

PETITIONER:
PAIARA LAL

Vs.

RESPONDENT:
STATE OF PUNJAB & ANR.

DATE OF JUDGMENT: 08/08/1997

BENCH:
SUJATA V. MANOHAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T

M. JAGANNADHA RAO, J.

1. Special leave granted. We have heard the counsel on both sides on the merits of the appeal.

2. The appellant was appointed as a Constable in the Police Department of the erstwhile State of PEPSU (Patiala and East Punjab States union) which merged later on 1.11.1956 with the new State of Punjab. The Raj Pramukh of the State of PEPSU framed, under the proviso to Article 309 of the Constitution of India, the PEPSU Services Regulations. Volume 1 para 2.28 thereof defines 'inferior servant' as 'inferior Government servant' as included in the list in Appendix 1. The said Appendix includes, among others, Police Constables. Notification dated 20.7.1954 (F.D. 1(2) Reg. 54) issued under the proviso to Article 309 by the Raj pramukh says that the following Note shall be added under Article 9.1 of PEPSU Services Regulations Volume I and the existing Note shall be numbered as Note (1):

"Note 2: The age for retirement of Class IV Government servants will be 60 years".

As per documents Ex.P3 (at points Ex.P3\1 and Ex.P3\2) filed in the trial court, the Police Constables and 'Sipahis' were included in the list of inferior class IV employees. While so, the appellant who was born on 1.12.1930 and who was appointed on 4.11.1949 as Constable in PEPSU and who after 1.11.1956 was allotted to the State of Punjab was sought to be retired at the age of 58 years which was the age of retirement applicable to Constables in the State of Punjab. The appellant contended that having been allotted from the State of PEPSU to the State of Punjab on 1.11.1956, his service conditions in the former State of PESU including his age of superannuation were protected under sub-clause (7) of the States Re-Organisation Act. 1956 and he should be allowed to continue till he completed 60 years even though, at the time of retirement, he was employed by the State of Punjab. This contention was not accepted and the Superintendent of Police. Punjab passed orders on 29.11.1988 regarding his superannuation on completion of 58 years w.e.f. 30.11.1988 (AN), as per the

Punjab Rules.

3. The appellant challenged the validity of the said order on Civil Suit No. 596 filed on 16.11.1991. The trial court decreed the suit on 20.9.1994 holding that in view of the proviso to s. 115(7) of the States Re-organisation Act, the appellant was entitled to continue in service upto 60 years as per PEPSU Regulations. The appeal by the State of Punjab was dismissed by the Additional District Judge, Patiala (Punjab) on 16.10.1995. However, the Second Appeal, RSA 611\1996 preferred by the State was allowed by the High Court on 25.7.1996 following the Division Bench judgment in Tripat Singh vs. State of Punjab etc. (CWP 8186 of 1994) dated 8.9.1994. In that case, it was held by the Division Bench that the age of superannuation applicable to the employees is the one applicable to them at the time of retirement in the State of Punjab. That was a case in which the employees were working in a higher post, a Class-III post on promotion from Class-IV. The Division Bench held that it was the age of retirement applicable to the post which a person was holding at the time of retirement that was relevant. Following the said judgment, the learned Single Judge allowed the Second Appeal holding that notwithstanding the fact that the plaintiff was not promoted to class III after allotment to Punjab, still the principle stated in the Division Bench judgment applied and that inasmuch as in Punjab, a Constable was to retire at 58 years, the appellant could not claim any higher right based upon the regulations obtaining in the State of PEPSU. No reference was made by the learned Single Judge to the proviso to section 115(7) of the States Re-Organisation Act, 1956 while taking this view, even though the trial court and the first appellate court had made reference to the said provision. Some other Judgments of learned Single Judges of the Punjab and Haryana High Court decided with reference to Section 115(7) were not followed in view of the judgment of the Division Bench even though on the facts of the present case, the appellant had never been promoted to class III in the State of Punjab, after allotment to that State of Punjab.

4. In this appeal, learned counsel for the appellant has relied upon an unreported judgment of this Court in Secretary to Government, Punjab vs. Niranjan Singh (SLP No. 8047\1990) dated 13.9.1990. That was an appeal from the judgment of the Punjab & Haryana High Court in LPA No. 354 of 1990, wherein in respect of a Cobler (Mochi, recruited in PEPSU who was in class IV and who was allotted to the State of Punjab, a Division Bench of the High Court held that in view of the proviso to section 115(7) of the States Re-Organisation Act, 1956, the employee was entitled to continue upto 60 years. This Court dismissed the SLP preferred by the State of Punjab by a reasoned order. Learned counsel for the appellant contended that the learned Single Judge erred in not giving effect to the proviso to section 115(7) and in not noticing the distinction between persons who were before 1.11.1956 and after in class IV till retirement and who, after 1.11.1956 were promoted to class III in the State of Punjab. The appellant belonged to the former category.

5. On the other hand, learned counsel for the respondent-State contended that the learned Single Judge rightly applied to the appellant the age of retirement applicable to him at the time of his retirement in the State of Punjab. He also contended that even assuming that the PEPSU Regulations were applicable, a class IV employee who was drawing more than Rs. 200\- p.m. at the time of his

retirement was not entitled to continued upto 60 years in PEPSU.

6. At the outset, we may say that the contention for he respondent that even if the PEPSU Regulations applied, the respondent could not continue upto 60 years as he was drawing more than Rs.200\- p.m. at the time of retirement is a point not raised either in the written statement in the suit or before any of the three Courts, nor was any regulation of PEPSU State placed before us to substantiate the said contention. We, therefore, reject this addition contention raised by the respondent for the first time before us.

7. Coming to the main point, Section 115(7) in so far as it is relevant, reads as follows:-

"115. Provisions relating to other services. (1) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Lieutenant-Governor of Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vindhys Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.

(2) Every person who immediately before the appointed day is serving in connection with the affairs of an existing State Part of whose territories is transferred to another State by the provisions of Part II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State. Unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other successor State.

(3) ** ** ** **

(4) ** ** ** **

(5) ** ** ** **

(6) ** ** ** **

(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State.

Provided that the conditions of service applicable immediately before the appointed day to the

case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government".

8. In our view, the proviso to section 115(7) makes it clear that the service conditions of the allotted employees cannot be varied to their disadvantage by the State to which they are allotted, upon re-organisation, after 1.11.1956, except with the previous approval of the Central Government. Question is whether the State of Punjab is entitled to apply the age of retirement for class IV employees in Punjab, namely 58 years, ignoring the age or retirement of class IV employees, namely 60 years as obtaining in PEPUSU?

9. The point arising before us has been dealt with previously by three Constitution Benches of this Court, which, unfortunately, were not placed before the High Court. The first of these decisions is the one in N. Raghvendra Rao Vs. Deputy Commissioner, South Kanara, Mangalore [1964 (7) SCR 549]. In that case, the State to which the employee was allotted relied upon a letter of general approval issued by the Central Government dated 11.5.1957 (memorandum No.S.O. SR DI-J.APM-57) which was communicated to all States on re-organisation. It was said in that letter that certain conditions of service enumerated therein in respect of allotted employees are not protected. This Court held that the word 'previous approval' in the proviso to section 115(7), would include the general approval granted by the Central Government in regard to the variation of the conditions of service of the allotted personnel. The said Memorandum of the Central Government says that the Central Government is permitting the States to whom the employees are allotted, to vary their conditions of service in respect of 'travelling allowance' discipline, control, classification appeal, conduct, probation and departmental promotion'. The other conditions of service as applicable to the employee in his parent State remained protected. It was held in the facts of the case that certain Rules of 1959 made after 1.11.1956 by the State to which the employee was allotted, modifying certain benefits of service and increments, were valid. The contention that previous approval' meant specific previous approval and not a general approval was rejected. The above decision was followed by another Constitution Bench of this Court in N.Subba Rao Vs. Union of India [1975 (3) SCC 8620 (see para 38 at p. 872-83)]. The matter came up again before another Constitution Bench of this Court in Mohd. Shujat Ali Vs. Union of India [1975 (3) SCC 76]. It was held (see Para 16 to 18, pp.96-100) that the view taken in N. Raghvendra's case was to be followed.

10. It will be noticed that the Memorandum of the Central Government dated 11.5.1957 which was communicated to all the States gave 'general approval' for variation of certain specific conditions of service to which we have referred above. The said Memorandum does not refer to the age of superannuation as one of the conditions of service for the variation of which general approval is given by the Central Government. Neither in the Courts below, nor before us, was any order of the Central Government issued in exercise of powers under the proviso to section 115(7) of the States Re-Organisation Act, 1956 relied upon by the respondent to say that the State of Punjab while prescribing 58 years as the age of superannuation for Constables had obtained approval of the Central Government either generally or specifically.

There is no dispute before us that the age of retirement is a condition of service and that the age of retirement in PEPSU for class IV employees including Constables was 60 years. In as much as there is no previous or general approval after 1.11.1956 to vary the age of superannuation from 60 years to 58 years, it was not open to the Superintendent of police, Punjab to retire the appellant on completion of 58 years. The High Court erred in law in not noticing the above authorities and statutory provisions and in applying the age of superannuation applicable to Constables recruited in the State of Punjab. The unreported judgment of this Court in Secretary to Govt. Punjab Vs. Niranjan Singh above referred to is also in favour of the appellant and is consistent with view taken in the above rulings of the Constitution Bench.

11. Learned counsel for the respondent relied upon a recent decision of this Court in State of Haryana Vs. Amar Nath Bansal [AIR 1977 SC 718]. That case is clearly distinguishable. In that case, the respondent was recruited in the State of Jind on 12.7.1943 as a civilian clerk and the age of superannuation in Jind was 62 years. Jind State merged with PEPSU before 1.11.1956 by virtue of a covenant. The respondent was thereafter allotted to the State of Punjab after 1.11.1956 and still later to the State of Haryana. He was employed as an Asstt. Treasury Officer in the State of Haryana when he was retired from service on 30.9.1987 as per the age of retirement in Haryana which was 58 years. In the appeal by the State, it was held by this Court that there was no declaration by PEPSU in 1948 recognising the duties and obligations of the Jind State and hence the Jind regulations were not applicable, even in PEPSU. In fact, the Ordinance issued by the Raj Pramukh of PEPSU on 20.1.1948 had the effect of repealing all previous rules applicable in Jind State. In our view, the above case has no relevance because there was no statute protecting the service conditions of employees of Jind State when it merged with PEPSU. Under the covenant, PEPSU had not undertaken to recognise the obligations of Jind and, therefore, PEPSU could issue the Ordinance varying the service conditions of the Jind employees without the need to get any approval from the Central Government. The events relate to 1943 and not to 1.11.1956.

12. For the aforesaid reasons, this appeal is allowed. The judgment of the High Court is set aside and the judgment of the trial court as affirmed by the first appellate Court is restored. The appeal is allowed with costs.