



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

202

RSA-3409-1998 (O&M)

Date of decision: 12.02.2026

Gurmit Singh

.....Appellant

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Ms. Nikita Goel, Advocate for
Mr. Prateek Mahajan, Advocate for the appellant.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

1. The appellant/plaintiff has filed the instant Regular Second Appeal challenging the judgments and decrees dated 06.11.1995 and 28.01.1998, passed by the learned Trial Court and the First Appellate Court respectively, whereby the suit and the first appeal filed by the plaintiff have been dismissed.

2. Parties to the *lis* hereinafter shall be referred to by their original position before the learned Trial Court.

3. Briefly stated, the facts of the case are that the plaintiff was working as Assistant/Inspector under the Punjab Government since 05.12.1973, with the Director, Local Government, Punjab, being his appointing and punishing authority. He was deputed to various Municipal Committees, where his salary was paid from municipal funds under the directions of the Director, Local Government, Punjab, Chandigarh. In the year 1985, the plaintiff applied through proper channel for the post of Additional District Attorney Grade-II and was duly selected, vide order dated 25.05.1985 issued by the Director,

Prosecution and Litigation Department, Punjab, Chandigarh. Upon being relieved from his previous department, he joined the post of Additional District Attorney Grade-II. At the time of his relieving, the plaintiff requested that his lien on the post of Inspector be retained. Subsequently, the plaintiff submitted representations seeking counting of the service rendered by him as Inspector in the Punjab Municipal Service, which were declined by the Director, Prosecution and Litigation Department. An appeal filed by the plaintiff before the Secretary to the Government of Punjab was also dismissed. The plaintiff has averred that the orders rejecting his claim and the appellate order are illegal, arbitrary, and void, as he is entitled to the benefit of the relevant provisions of the Punjab Civil Services Rules as well as Articles 14 and 311 of the Constitution of India. On the basis of the pleadings of the parties, the following issues were framed:-

“1. Whether the past service of the plaintiff, w.e.f. 13.12.1978 to 6.6.1985, is to be counted towards pension and other benefits etc.? OPP.

2. Whether the order dated 3.7.92 is null and void? OPP.

3. Whether the rule 11.3 and other of C.S.R. do not apply to the plaintiff? OPD.

4. Relief.”

4. Learned counsel for the appellant/plaintiff contends that the impugned judgments and decrees are unsustainable in law. It is argued that the plaintiff was duly selected as Additional District Attorney Grade-II through a regular selection process and was relieved by the competent authority. The plaintiff had sought protection of lien over his previous post in accordance with the Civil Service Rules, which permit retention of lien. Since the plaintiff was serving in the

Municipal Committee and was selected thorough a proper selection committee, therefore, the earlier service rendered by him is liable to be counted towards pensionary benefits.

5. *Per contra*, learned State counsel contends that the plaintiff, after his appointment as Additional District Attorney Grade-II, became a member of a separate cadre governed by distinct service rules, and therefore, the services rendered by him in the Municipal Committees cannot be counted for seniority and other benefits. It was argued that no rule confers any right to retain lien or claim past service benefits, and the rejection of the plaintiff's representations was legal and justified.

6. I have heard learned counsel for the parties and perused the record.

7. It appears that during the course of hearing before the learned Trial Court, the plaintiff has made claim for counting of the earlier service only for the purpose of pensionary benefits.

8. The question of law which arises for determination in the present appeal is as to whether the service rendered by the appellant/plaintiff from 13.12.1978 to 06.06.1985 while he was working as Inspector in the Municipal Committee, is countable for the purpose of pensionary benefits or not?

9. The learned Trial Court has rejected the said claim by observing that the services in the Municipal Committee do not fall within the expression of the services to the State Government and he was working against non-pensionable post, therefore, the appellant/plaintiff is not entitled for counting of the said service for the

purpose of pension. The said finding has been affirmed by the learned First Appellate Court. The learned Trial Court and First Appellate Court have not taken note of Rule 3.17-A of the Punjab Civil Services Rules, Volume II, which provides that subject to the provisions of Rule 4.23 and other Rules and except in cases mentioned therein, all services rendered in establishment, interrupted or continuous, shall count as qualifying service. Even otherwise, the services in the Municipal Committees are also pensionable in terms of the rules known as “Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994”. Therefore, the finding recorded by the learned Trial Court and First Appellate Court to this effect is totally erroneous and perverse. The similar issue has been considered by this Court in ***Dharvinder Paul Sehgal and others v. State of Punjab and others : 2025 NCPHHC 163455***, wherein after considering the provisions of Rule 3.17A and various other judgments on the similar issue, it has been held as under:-

“11. Rule 3.17-A of the Punjab Civil Services Rules (Volume II) deals with the counting of service rendered in an establishment and provides that service rendered in an establishment would be counted as qualifying service, if the employee has submitted resignation for taking up another appointment and said resignation has been accepted.

12. Rule 3.17-A of the Punjab Civil Services Rules reads as under: -

“Rule 3.17-A. (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:—

(i) Omitted.

(ii) Omitted.

(iii) Casual or daily rated service.

- (iv) *Suspension adjudged as a specific penalty.*

Note.— In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.

- (v) *Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.*
- (vi) *Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.*
- (vii) *If any unauthorised leave of absence occurs in continuation of authorized leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.*
- (viii) *Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-inaid school. (A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)*
- (ix) *Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.*
- (x) *Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.*

(2) *An interruption in the service of a Government employee caused by wilful absence from duty or unauthorised absence without leave, shall entail forfeiture of the past service.*

(3) *Wilful abstinence from performing duties by a Government employee by resort to pen down strike*

shall be deemed to be wilful absence from duty and shall also entail forfeiture of the past service.

Note.— *In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.*

Clarification (1).—Even after the introduction of rule 3.17(A) and deletion of rule 4.21 the following cases do not entail forfeiture of past service:—

(a) authorised leave of absence;

(b) abolition of post or loss of appointment owing to reduction in establishment.

(“Post” or “appointment” means a post or appointment service in which qualifies for pension).

(2) While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted.”

[Emphasis Supplied]

Sub-Rule (2) of Rule 7.5 of PCS Rules provides that resignation submitted for taking up another appointment with Government, shall not entail forfeiture of past service, if there is permission by Competent Authority. Sub-Rule (2) of Rule 7.5 of PCS Rules is reproduced as below: -

“A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.”

*13. The said provisions have been interpreted by this Court in **Jasdeep Singh Aulakh’s case (supra)**. In the said case, petitioner had rendered service as Assistant Engineer from 1996 to 2004 in Punjab State Electricity Board (hereinafter referred to as ‘PSEB’) and thereafter he participated in the direct recruitment process of PCS (Executive Branch) and was selected in 2004 and joined PCS (Executive Branch) after submitting resignation to his parent department i.e. PSEB, which was accepted and his pay was protected. The relevant paras from the said judgment read as under: -*

“10. From the perusal of above quoted Rules 3.17-

A and 7.5 (2) of PCS Rules, it is quite evident that service rendered with an establishment is counted for qualifying service if an employee resigns with the permission of Competent Authority and for the purpose of taking up employment with Government. The respondent has failed to controvert applicability of aforesaid Rule to petitioner except pleading that instructions do not provide for counting previous service.

11. It is settled proposition of law that instructions can supplement statutory provisions but cannot supplant the statutory provisions. The instructions cannot be contrary to mandate of Rules. The said instructions are not under challenge, however, being contrary to statutory provisions as well as intent of beneficial scheme cannot detain this Court.

*12. The Supreme Court in **Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and another, (2016) 3 SCC 643**, has observed that Rules or Regulations which are ultra vires though not challenged may be ignored. The relevant extracts of the judgment read as:*

*“28. Shri Aggarwal in order to buttress his submission that he ought to be allowed to raise a pure question of law going to the very jurisdiction to levy interest, cited before us the judgment in **Bharathidasan University v. All-India Council for Technical Education [Bharathidasan University v. All-India Council for Technical Education, (2001) 8 SCC 676 : 1 SCC 924]** and in particular para 14 thereof which reads as follow: (SCC pp. 688- 89)*

“14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make Regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific

relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that the Regulations made under Section 23 of the Act have 'constitutional' and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions."

29. *It would be seen that Shri Aggarwal is on firm ground because this Court has specifically stated that rules or regulations which are in the nature of subordinate legislation which are ultra vires are bound to be ignored by the courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the court's way of not enforcing them. We also feel that since this is a question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not allow Shri Aggarwal to make this submission."*

13. *A three Judge Bench of Supreme Court in **State of Haryana Vs. Shamsher Jang Bahadur, 1972(2) SCC 188**, while relying upon Constitution Bench judgment in **Sant Ram Sharma Vs. State of Rajasthan and another, AIR 1967 Supreme Court 1910** has held that Government is not Competent to alter the Rules framed under Article 309 by means of administrative instructions. The relevant extracts of the judgment reads as:*

*“7. It may be noted that herein we are dealing only with those who were promoted from the cadre of clerks in the Secretariat. The first question arising for decision is whether the Government was competent to add by means of administrative instructions to the qualifications prescribed under the Rules framed under Article 309. The High Court and the courts below have come to the conclusion that the Government was incompetent to do so. This Court has ruled in **Sant Ram Shama v. State of Rajasthan [(1968) 1 SCR 111]** that while the Government cannot amend or supersede the statutory rules by administrative instructions, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Hence we have to see whether the instructions with which we are concerned, so far as relate to the clerks in the Secretariat amend or they alter the conditions of service prescribed by the rules framed under Article 309. Undoubtedly the instructions issued by the Government add to those qualifications. By adding to the qualifications already prescribed by the rules, the Government has really altered the existing conditions of service. The instructions issued by the Government undoubtedly affects the promotion of concerned officials and therefore they relate to their conditions of service. The Government is not competent to alter the rules framed under Article 309 by means of administrative instructions. We are unable to agree with the contention of the State that by issuing the instructions in question, the Government had merely filled up a gap in the rules. The rules can be implemented without any difficulty. We see no gap in the rules.”*

14. A rule cannot operate contrary to a statutory provision whereunder said rule has been made. Rules cannot be contrary to statutory provisions. Similarly, neither instructions can be contrary to statutory provisions nor rules. The instructions cannot override or flow beyond the banks of river of rules. The instructions, which are contrary to Rules, need to be ignored.

15. In the case in hand, the case of petitioner is

squarely covered by afore-stated Rules, however, his claim has been rejected on account of instructions which are contrary to Rules framed under proviso to Article 309 of the Constitution. In view of afore-stated legal position, the instructions need to be ignored. It is apt to notice here that respondent has granted similar benefit to identically placed other employees.

16. In the wake of above discussion and findings, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 31.01.2023 (Annexure P-17) is hereby quashed.”

*The said judgment has become final as the same has not been challenged by the respondents and has been implemented after filing of **COCP-3243 of 2024 (Jasdeep Singh Aulakh v. Anurag Verma, IAS and others)**.*

*14. To the same effect is the judgment of a Co-ordinate Bench in **Yash Pal Singh Rana (supra)**. In the said case, the petitioner had joined the Punjab Land Development and Reclamation Corporation Limited as Clerk on 01.11.1975 and thereafter he was promoted as Senior Assistant. While he was working in the said Corporation, due to weak financial status of the said Corporation, the same was wound up and during the said period, the posts of Superintendent in the District Consumer Disputes Redressal Forum were advertised by the respondents therein and petitioner therein applied through proper channel and was selected vide appointment order dated 20.12.2000 and he joined on 05.01.2001 after he was relieved from the services of the said Corporation. He joined the State Consumer Disputes Redressal Commission on 05.01.2001 and superannuated on 30.11.2011, however, his earlier service rendered from 01.11.1975 till 04.01.2001 was not counted as qualifying service for computing the pensionary benefits. The said claim was accepted by this Court vide judgment dated 05.02.2019 while relying upon various earlier orders passed by this Court in various other writ petitions. The said judgment has been followed in **Sham Lal (supra)** and the same reads as under: -*

“1. In the present petition, the challenge is to the orders dated 25.04.2017 (Annexure P-5) and 03.02.2020 (Annexure P-7) respectively by which the respondents have declined to grant the benefit of service rendered by the petitioner with the Punjab Scheduled Castes Land Development and Finance Corporation, after the petitioner retired from service working on a pensionable post with the Government of Punjab.

2. Learned counsel for the petitioner submits

*that the relief which is being claimed by the petitioner has already been granted by this Court to another similarly situated employee, who had filed **CWP No. 2722 of 2013 titled as Yash Pal Singh Rana Vs. The State of Punjab and others, decided on 05.02.2019**, which judgment has already attained finality and relief has already been given to Yash Pal Singh Rana.*

3. *Learned counsel for the respondents has not been able to dispute the fact that in Yash Pal Singh Rana's case (supra) also, the service rendered in the Corporation wherein the petitioner of that case was working, was directed to be taken into account for computing the pensionary benefits. No differentiating factor in the case of the petitioner and that of Yash Pal Singh Rana's case (supra) has been proved and so as not to appeal the said decision in the case of petitioner herein. Hence, the present petition is also allowed in the same terms as Yash Pal Singh Rana's case (supra) except that the rate of interest will be 6% per annum and not 9% as claimed."*

$$x \qquad \qquad \qquad x \qquad \qquad \qquad x \qquad \qquad \qquad x$$

15. ***The judgment dated 28.08.2024 in Sham Lal's case (supra) has been upheld by a Division Bench of this Court in LPA-3328 of 2024 – State of Punjab and another v. Sham Lal and another decided on 20.12.2024. The relevant portion from the said judgment reads as under: -***

“4. *Learned Single Bench noted that relief claimed by respondent/writ-petitioner had been granted to another similarly situated employee i.e., the petitioner in CWP No. 2722 of 2013, titled ‘Yashpal Singh Rana Vs. State of Punjab and others’, decided on 05.02.2019’.* It was concluded that respondents were not able to distinguish the cause of writ petitioner from that of Yash Pal Singh Rana. Writ petition was accordingly allowed in the same terms with the difference that interest at the rate of 6% per annum instead of 9% was ordered.

5. *Aggrieved therefrom, present appeal has been filed.*

6. *Learned counsel for appellants submits that Instructions dated 25.04.2017 are categorical, therefore directions by learned Single Bench are unjustified. Appointment of writ-petitioner on the post of Section Officer had to be treated as fresh appointment and he was not entitled to counting of his service for the purpose of pension with the respondent-Corporation as qualifying service for*

the purpose of pension. It is thus prayed that present appeal be allowed.

7. We have heard learned counsel for appellants and have perused the file carefully with his able assistance, however, we do not find any ground to cause interference in this matter.

8. It is to be noted that the import and effect of Instructions dated 25.04.2017 have already been considered by this Court in **LPA No. 2445 of 2024, titled State of Punjab and others Vs. Om Parkash and others** with the appeal filed by State of Punjab being dismissed. In the present case also, writ-petitioner had been appointed through proper channel while in service. His representation for counting his service with the respondent-Corporation as qualifying service for the purpose of pension was duly submitted.

9. It is to be noted, at this stage that in a number of writ petitions involving similar controversy, respondent has already granted relief to the employees therein and counted the service rendered by them with the Corporations which had not been wound up, for the purpose of pension. This fact is not denied by learned counsel for appellants.

10. *Learned counsel for appellants is unable to point out any illegality, infirmity or perversity in the impugned order dated 28.08.2024, passed by learned Single Bench, which calls for interference by this Court.”*

$$x \qquad x \qquad x \qquad x''$$

the same being pensionable in nature, would be contrary to the spirit and object of the pension rules, which are intended to secure social and economic security to a retired employee. The earlier service rendered by the appellant/plaintiff is held entitled to be counted for the pensionary benefits.

11. Further, it has been brought to the notice of the Court that the appellant/plaintiff has already retired from service on attaining the age of superannuation while holding the post of District Attorney. Pension being a continuing cause of action and not a bounty, the appellant/plaintiff cannot be deprived of his legitimate pensionary benefits. Once the entitlement is established in law, the benefit must follow.

12. Accordingly, in view of the above, the instant Regular Second Appeal is allowed. The judgments and decrees passed by the learned Trial Court and First Appellate Court are hereby set aside and the appellant/plaintiff is held entitled for counting of his service from 13.12.1978 to 06.06.1985 for the purpose of pensionary benefits.

13. Let the necessary benefits shall be calculated, in accordance with the rules applicable, and be released to the plaintiff within a period of 04 months from the date of receipt of certified copy of this order.

14. Decree sheet be prepared accordingly.

15. Pending applications, if any, stand disposed of.

12.02.2026

Vinay

(NAMIT KUMAR)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No