

237

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

CWP-27995-2022

Date of Decision: 12.02.2024

Chand Ram

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Karamveer Singh Banyana, Advocate
for the petitioner.

Mr. Kapil Bansal, D.A.G., Haryana.

Mr. Parvinder Chauhan, Advocate,
for respondent No.4.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 10.02.2020 (Annexure P-11) whereby the payment of arrears of salary for the extended period of two years has been wrongly denied by the respondents and also for issuance of a writ in the nature of *mandamus* to grant the arrears of salary to him for an extended period of two years along with interest.

2. The brief facts involved in the present case are that the petitioner was working in respondent No.4-Council as a Clerk and he completed the age of 58 years on 31.03.2011 and after the completion of the aforesaid age of 58 years, he was directed to be retired on 31.03.2011.

Before the petitioner was retired as aforesaid, he being aware of the right to continue till the age of 60 years being visually handicapped to the extent of more than 75% as per the Policy of the Government, forwarded the medical certificate (Annexure P-1) to the concerned Executive Officer on 01.03.2011 vide Annexure P-2, depicting that he is 75% visually handicapped as per the certificate. The aforesaid representation (Annexure P-2) was thereafter forwarded by the Executive Officer, Municipal Council, Sonipat to the Deputy Commissioner, Sonipat vide Annexure P-3, on 11.03.2011. The aforesaid exercise was done before the retirement of the petitioner on 31.03.2011. Thereafter, on 30.04.2012 vide Annexure P-4, the claim of the petitioner for continuing the service till the age of 60 years was rejected by issuance of a letter by the Financial Commissioner & Principal Secretary to Government of Haryana, Urban Local Bodies Department on the ground that the medical certificate issued by the competent authority should have been given to the concerned authorities at least three months before the date of retirement to enable the Department to carry out the requisite verification in time, but he made the request on the basis of the medical certificate dated 01.03.2011, which is just one month before the retirement and the requisite verification could not be done in time and therefore, no extension of service is permissible in this case. Thereafter, the petitioner filed a writ petition bearing CWP-6470-2013 which was dismissed vide order dated 28.02.2014 (Annexure P-10) but the petitioner was granted liberty to challenge the order in accordance with law because at the time of filing of the aforesaid petition, the aforesaid order was not passed and was not attached. Thereafter, the petitioner again filed a writ petition before this Court bearing CWP-26642-

2014 in which the State had taken a stand by treating the petitioner physically handicapped, his claim for grant of benefit of extension in service upto age of 60 years will be considered by the Municipal Council, Sonipat and appropriate orders will be passed in that regard. Thereafter, again an order was passed by the Commissioner, Municipal Corporation, Sonipat vide Annexure P-11, in which it was so observed that the petitioner was entitled to the benefit of extension of his service upto the age of 60 years as per the definition of physically handicapped as per the Notification dated 06.08.1986 passed by the Government of India, Ministry of Welfare because of the uniform definition of the physically handicapped (Physically differently abled) person and therefore, keeping in view the aforesaid position, the pay of the petitioner was re-fixed notionally for a further extended period of two years i.e. w.e.f. 31.03.2011 to 31.03.2013 and pensionary benefits were revised. So far as the arrears of salary for the aforesaid period of two years are concerned, the claim was rejected in view of the judgment of the Hon'ble Supreme Court passed in ***Appeal (Civil) No.5128 of 2001*** titled as "**Union of India Vs. B.M. Jha**" decided on 24.10.2007, being not admissible on the basis of principle of 'No work No pay'. The present petition has been filed challenging the aforesaid order dated 10.02.2020 (Annexure P-11) to the extent of denial of arrears of salary for a period of two years.

3. Learned counsel for the petitioner submitted that before attaining the age of 58 years, the petitioner had filed an application to the concerned Authorities for granting the benefit of the Visually Handicap Certificate and as per the Policy of Government, he was entitled to serve till

the age of 60 years and vide Annexure P-4, when it was not granted, the reason given was that he had given the certificate only one month before his date of retirement and there was no time for requisite verification. He also referred to Annexure P-6 which is a letter dated 28.03.2006 written by the Chief Secretary, Government of Haryana to all the Heads of Department with regard to raising of the age of retirement of the Physically Handicapped Government Employees from 58 to 60 years and the certificate thereof and while referring to Para No.3 of the aforesaid letter, he submitted that it has been specifically so stated that any employee who submits the papers even up to the date of retirement can seek advantage of the instructions. However, it would be normally expected that the employees should submit the requisite certificate at least 3 months before the date of retirement to enable the department to carry out the requisite verification in time. Learned counsel further submitted that it has been specifically so stated in the aforesaid letter written by the Chief Secretary that the employees are expected to submit the medical certificate three months before the retirement but there is no mandatory provision under the aforesaid letter or any other provision whereby even if it is submitted in less than three months then it will not be considered. He further submitted that the certificate was issued by the concerned hospital and thereafter immediately the petitioner forwarded the aforesaid certificate to the concerned authorities and in the absence of mandatory provision of fixing a period of three months, the certificate of the petitioner could not have been rejected only on the ground that the petitioner filed the aforesaid certificate only one month prior to completion of age of 58 years because even one month time is a sufficient

time to get the verification done especially in view of the fact that the certificate (Annexure P-1) was issued by none other than the Regional Institute of Ophthalmology PT. B.D. Sharma, PGIMS, Rohtak and therefore the reasoning given by the Deputy Secretary, General Administration that it was submitted in less than three months is not sustainable.

4. Learned counsel for the petitioner further submitted that after the second round of litigation by the petitioner, the respondents have now realized that the petitioner was actually entitled for being retired at the age of 60 years instead of 58 years in view of the Policy of Government of India and that of the State of Haryana and has now been granted the benefit of extension of two years service i.e. from 58 years to 60 years, but only notional benefit has been granted for the purpose of fixation of his pension and other retiral benefits. However, the salary for the period of two years has been denied and not paid to him. He further submitted that had it been a case that because of any decision which is taken later on which normally happens for the purpose of grant of notional promotion etc. then it would have been justified to decline the prayer of arrears of salary on the ground of the principle of 'No work No pay', but the factual position in the present case is totally different. He submitted that in the present case Policy on the basis of which the petitioner was to retire on the age of 60 years was already in existence and it was because of the fault of the respondent-Department that he was prevented to continue till the age of 60 years. He submitted that it is a settled law that in case an employee is prevented from discharging his duties by the State and thereafter, the benefit is conferred and the notional pay is fixed then the principle of 'No work No pay' is not applicable. He

submitted that it is a case of petitioner being prevented and deprived of discharging his duties on a public post and therefore he is entitled to the difference of the salary etc. and all the monetary benefits.

5. Learned counsel for the petitioner also submitted that in the similar circumstances a similar point of law had come up before a Co-ordinate Bench of this Court in *CWP-23454-2012* titled as “*Gulshan Kumar Vs. State of Haryana and others*”, decided on 19.02.2013 (Annexure P-7) whereby it was so held that in such like situation where despite the policy being in existence, an employee was not permitted to continue till the age of 60 years and later on it was realized that he ought to have been continued till the age of 60 years and was granted notional benefit but was deprived of from arrears of salary for the period of two years, the same was granted by a Co-ordinate Bench of this Court in the aforesaid writ petition. He submitted that in view of the aforesaid facts and circumstances, the impugned order (Annexure P-11) is liable to be set aside to the extent that the arrears of salary has been denied to the petitioner for a period of two years. He also submitted that so far as the aforesaid judgment which has been so stated in the impugned order i.e. *B.M. Jha's case (supra)* is concerned, the same is distinguishable and is not applicable in the present case because the aforesaid judgment pertains to the retrospective promotion and not in a case where due to the existence of policy, an employee was entitled to continue in service and due to wrongful and arbitrary action of the respondent, he was deprived and prevented from discharging his duties.

6. On the other hand, Mr. Pravindra Chauhan, learned counsel for respondent No.4-Council submitted that the petitioner submitted his medical

certificate only one month prior to attaining the age of 58 years and because of that reason, he was not granted the benefit of extension of service. So far as the presence of the policy and the instructions of the Government for the age of visually disabled persons to serve till 60 years is concerned, the same is not in dispute and such policy was already in existence at the time when the petitioner had retired. He further submitted that now the petitioner has already been granted the notional benefit vide Annexure P-11 and only because of principle of 'No work No pay', the petitioner is not entitled to grant of salary for the period of two years.

7. I have heard the learned counsel for the parties.

8. It is a case where the petitioner is more than 75% visually handicapped and there is no dispute that when an employee is physically handicapped including visually handicapped then the age of retirement is fixed at 60 years as per Government Policy. However, as per letter dated 28.03.2006 (Annexure P-6) which is written by the Chief Secretary, Government of Haryana to all the Heads of Department in which it has been so stated that it is normally expected that such a certificate is to be submitted at least three months before the date of retirement in order to carry out the requisite verification in time, a perusal of the same would show that no mandatory provision has been mentioned that in case it is not submitted before three months then the claim of a person will be rejected on this ground but it has only been stated that it is 'normally expected'. Therefore, when the petitioner submitted the medical certificate at least one month before his retirement then his claim could not have been rejected only on the basis of the aforesaid Annexure P-6. Similar issue also came up for

consideration before a Co-ordinate Bench of this Court in ***Gulshan Kumar's case (supra)*** vide Annexure P-7 whereby the aforesaid issue of three months was also considered and benefit was granted to the petitioner in that case.

Para Nos.11 & 12 of the aforesaid judgment is reproduced as under:-

“11. The ground on which the case of the petitioner for extension in service has been rejected is totally misconceived and in fact shows total insensitiveness and non-application of mind by the authorities. In fact, the manner in which the case of the petitioner has been dealt with has defeated the very purpose for which the instructions have been issued. The impugned communication (Annexure P-7), vide which the case of the petitioner was rejected shows that the reason given is that the application had to be submitted three months before the date of retirement. While rejecting the case of the petitioner on that ground, the authorities have failed to appreciate the fact that the instructions/clarification issued by the Government on 28.3.2006 clearly provided that application for extension in service could be filed before the last date of retirement. However, normally it should be filed three months in advance, but in the present case, the application could not be filed three months in advance for the reason that the petitioner acquired permanent disability nearly a month before the date of his retirement, hence, rejection of the case of the petitioner on that ground is totally misconceived and deserves to be set aside. The respondents are directed to take the petitioner back in service forthwith and allow him to continue till the age of 60 years as per rules/instructions.

12. As the case of the petitioner for extension in

service was rejected with total non-application of mind and even ignoring the instructions/clarification issued by the State Government and as a result of which the petitioner was made to rush to this court, respondents No. 1 to 3 are burdened with cost of Rs.20,000/-, which shall be paid to the petitioner by way of bank draft within a period of one month from today.”

9. This is the third round of litigation being third writ petition filed by the petitioner. Now Annexure P-11 has been passed by the respondents-Corporation in which now realizing their mistake, they have so decided that the petitioner is entitled for the date of retirement to be fixed at 60 years in view of the Policy of the Government of India. However, now only notional benefits have been granted to the petitioner because he did not serve for the aforesaid period of two years. The reason which has been so stated which is under challenge in the present petition for denial of the actual salary for the period of two years was on the principle of ‘No work No pay’ and reference has been made to a judgment of Hon’ble Supreme Court in ***B.S. Jha’s case (supra)***.

10. It is a settled law that in case an employee is prevented from discharging his duties which is later on found to be wrong exercise of power by any authority or the Court of law or in another situation where respondents themselves rectified their mistake, then in that situation the principle of ‘No work No pay’ will not apply. However, in those cases where the promotions are not granted and some juniors are promoted etc. when retrospective promotions were granted then the principle of ‘No work No pay’ applies. The judgment of the Hon’ble Supreme Court passed in ***B.S. Jha’s case (supra)*** is distinguishable from the present case because the facts

of the aforesaid judgment pertained to grant of arrears when retrospective promotion was granted. However, in the present case, the petitioner was working as an employee of the Council (now Corporation) and he was entitled to work till the age of 60 years even at the time when all the policies of the Government of India and that of the State of Haryana were applicable since a decision was taken with regard to the same for extension of two years of service in the year 2006 itself whereas the petitioner retired in the year 2011. The aforesaid mistake was rectified by the respondents themselves by realizing their mistake that the petitioner was entitled for service till the age of 60 years. At that point of time, when the claim of the petitioner was rejected, the same was rejected on the ground that the petitioner did not submit the medical certificate within three months but he submitted the same just one month before attaining the age of 58 years and there was no time for requisite verification. Such a reasoning given by the respondents was also considered by a Co-ordinate Bench of this Court vide Annexure P-7 as reproduced above. This Court is also of the view that such kind of reasoning given by the respondent-State is perverse and unsustainable in the eyes of law. It cannot be said that one month time is not a sufficient period of time to get the requisite verification of the certificate done from an institute which is situated within the State of Haryana at Rohtak. Even otherwise also there is no mandatory provision of law to show that three months time for making claim or submitting the medical certificate was a condition precedent. In the absence of the same, the mere fact that the petitioner had submitted the medical certificate just one month before retirement is no ground for non-suiting the petitioner for being continued till

the age of 60 years.

11. A Division Bench of this Court in “**Satyavir Singh Shekhawat Vs. State of Haryana and others**” 2014(4) SCT 233 dealt with this issue regarding payment of monetary benefits and salary where an employee was deprived of his promotion wrongfully. It was held that when promotion is denied because of mistake of administration and due to no fault of an employee, then the authorities are bound to pay the arrears of salary etc. Para 17 and 18 of the aforesaid judgment is reproduced as under:-

*“17. The principle which can be deduced is that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the said employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefit of retrospective promotion after realising that mistake. This principle would be extended even to those cases where due to sheer negligence, carelessness or on account of malafides an employer denies the benefit of promotion to the employee at a proper time when it becomes due and gives him afterwards though retrospectively. (Also see **State of Kerala and Others v. E.K. Bhaskaran Pilai, 2007(2) S.C.T 757: JT 2007(6) SC 83; Mohd. Ahmed v. Nizam Sugar Factory and Others -(2004) 11 SCC 210; Nalini Kant Sinha v. State of Bihar and Others-1993 Supp (4) SCC 748.** On the other hand, where there is genuine dispute and the promotion was delayed because of pendency of such a dispute and before the settlement of the dispute the promotion could not have been granted, the salary for the past period can be denied even when promotion is given retrospectively after the resolution of the*

dispute. Further the benefit of arrears of salary for past period can also be denied if it is found that it was not fault or mistake of the administration because of which the promotion was delayed.

18. In those cases where concerned employees seniors as well as juniors are granted the benefit of promotion and the salary for the period in question, same should invariably be given to such an employee who is given belated promotion retrospectively as non grant of arrears of pay and allowances of the higher post for the relevant period, in such circumstances, would amount to hostile discrimination.”

12. The aforesaid judgment was upheld by Hon’ble Supreme Court in ***Special Leave to Appeal (Civil) No. CC 7253 of 2013*** tiled as “***State of Haryana Vs. S.S. Shekhawant***” on 08.04.2013 and the same is reproduced as under:-

“Delay condoned.

This petition is directed against judgment dated 2.11.2012 of the Division Bench of the Punjab and Haryana High Court, whereby the Letters Patent Appeal filed by the respondent was allowed, the order passed by the learned Single Judge was set aside and it was declared that he shall be entitled to arrears of pay and allowances from 5.7.1994 to 31.1.2006 as Divisional Employment Officer and from 1.2.2006 to 9.4.2008 as Deputy Director (Employment).

The respondent was denied promotion on account of pendency of two departmental enquiries. The enquiry proceedings were dropped in 2002 and 2005. Thereafter, the State Government passed order dated 9.4.2008 and promoted the respondent as Assistant Director/Divisional Employment Officer w.e.f. 5.7.1994

and as Deputy Director w.e.f. 1.2.2006. However, he was not allowed monetary benefits because the promotions were treated as notional. C.W.P. No. 7349/2010 filed by the respondent was disposed of by the learned Single Judge of the High Court by directing the concerned authority to decide his claim for payment of arrears for the period he was denied promotion.

In compliance of the direction given by the High Court, the Principal Secretary to the Government of Haryana, Labour and Employment Department considered the case of the respondent and passed order dated 25.2.2001 whereby he rejected the respondent's prayer for grant of actual monetary benefits.

The State Government's decision to deny monetary benefits to the respondent became subject matter of challenge in Writ Petition No.4610/2012, which was dismissed by the learned Single Judge vide order dated 18.4.2012 by observing that termination of the departmental proceedings does not entitle the respondent to claim actual promotions with retrospective effect.

The Division Bench of the High Court relied upon the judgments of this Court in Union of India vs. K.V. Jankiraman (1991) 4 SCC 109 and State of Haryana vs. O.P. Gupta (1996) 7 SCC 533 and held that the respondent is entitled to pay and allowances prescribed for the posts of Assistant Director/Divisional Employment Officer and Deputy Director, respectively.

Learned senior Additional Advocate General could not draw our attention to any document or other evidence from which it can be inferred that the respondent was responsible for delayed finalisation of the departmental proceedings. Therefore, the Division Bench rightly held that there was no legal or other

justification for denial of pay and other monetary benefits attached to the promoted posts. We may add that the rule of "No work, no pay" can be invoked only if the employee voluntarily abstains from duty or refuse to perform the duty and not in the cases in which he is prevented by the employer from performing his duties.

The special leave petition is accordingly dismissed.

The petitioners shall fix the pay of the respondent on the promoted posts and pay the arrears within a period of three months from today.

The Registry is directed to send a copy of this order to the respondent at the address mentioned in the memo of the special leave petition.”

13. In view of the aforesaid totality of the circumstances, the present petition is allowed. The order dated 10.02.2020 (Annexure P-11) to the extent of denial of salary for the period of two years from 31.03.2011 till 31.03.2013, is set aside and quashed. Since the petitioner was prevented from discharging his duties till the age of 60 years in violation of the Policy of the Government itself, respondent No.4 is directed to calculate the arrears of salary for the aforesaid period of two years and pay to the petitioner within a period of four months from today along with interest @ 6% per annum (simple).

13. In case, the aforesaid amount is not paid to the petitioner within a period of four months from today, then the petitioner shall be entitled to future interest @ 9% per annum (simple) instead of 6% per annum (simple).

12.02.2024

(JASGURPREET SINGH PURI)

Bhumika

JUDGE

1. Whether speaking/reasoned:

2. Whether reportable:

Yes/No

Yes/No