

SHRI R.R. BHANOT
v.
UNION OF INDIA AND ORS.

JANUARY 4, 1994

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

Service Law : Pension—Employee serving in erstwhile State of Punjab since 1937—Provisional allocation to State of Himachal Pradesh in 1966—Employee attained superannuation in 1970—Meanwhile Order of Government of India under s.82(2) of the Punjab Reorganisation Act, 1966, finally allocating employee to State of Punjab w.e.f. 1.11.1966—Held, employee having been finally allocated to State of Punjab w.e.f. 1.11.1966 would be deemed to be continuously serving that State from said date and that State would give pension and other retiral benefits to employee.

The Punjab Reorganisation Act, 1966 : Section 82(2)—Allocation of employee to a State—Power of Government of India—Employee would be deemed to be in service of the state to which he was finally allocated by Government of India.

The appellant entered service of the erstwhile State of Punjab in the year 1937. On the reorganisation of the State, the appellant was provisionally allocated to the State of Himachal Pradesh w.e.f. 1.11.1966. The appellant after complying with the order, sent a representation to the Union of India against his allocation to the said State. Meanwhile the Himachal Pradesh Government by an order dated 20.3.1969 prematurely retired the appellant from service w.e.f. 14.5.1968. The appellant challenged the said order by filing a writ petition before the High Court. During the pendency of the writ petition an order dated 19.5.1969 passed by the Government of India under s.82(2) of the Punjab Re-Organisation Act, 1966, stating that the appellant was deemed to have been finally allotted to the State of Punjab w.e.f. 1.11.1966 was brought to the notice of the Court. The High Court allowed the writ petition and quashed the order of appellant's premature retirement. Thereafter the appellant represented before the Department concerned as also the Government of Himachal Pradesh for payment of arrears of his salary and for further posting, but the authorities did not take any action on the ground that since the

A appellant was finally allocated to the State of Punjab it was for that Government to look into the matter. In the meantime the appellant attained the age of 58 years in 1970. Thereafter he sent various representations to the authorities concerned in the State of Punjab as also the State of Himachal Pradesh for grant of his pension and other post-retiral benefits but in vain. Ultimately the appellant filed a writ petition before the Punjab and Haryana High Court which dismissed the same *in limine*. Hence the appeal by special leave.

Allowing the appeal, this Court

C **HELD : 1.1.** The appellant having been finally allocated to the State of Punjab w.e.f. 1.11.1966, he shall be deemed to be continuously serving that State from the said date and it is the State of Punjab which has to give pension and other retiral benefits to the appellant. [6-D]

D **1.2.** The appellant had joined the service in the erstwhile State of Punjab in 1937. On the date he was prematurely retired by the State of Himachal Pradesh, he had already served the Government for about 32 years. He was undoubtedly entitled to the grant of pension and other post-retiral benefits. [6-D, E]

E **1.3.** Simply because the appellant failed to submit joining report to the State of Punjab after the judgment of the High Court quashing the order of his premature retirement, he could not be denied his right to pension and other benefits to which he was entitled on his attaining superannuation. It was for the State of Himachal Pradesh to have reinstated the appellant in service after the High Court judgment and thereafter relieved him to join the State of Punjab. [6-E, F]

G **2.1.** Consequent upon the High Court quashing the premature retirement of the appellant by its judgment dated September 29, 1969, the appellant shall be deemed to be working with the State of Himachal Pradesh till September 30, 1969. The said State should pay the arrears of salary due to the appellant till September 30, 1969. [6H; 7A]

H **2.2.** Since the appellant did not join service with the State of Punjab from October 1, 1969 to December 31, 1970, he shall not be entitled to any salary for the said period. The State of Punjab shall treat the said period to be leave of the kind due to the appellant. The appellant shall be deemed

to have retired from service on December 31, 1970 when he attained the age of superannuation. [7-C] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15 of 1994.

From the Judgement and Order dated 1.5.84 of the Punjab & Haryana High Court in W.P. No. 2004 of 1984. B

D. Goburdhan for the Appellant.

B. Dutta, Ms. Kusum Chaudhary, H.S. Munjral and G.K. Bansal for the Respondents. C

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

1. R.R. Bhanot, the appellant herein, attained the age of superannuation on December 31, 1970. Till-date his post-retiral benefits including pension have not been settled. He has been running from pillar to post and has been shuttling between the two States of Himachal Pradesh and Punjab for over two decades. Total apathy on the part of the officers concerned, has brought untold misery and hardship to the appellant. He filed a writ petition under Article 226 of the Constitution of India, before the Punjab and Haryana High Court, seeking appropriate directions to the authorities concerned for the release of pension, gratuity etc. due to him under the rules. It is unfortunate that the High Court dismissed the writ petition *in limine*. This appeal by way of special leave is against the order of the High Court. D E F

2. The appellant was born on January 1, 1913. He entered the service of the erstwhile State of Punjab as Sectional officer (Overseer) on September 30, 1937. He was promoted to the post of sub-Divisional Engineer on December 10, 1959. G

3. On the re-organisation of the erstwhile State of Punjab, the appellant was provisionally allocated to the State of Himachal Pradesh with effect from November 1, 1966. The appellant joined the State of Himachal Pradesh but at the same time represented before the Union of India against his allocation to the said State. H

A 4. The Himachal Pradesh Government prematurely retired the ap-
pellant from service by notification dated March 20, 1969 with effect from
the afternoon of May 14, 1968. The appellant, at that time, was on deputa-
tion with the Development Commissioner, Himachal Pradesh, Shimla and
was posted as Assistant Engineer, Development, Una. The appellant chal-
lenged the said order by way of writ petition before the High Court of
B Delhi, Himachal Bench, Shimla. A learned Single Judge of the High Court
allowed the writ petition and quashed the order dated March 20, 1969
prematurely retiring the appellant from service. The operative part of the
High Court judgment dated September 29, 1969 is as under :-

C "After the matter was argued at great length, Shri Mal-
hotra, the learned counsel for the petitioner, was able to
bring to my notice an order passed, pending this writ
petition, by the Government of India, Ministry of Home
Affairs, New Delhi on 19.5.1969 stating that with effect
D from 1.11.1966 the petitioner, among others, was deemed
to have been allotted to the State of Punjab. This order
was passed in exercise of the powers conferred by sub-
section (2) of Section 82 of the Punjab Reorganisation
Act, 1966. By reason of the said provision it was the
E Central Government which could finally determine the
State to which the concerned officers were allotted. In
view of this order, which has been passed by the Central
Government, Shri Chhabil Dass, learned counsel for the
State of Himachal Pradesh, fairly concedes that the order
retiring the petitioner from service on completion of 55
F years did not survive. It is hence quashed. In the cir-
cumstances the parties will bear their own costs."

G 5. It is thus obvious that the representation of the appellant against
his provisionally allocation to the State of Himachal Pradesh was accepted
and as a consequence by the order dated May 19, 1969 issued by the
Government of India in exercise of the powers under sub-section (2) of
Section 82 of the Punjab Reorganisation Act, 1966, the appellant was finally
allocated to the State of Punjab with effect from November 1, 1966.

H 6. After the High Court set aside the premature retirement of the
appellant, he represented before the Engineer-in-Chief PWD, Himachal

Pradesh and also the State Government for payment of the arrears of his salary and also for further posting as a consequence of the High Court judgment. It seems that the authorities in the State of Himachal Pradesh did not take any action on the ground that the appellant having been finally allocated to the State of Punjab, it was for the later to look into the grievance of the appellant. There is nothing on the record to show as to whether the State of Himachal Pradesh issued any order directing the appellant to approach the State of Punjab for further posting in the said State. It seems that the appellant did not, on his own, approach the Punjab Government for joining the duties in the said State as a consequence of the order of the Government of India finally allocating him to the State of Punjab. Meanwhile the appellant attained the age of 58 years on December 30, 1970. Thereafter the appellant sent various representations to the authorities in the State of Punjab as well as the State of Himachal Pradesh for grant of pension and other post-retiral benefits. The appellant was finally informed by Engineer-in-Chief H.P. PWD, Shimla by his letter dated January 31, 1981 that he should approach the Chief Engineer, Punjab PWD (B & R) Branch, Patiala for payment of his pension and gratuity. The appellant was further informed that he should approach the Agriculture Production Commissioner, Shimla, Himachal Pradesh for final payment of his general provident fund. Thereafter the appellant sent a legal notice dated June 21, 1983 through an advocate to all the authorities concerned in the two States of Punjab & Himachal Pradesh. The Accountant General Punjab, Chandigarh informed the appellant by his letter dated September 9, 1983 that nothing could be done in respect of his pension and other post-retiral benefits till the time the pension papers are received by the Accountant General Punjab from the concerned department of the Punjab Government. No action having been taken by any of the authorities in the two States of Himachal Pradesh and Punjab, the appellant finally approached the Punjab & Haryana High Court for relief. As mentioned above the High Court dismissed the writ petition of the appellant *in limine*.

7. Counter affidavit has been filed on behalf of the State of Punjab and the Chief Engineer, PWD (B & R branch) Punjab, Patiala. In para 9 of the counter affidavit the stand taken by the State of Punjab is as under :-

"That in reply to this para, it is submitted that the petitioner was allocated to the State of Himachal Pradesh

A w.e.f. 1.11.1966. He was retired by the Himachal Pradesh Government vide order dated 20.3.1969 w.e.f. 14.5.1968, when the Hon'ble High Court at Simla vide order dated 29.9.1969 set aside the above order on the ground that Union of India vide their letter dt. 19.5.1969 had allocated him to Punjab State, he should have come to Punjab. As B admitted by the petitioner in para 7 of the petition, he did not join in the Punjab State. The Govt. of Punjab, therefore, had nothing to do with his pension case which was returned."

C 8. We are of the view that the stand taken by the Punjab Government is wholly unjustified. As stated above the order dated March 20, 1969 prematurely retiring the appellant from service was quashed by the Himachal Bench of the Delhi High Court by its judgment dated September 29, 1969. As a consequence the appellant continued in service till December 31, 1970 when he attained the age of superannuation. It is not disputed D that the appellant was finally allocated to the State of Punjab with effect from November 1, 1966. The net result would be that the appellant shall be deemed to be continuously serving the State of Punjab with effect from November 1, 1966. He had joined service in the erstwhile State of Punjab on September 30, 1937. On March 20, 1969 when he was prematurely E retired by the State of Himachal he had already served the Government for about 32 years. He was undoubtedly entitled to the grant of pension and other post-retiral benefits. Simply because the appellant failed to submit joining report to the State of Punjab after the judgment of the Himachal Bench of Delhi High Court, he could not be denied his right to pension and other benefits to which he was entitled on his attaining superannuation. F It was for the State of Himachal Pradesh to have reinstated the appellant in service after the High Court judgment and thereafter relieved him to join the State of Punjab. In any case the appellant, having been finally allocated to the State of Punjab, it is the State of Punjab which has to give pension and other retired benefits to the appellant.

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9. We, therefore, order and direct as under :-

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[1] The Himachal Pradesh Bench of Delhi High Court quashed the premature retirement of the appellant by its judgment dated September 29, 1969. The appellant shall

be deemed to be working with the State of Himachal Pradesh till September 30, 1969. We direct the State of Himachal Pradesh through its Chief Secretary and the Secretary, PWD to pay the arrears of salary due to the appellant till September 30, 1969 within two months from the receipt of this judgment;

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[2] Since the appellant did not join service with the State of Punjab from October 1, 1969 to December 31, 1970, he shall not be entitled to any salary for the said period. The State of Punjab shall treat the said period to be leave of the kind due to the appellant. The appellant shall be deemed to have been retired from service on December 31, 1970 when he attained the age of superannuation;

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[3] The State of Himachal Pradesh through the Secretary PWD and the Agriculture Production Commissioner, Himachal Pradesh, Shimla are directed to send the personal file and other record pertaining to the appellant to the Chief Engineer PWD (B & R Branch) Punjab, Patiala. All the records and files which are necessary to finalise the post-retiral benefits of the appellant shall be sent by the Himachal authorities to the Punjab authorities;

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[4] The Chief Engineer PWD (B & R branch) Patiala, the Secretary to Government PWD (B & R branch) Punjab, Chandigarh and the Accountant General Punjab, Chandigarh are directed to finalise the pension case of the appellant within two months of the receipt of this order. All the arrears of the pension and other post-retiral benefits shall be paid to the appellant within one month thereafter;

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[5] The arrears of pension shall be paid to the appellant with interest at the rate of 12% per annum; and

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[6] We further direct the State of Punjab through the Secretary to Government PWD (B & R branch) Chandigarh and Chief Engineer (B & R branch) patiala to pay a sum of Rs.50,000 to the appellant within two weeks of

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A the receipt of this judgment. The amount shall be adjusted at the time of making the final payment of arrears of pension to the appellant.

10. The appeal is allowed in the above terms with costs. We quantify the costs as Rs. 10,000. The cost to be paid half and half by the States of Punjab and Himachal Pradesh.

R.P.

Appeal allowed.