in Registrar (Admn.), High Court of Orissa, Cuttack vs. Sisir Kanta Satapathy (Dead) by LRs. and Anr. (1999) 7 SCC 725, while considering the scope of Articles 233, 234 and 235 of the Constitution of India has held that the control vested in the High Court over the subordinate judiciary though absolute and

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exclusive, has to be exercised without usurping the power vested in the executive under the Constitution. The High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiry and impose punishment on them. But when it comes to the question of dismissal, removal, reduction in rank or termination of judicial officers on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order. The High Court has to send its recommendations to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment.

*10. In the instant case, the appellant had not been retired by the appointing authority, namely, the Governor of Himachal Pradesh. Therefore, it cannot be said that the appellant had retired on the completion of age of 58 years. Instead of quashing the notification at Annexure P-16, the Division Bench treated the said notification as recommendation of the High Court to the Governor for removal of the services of the appellant. This order was passed after the appellant had completed the age of 60 years. **In terms of the order of the Division Bench, the Governor has passed an order dated 31.1.2017 retrospectively retiring the appellant with effect from 31.7.2005, which, in our view, is not permissible in law.** The Himachal Pradesh Judicial Service Rules, 2004 do not provide for retrospectively retiring the judicial officers. The order of the High Court retiring the appellant at the age of 58 years cannot take effect as it was without authority of law. It only means that the appellant has to be*

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treated to have been retired from service on completion of 60 years of age on 31.7.2007.

11. We are of the view that the order of the Division Bench treating the recommendation of the High Court to the Governor for compulsorily retiring the appellant cannot be sustained. The order of the Division Bench to that extent is hereby set aside. Consequently, the order of the Governor dated 31.1.2017 is also set aside. The appellant is entitled to his salary, allowances and all other consequential benefits till 31.7.2007. The arrears as per above terms shall be paid to the appellant within three months from the date of receipt of copy of this judgment. The appeal is accordingly allowed.”

Learned counsel for the petitioner has further relied upon the Division Bench judgment of this Court in **“Rajinder Singh vs Board of School Education Haryana and another”**, 1996(4) RSJ 417, wherein while setting-aside the order of dismissal from service, it was held that the order of punishment cannot be passed retrospectively. The operative part of the said judgment, reads as under:-

*“12. We also find merit in the contention of Shri Walia that respondent no.1 was not entitled to dismiss the petitioner from service with retrospective effect. **Relationship of master and servant can be brought to an end from the date of order or from a subsequent date but not with effect from an earlier date. The employee earns some benefits during the period of service and he cannot be deprived of those benefits by termination of his service with retrospective effect.** In this case the petitioner has acquired a right to get subsistence allowance because he was under suspension till the passing of the impugned order. By retrospective dismissal from service, he has been deprived of this right and that the respondent no.1 was not entitled to do.*

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13. In the result, the writ petition is allowed. Order Annexure PI is quashed. Petitioner shall be deemed to be continuing under suspension and shall be entitled to get subsistence allowance payable to him with effect from 17.12.1993. We, however, make it clear that it shall be open to respondent no.1 to reconsider the case of the petitioner and pass a fresh order in accordance with law. Costs made easy. Petition allowed.”

7. Learned counsel for the respondent could not dispute the abovesaid legal proposition.

8. I have heard learned counsel for the parties and persued the paperbook.

9. The matter pertains to year 1999 and was admitted on 08.10.2001. In context of limited prayer made before this Court which in my consideration, in terms of settled principles of law in service jurisprudence, when an employer-employee relationship ends, the termination can take effect from the date of order of termination with immediate effect or a future date specified in the order (later effect). However, the termination cannot be applied retroactively to an earlier date (backdated) which means that the employee's benefits earned during their service cannot be taken away by making the termination effective before it actually happened. In essence, the employees rights and benefits accrued during their service are to be protected and the employer cannot retroactively deprive them of those benefits by backdating the termination. Accordingly, the present petition is allowed to the limited extent and the order dated 08.06.1995 (Annexure P-3) is set-aside to the scale that the same has been passed retrospectively. The

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date of retirement of the petitioner shall be treated as 08.06.1995 i.e. the date of passing of impugned order and he shall be granted all the consequential benefits from 01.01.1995 till 08.06.1995 within a period of 03 months from the date of receipt of certified copy of this order.

29.07.2024

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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No