

CASE NO.:
Appeal (civil) 6879 of 2003

PETITIONER:
State of Haryana & Ors

RESPONDENT:
Babu Singh

DATE OF JUDGMENT: 27/11/2007

BENCH:
H. K. Sema & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.6879 OF 2003

Lokeshwar Singh Panta, J.

1. This appeal, by special leave, is directed against the judgment and order dated 19.07.2002 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh in CM No.10362/99 in CWP No.2890/97, whereby and whereunder the appellants have been directed to pay pension to Babu Singh by giving him benefit of Rule 6.16 (2) of the Punjab Civil Services Rules, 1952 (Vol.-II Part-I) with further direction to do the needful within a period of three months from the date of submission of a certified copy of the order.

2. The necessary facts in brief may be stated as follows:
Babu Singh, respondent herein, served the Indian Army as a Driver from 06.01.1964 to 31.01.1979. He was granted the benefit of pay fixation, seniority, increments etc. of the military service. After being discharged from Army service, the respondent was appointed as Driver in Haryana Roadways, Faridabad, w.e.f. 23.04.1979. On 09.03.1996, the respondent applied for voluntary retirement from service and his request was accepted by the General Manager, Haryana Roadways, Faridabad, who retired him from service vide Order dated 18.06.1996. Afterwards, the respondent made representation for reinstatement by contending that the General Manager, Haryana Roadways- appellant No.3 herein could not have accepted his conditional plea for voluntary retirement ignoring the fact that he will not be eligible to get pensionary benefits without counting military service. Having failed to receive any favourable decision from the appellants, the respondent filed Civil Writ Petition No.2890/97 in the High Court of Punjab and Haryana at Chandigarh, inter alia, claiming the following reliefs:-

"(i) issue a writ of certiorari quashing the impugned order dated 18.06.1996 being illegal and against the provisions of rules;

(ii) issue a writ of mandamus directing the respondent-authorities to take back the petitioner into service in order to complete 20 years qualifying service for the purpose of pension, gratuity, etc.;

(iii) issue any other appropriate writ, order or direction which this Hon'ble

Court may deem fit in the circumstances of the case;

(iv) dispense with the filing of certified copies of annexures of this writ petition;

(v) dispense with the advance notice to the respondents of the writ petition; and

(vi) award the costs of this writ petition to the petitioner."

3. The respondents in the writ petition, who are appellants before this Court, have contested and resisted the claim of the writ petitioner. They contended that as the respondent sought unconditional voluntary retirement, he was not entitled to get pension in view of the decision taken by the Accountant General, Haryana, appellant No.4 herein and conveyed vide communication dated 03.08.1996 to appellant No. 3.

4. During the commencement of the hearing of the said writ petition, the Deputy Advocate General of the State drew attention of the High Court to the original application submitted by the respondent in February 1996 seeking voluntary retirement from service and pointed out that the document produced as Annexure P-2 by the respondent along with the writ petition contained interpolation. It was submitted that the words "if the Government has got any such law that I can get pension under the benefit of ex-service, I may be given retirement" were not stated in the original application and those words had been added later on by the respondent in order to prove his plea that he sought conditional voluntary retirement. After hearing the learned counsel for the respondent on the issue of interpolation of the aforesaid words in the application, the High Court observed as under:-

"In our opinion, the document Annexure P-2 purporting to be the true translation of the application submitted by the petitioner for making voluntary retirement has been fabricated by the petitioner in order to justify his plea that respondent No.3 should not have accepted his request without verifying his entitlement to get pension.

A look at the original application submitted by the petitioner before the respondent No.3 for voluntary retirement shows that he had pleaded inability to serve the Roadways due to illness and adverse family conditions. In the said application, he did not incorporate the condition that his request may be accepted only if he was entitled to earn pension on the basis of total service. In the absence of such condition, unconditional acceptance of the petitioner's request for retirement cannot be nullified or invalidated on the ground that he had subsequently changed his mind. Otherwise also, we are not convinced with the petitioners' plea that he was unaware of the limited benefit extended to him vide order dated 09.03.1987 (date of this order has been given as 09.11.1987 in the written statement filed by the respondents) which

was passed by the respondent No.3 under the Punjab National Emergency Rules, 1965. A bare reading of that order shows that the military service rendered by the petitioner was counted only for the purpose of fixation of pay, seniority and increments and no other benefit was extended to him. Therefore, the petitioner cannot make any grievance against the acceptance of his request for voluntary retirement. As a logical corollary, it must be held that he cannot seek reinstatement merely because the Accountant General of Haryana has refused to give him pensionary benefits.

For the reasons mentioned above, the writ petition is dismissed. In view of the highly contumacious conduct of the petitioner of producing fabricated documents before the Court, we impose costs of Rs.5,000/- which the petitioner should pay to the respondent."

5. The respondent thereafter filed another Writ Petition No. 4619/99 in the High Court of Punjab and Haryana at Chandigarh, inter alia, praying for the following directions:-

(i) issue a writ of certiorari, mandamus or any other appropriate writ directing the respondent-authorities to release the retirement benefits, i.e. pension, gratuity, commutation of pension w.e.f. 13.06.1966 and revised pay scales, revised pension, revised gratuity, etc. w.e.f. 01.01.1996 in view of the acceptance of recommendations of the Fifth Pay Commission by the State Government in February 1998 with interest at the rate of 18% per annum;

(ii) issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case;

(iii) dispense with the filing of certified copies of annexures of this writ petition;

(iv) dispense with the advance notice to the respondents of the writ petition; and

(v) award the costs of this writ petition to the petitioner."

6. The said writ petition came to be listed before the Division Bench of the High Court on 19.04.1999 when the following order was recorded by the Bench:-
"Present Shri W.R. Dua, Advocate for the petitioner.

After making some submissions, Shri Dua requested that he may be allowed to withdraw this petition with liberty to the petitioner to make appropriate application for grant of relief in CWP

No.2890 of 1997 decided on 31.8.1998.

We accepted the request of the learned counsel and dismiss the writ petition as withdrawn with liberty as prayed for."

7. It appears from the record that the respondent thereafter filed an application under Section 151 of the Code of Civil Procedure being Civil Miscellaneous No.10362/99 dated 29.04.1999 in CWP No.2890/97, which was already dismissed by the Division Bench on 31.08.1998 with costs of Rs.5,000/-. In the said application, the respondent has claimed retiral benefits under Rule 6.16(2) of the Punjab Civil Service Rules Vol. II. The application was, however, allowed by the Division Bench vide Order dated 19.07.2002 and the appellants were directed to pay pension to the respondent within a period of three months.

8. Being aggrieved against the impugned order dated 19.07.2002, the State of Haryana through Secretary to the Government, Haryana Transport Department; (Appellant No.1), The Transport Commissioner, Haryana; (Appellant No.2), The General Manager, Haryana Roadways, Faridabad; (Appellant No.3) and the Accountant General, Haryana, (Appellant No.4) have filed this appeal by special leave.

9. We have heard Mr. P. S. Patwalia, Senior Advocate, and Mr. Manjit Singh, Additional Advocate General appearing for the appellants and Mrs. Namita Sharma, learned counsel for the respondent in detail.

10. In the midst of the hearing of this appeal on 08.08.2007, this Court felt it necessary to summon the original record of application (CM No.10362/99 in CWP No.2890/97) from the Registry of the Punjab and Haryana High Court. On receipt of the original record, the parties were heard further. An argument advanced by Mr. Patwalia, Senior Advocate, before us was that after dismissing the first Writ Petition No.2890/97 filed by the respondent, with costs for the highly contumacious conduct of the respondent for producing fabricated documents, the High Court has become functus officio and, therefore, C.M. No. 10362/1999 filed by the respondent under Section 151 CPC was not maintainable nor any relief could have been granted to the respondent by the High Court. He next submitted that the High Court failed to appreciate that the service conditions of the respondent are governed by the Punjab Civil Services Rules, 1952 (for short "PCS Rules") Vol. II Part-1, whereunder the respondent before seeking voluntary retirement has to complete 20 years' of qualifying service for getting pension and admittedly he has not fulfilled the essential criteria, therefore, the impugned order of the High Court granting pension to the respondent is in violation of the rules and cannot be sustained on this ground as well.

11. Mrs. Namita Sharma, Advocate, resisting the above submissions, argued that this Court should be slow in interfering with the well-reasoned judgment of the High Court based upon the proper appreciation of the facts in issue and law. She contended that it was the duty of the appellants to ensure compliance of the statutory rules which enjoin upon them the duty to see that once the respondent has been permitted to proceed on voluntary retirement and in fact he was so retired, it is no longer open to the appellants to tell him that he has put in less than 20 years of service and on that account he was not entitled to any pension.

12. In support of this contention, Mrs. Sharma has relied on the judgments passed by the learned Single Judge and Division Bench of the Punjab and Haryana High Court in the

following cases;-

(i) Ganga Bishan v. State of Haryana
[1994 (3) Service Cases Today 153];

(ii) Ramesh Chand Kaushik v. State of
Haryana [1994 (3) Recent Services
Judgments 792 (D.B.)];

(iii) Nishan Singh v. Transport
Commissioner [1994 (3) Recent Services
Judgments 519]; and

(iv) Manorama Rani v. The Secretary to
Government of Punjab, Education
Department and Ors. [2000 (3) Recent
Services Judgments 89]"

13. Having gone through the above-said decisions of the learned Judges of the Punjab and Haryana High Court, we are of the view that the decisions turned upon the facts of those cases and cannot be held to be binding precedent in the facts and circumstances of the present case. In the present case, it is not in dispute that the services of the respondent were governed under PCS Rules. Chapter V of the PCS Rules Vol. II deals with different kinds of pensions. Rule 5.1 of Section I prescribes four classes of pensions, namely, (a) Compensation Pensions (See Section II); (b) Invalid Pensions (See Section III); (c) Superannuation Pensions (See Section IV) and (d) Retiring Pensions (See Section V). Rule 6.1 in Chapter VI deals with amount of pensions that may be granted to the employee on the basis of determination of length of service. In the case of the respondent, the rule for the grant of retiring pension is covered by Rule 5.32-B which reads as under:-

"5.32-B. (1) At any time a Government employee has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority subject to rule 2.2 of Pb. C.S.R. Vol.II:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the

expiry of the period specified in sub-rule (1) supra, the retirement shall become effective from the date of expiry of the said period:

Provided further that before a Government employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years service qualifying for pension.

[illegible]

14. The respondent has averred in the application under Section 151, CPC, that he is entitled to get pension under Rule 6.16(2) of the Rules because as on the date of voluntary retirement, he had completed more than ten years service. The Division Bench of the High Court granted the relief of pension to the respondent by giving him benefit of Rule 6.16(a) of PCS Rules in view of the earlier two decisions of the High Court in Ganga Bishan v. State of Haryana [1994 (3) SCT 154 P & H; and Manorama Rani v. The Secretary to Government Punjab, Education Department & Ors. [1994 (3) RSJ 89.

15. We find from the record that the claim of the respondent for the grant of retrial pension has been considered by the competent authority under Rule 5.32-B of PCS Rules, whereunder the respondent has to complete 20 years' qualifying service before seeking voluntary retirement from service. Proviso (2) to Rule 5.32-B emphasizes that before a Government employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years service qualifying for pension. It is not in dispute that the respondent has been given the benefits of military service towards seniority, gratuity and other benefits including military pension and therefore, the High Court was not justified in extending the benefit of Rule 6.16(1) of the PCS Rules to the respondent.

16. As noticed above, the respondent has not chosen to seek the benefit of pension in terms of Rule 6.16 (2) of the PCS Rules Vol. I in the first writ petition No.2890/97, which was dismissed by the Division Bench with costs for the aforesaid reasons. In the said writ petition, second prayer made by the writ petitioner (respondent herein) was to issue a writ of mandamus directing the respondents-authorities (appellants herein) to take back the writ petitioner into service in order to complete 20 years qualifying service for the purpose of pension, gratuity, etc. This prayer of the writ petitioner would clearly indicate that his claim for the grant of pension in the case of voluntary retirement is squarely covered by Section 5.32-B of the PCS Rules and not under Rule 6.16(1) of the Rules as held by the High Court. Undisputedly, the respondent has not completed 20 years qualifying service before he sought voluntary retirement on 09.02.1997 and his request was accepted by the competent authority on 19.06.1996 with immediate effect. The Division Bench of the High Court in its order dated 31.08.1998 passed in CWP No.2890/07 found that the respondent in his application seeking voluntary retirement had pleaded inability to serve the Roadways due to illness and adverse family condition and in the application, he did not incorporate any condition that his request should be accepted only if he was found entitled to

earn pension on the basis of the entire period of service. The document seeking voluntary retirement produced by the respondent before the Division Bench was held to be fabricated for which the respondent was penalized by the High Court by imposing cost of Rs.5,000/- when his writ petition was dismissed. The second writ petition No. 4619/99 filed by the respondent seeking retrial benefits, i.e. pension, gratuity, commutation of pension w.e.f. 13.06.1996 and revised pay scales, revised pension, revised gratuity, etc. w.e.f. 01.01.1996 in view of the acceptance of recommendation of the Fifty Pay Commission by the State Government in February 1998, with interest at the rate of 18% per annum, was allowed to be withdrawn by the Division Bench of the High Court vide Order dated 19.04.1999 and relief of pension has been granted to the respondent in C.M. No. 10362/199 vide order impugned in this appeal, which is wholly unsustainable and against the provisions of the statutory rules governing the service conditions of the respondent.

17. The High Court's order is not sustainable for yet another reason. As noticed above, first Writ Petition No. 2890/97 was dismissed with costs for the highly contumacious conduct of the respondent for producing a fabricated document in regard to seeking of unconditional voluntary retirement from the service. We may again repeat that no claim for pensionary benefits was made by the respondent in Writ Petition No. 2890/1997 nor has he applied for review of the order dated 31.08.1998 whereby his petition was dismissed. Thus, the order dated 31.08.1998 passed by the Division Bench of the High Court in CWP No.2890 of 1997 has attained finality. It is well-settled that the relief granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of the legal reasoning and the legitimacy of the conclusions. The possession of powers under Section 151, CPC, by the Courts, itself is not sufficient, it has to be exercised in accordance with law. The orders of the Courts must emanate logically from legal findings and the judicial results must be seen to be principled and supportable on those findings.

18. In State of Uttar Pradesh v. Brahm Dutt Sharma & Anr. [(1987) 2 SCC 179], this Court recorded a note of caution that when proceedings under Article 226 of the Constitution of India stand terminated by final disposal of writ petition, it is not open to the Court to reopen the proceedings by means of a miscellaneous application. Paragraph 10 (page 187) of the

decision reads as under:-

"10. The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on August 10, 1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated January 29, 1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided as separate cause of action to

him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning."

[Emphasis supplied]

19. In our view, it would be in the fitness of things to follow the aforesaid principle as laid down by this Court in the case of Brahm Dutt Sharma (supra) in the facts and circumstances of the instant case. The High Court, therefore, was not justified in granting relief to the respondent in a proceeding under Section 151, CPC, filed in the decided writ petition.

20. In the result, for the aforesaid reasons the impugned order dated 19.07.2002 passed by the Division Bench of the High Court in CM No.10362/99 in CWP No.2890/97 stands set aside and the said application is, accordingly, dismissed. The appeal shall stand allowed accordingly. In the facts and circumstances of the case, we leave the parties to bear their own costs.