IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110 **LPA-1671-2024 (O&M)**
Date of decision: 24.07.2024

State of Haryana and others **....Appellants**

Versus

Krishan Kumar
...Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Sanjeev Kaushik, Addl. A.G. Haryana
for the appellants.

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DEEPAK SIBAL, J.(ORAL)

1. There is a delay of 298 days in filing of the instant intra Court appeal which has been filed on the insistence of the concerned Department inspite of the fact that thrice over the Advocate General of the State of Haryana had categorically opined that the present was not a fit case for filing of an appeal. Even otherwise, the inordinate delay in the filing of the appeal has not been satisfactory explained. However, on the insistence of the learned State counsel, we have heard the case on its merits.

2. The present intra Court appeal is directed against the judgment dated 29.08.2023 passed by a learned Single Judge of this Court allowing the respondent's petition filed by him to challenge therein the order passed by the State altering the date of regularization of his services from 09.05.1994 to 30.09.2003 and consequently the date of his promotion as Assistant resulting in reduction of his salary/pension.

3. A few relevant facts may be noticed.

4. On 16.02.1994, on the recommendation by the Employment Exchange, the respondent was appointed, on adhoc basis, as a Clerk. After

passing the requisite type test, his services were regularized on 09.05.1994. Thereafter, the petitioner earned promotion as an Assistant. After having put in unblemished service for over 23 years, on attaining the age of superannuation, he retired on 28.02.2017. About 09 months after his retirement, the order dated 24.11.2017 was passed by the State through which his date of regularization was changed from 09.05.1994 to 30.09.2003. As a consequence, the date of his promotion as Assistant was postponed and his salary as also his pension were reduced. Order dated 24.11.2017 was petitioned against by the respondent before this Court. The learned Single Judge has allowed the respondent's petition through the judgment under challenge.

5. Learned State counsel submits that the learned Single Judge has quashed the order challenged by the respondent only on the ground that the same was in violation of the principles of natural justice which finding is against the record as letter of the respondent dated 25.10.2017 clearly reveals that before passing of the order dated 24.11.2017 the respondent had been granted opportunity of personal hearing. He further submits that order of regularization of the respondent, which had been corrected by the State, was for the reason that as on 09.05.1994 i.e. the date when his services were regularized, there was no regularization policy of the State.

6. The respondent's initial appointment as Clerk was admittedly after following due process and on the recommendation of the concerned Employment Exchange. It is also not disputed that only after the respondent had passed a requisite type test were his services regularized. It is further borne out from the record that after the respondent had put in the requisite number of years as a Clerk he was promoted as Assistant from which post,

attaining the age of superannuation, he retired on 28.02.2017. The learned State counsel also does not dispute the factum of the respondent's services being throughout unblemished.

7. In the light of the above peculiar facts, we are not inclined to interfere with the impugned judgment through which after 23 years, the action of the State to change the date of regularization of the respondent's service, has been held to be unsustainable especially when in the meantime he had earned promotion and had superannuated as also that at the time of regularization of his services in the year 1994 the respondent had neither misrepresented nor played any fraud.

8. Reference by the learned State counsel to the respondent's letter dated 25.10.2017 to contend that before passing of the impugned order dated 24.11.2017, the respondent had been granted opportunity of hearing and therefore, the State's action was legal is an argument which needs to be considered only to be rejected. Letter of the respondent dated 25.10.2017 reads as under:-

> *"As per the orders of Commissioner, I appeared before the Additional Excise and Taxation Commissioner (Admin) for a personal hearing today on 25.10.2017. I am informed that the regularisation order made by the then Deputy Excise and Taxation Commissioner, Hisar on 9.5.94 have been cancelled vide Commissioner orders dated 25.01.17. I had joined service as a Clerk on daily ways basis on 16.12.93 and on 17.2.94 on ad-hoc basis through employment office. Now, please get me an entry in the service book as per Government instruction dated 1.10.2003 regarding regularisation from 01.10.2003 as per the rules, I have no objection to this."*

9. It is true that the respondent says that he was heard by the Commissioner before passing of the order dated 24.11.2017 but such letter also refers to an earlier order passed by the Excise and Taxation Commissioner, Haryana (for short – ETC) on 25.01.2017 which on our

asking was produced by the learned State counsel. The same is ordered to be taken on the record as Annexure 'X'.

10. A perusal of the order dated 25.01.2017 reveals that the same was passed by the ETC while considering a representation made by the respondent seeking therein ante date promotion as Assistant. During the course of such consideration, the ETC through her order dated 25.01.2017 not only denied to the respondent ante dated promotion as Assistant but also returned a categoric finding that the order dated 09.05.1994 through which the respondent's services had been regularized was not in conformity with the regularization policy of the State and that at that time the respondent was not granted any opportunity of hearing before recording of adverse remarks with regard to the date of regularization of his services. Thus, much prior to 25.10.2017 i.e. the date when the respondent is said to have been granted opportunity of hearing, the ETC had already opined with regard to the illegality of the respondent's regularization order dated 09.05.1994. That being so, the opportunity of hearing granted to him on 25.10.2017 was a mere eyewash.

11. In the light of the above, both on account of delay as also on merits, the instant appeal is dismissed.

12. All pending miscellaneous application(s) shall also stand disposed of.

(DEEPAK SIBAL)
JUDGE

24.07.2024 **(DEEPAK MANCHANDA)**
Sapna **JUDGE**

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*