HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.14069 of 2013
Date of decision:13.10.2014

Mohd. Najibul Hassan

...Petitioner

Versus

The Board of Governors, Government of Polytechnic Education and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Jagbir Malik, Advocate for the petitioner.

Mr. S.S.Goripuria, DAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned orders dated 13.2.2012 (Annexure P-18) and 18.2.2013 (Annexure P-21), passed by respondents No. 1 and 2, respectively, whereby claim of the petitioner for counting his past service from 13.5.2000 to 27.2.2008 rendered with the Northern Railway-a Central Government Department, for the purpose of retiral benefits, was declined, petitioner has filed the present writ petition under Articles Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari. A writ in the nature of mandamus has also been sought by the petitioner, directing the respondents to count his past service rendered with the Northern Railway for the purpose of retiral benefits.

Notice of motion was issued and pursuant thereto reply was filed on behalf of respondents.

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

Learned counsel for the petitioner submits that the impugned orders are non-speaking and cryptic, as no reason has been assigned therein. He places reliance on the government notification dated 22.8.1988 (Annexure P-13), reiterated in a fresh communication dated 19.7.2011 (Annexure P-14), issued by the respondent-State. While placing reliance on notification dated 3.8.2007 (Annexure P-2), he would contend that as per clause 1, 22 and 23 of this notification, case of the petitioner is squarely covered and the petitioner deserves to be treated similar with other Haryana Government employees. He also places reliance on the recommendation (Annexure P-12), which was a conscious decision taken by the employer of the petitioner, recommending his case for counting his past service rendered with the Northern Railway for the purpose of retiral benefits. He concluded by submitting that in view of the notifications (Annexures, P-2, P-13 and P-14), the impugned orders (Annexures P-18 and P-21) were totally without jurisdiction, besides being non-speaking and cryptic. In support of his contentions, he relies on the judgment of this Court in **R.C.Verma v. State of Haryana, 2002(2) SLR 391**. He prays for setting aside the impugned orders, by allowing the instant writ petition.

On the other hand, learned counsel for the State, while referring to averments taken in paras 2 and 12 of the written statement on merits, submits that since the petitioner was serving with the Society, which at the most can be treated to be an autonomous body of the State Government, was not entitled for the relief being claimed, because he was not a government employee, as such. He further submits that notifications relied upon by learned counsel for the petitioner were not applicable in favour of the

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

petitioner. He prays for dismissal of the present writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, the instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

So far as the relevant service rules are concerned, notification dated 3.8.2007 (Annexure P-2) leaves no scope for any doubt. Clauses 1, 22 and 23 of the notification (Annexure P-2), read as under:-

> *"1. Wherever any particular matter connected with the Institute is not covered by these Bye-laws or decisions taken by the Board from time to time, the rules of the Haryana State Govt. shall apply mutatis-mutandis, however, such application shall be reported to the Board in its next meeting."*
>
> *xxx xxx xxx xxx xxx*
>
> *xxx xxx xxx xxx*
>
> *22.* ***Conduct Rules***
>
> *Conduct Rules as applicable to Govt. employees will be applicable to employees of the society.*
>
> *23.* ***New Pension Rules-2006***
>
> *The new pension Rules 2006 as applicable to Haryana Govt. employees will be applicable to the employees of the Society."*

While issuing the above-said notification (Annexure P-2), State

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

Government itself has made it clear that employees of the respondent-Society will be treated at par with the State Government employees, it being 100% grant-in-aid institute of the respondent-State. Further, contents of paras 2 and 12 of the written statement on merits, read as under:-

> "2 That in reply to Para No.2 of the Civil Writ Petition, it is submitted that the Government Polytechnic Education Society, Uttawar is provided 100% grant-in-aid by the State Government. The Principal Secretary to Government of Haryana, Technical Education Department is its Chairman and Director General, Technical Education, Haryana is its Vice Chariman. Government Polytechnic Education Society, Uttawar was registered under the Societies Registration Act 1860 (Act 21 of 1860) on 23.0.2006 and was notified vide Government notification no.38/27/2006-4TE dated 21.9.2006. Consequent upon the constitution of the Government Polytechnic Education Society, Uttawar vide Government notification no. 38/27/2006-4TE dated 21.09.2006, the Government vide orders dated 23rd November, 2006 transferred the posts from the cadre of Government Polytechnics to the cadre of Government Polytechnic Education Society, Uttawar with effect from the date of issue of notification for constitution of Society i.e. 21st September, 2006."
>
> xxx xxx xxx xxx xxx
>
> xxx xxx xxx xxx
>
> 12. That in reply to Para No. 12 of Civil Writ Petition, it is

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

submitted that the Annexure P-14 is applicable on the Centre/State government services, whereas the services of Government Polytechnic Education Society are not the services of Centre/State Government as detailed in para nos. 4 and 5 of preliminary submissions of the reply. Thus, the provisions of Annexure P-14 are not applicable in case of the petitioner, being employee of the Society."

A combined reading of the above-said provisions contained in notification (Annexure P-2) and the averments taken in the written statement filed by the respondents, would make it crystal clear that notifications (Annexures P-13 and P-14) would be applicable in favour of the petitioner. Relevant part of notifications (Annexures P-13 and P-14), read as under:-

*"**Annexure P-13***

Counting of service for purpose of pension of the employees of the State Government and State Autonomous Bodies seeking absorption in Central Autonomous Bodies and Central Government/Central Autonomous Bodies respectively and vice versa.

(Copy of P.D. Hr. No. ½ (77) 87-2 FR-II dt. 22.8.88).

I am directed to refer to the subject cited above and to state that the Government of Haryana has been considering, in collusion with the Government of India, the question of counting of service, rendered by the State Govt. employees under the State Government before their absorption in the

::: Downloaded on - 19-08-2022 16:59:10 :::

Central Autonomous Bodies and the Service rendered by the employees of the State Autonomous Bodies, under the State Autonomous Bodies before their absorption in the Central Government/Central Autonomous Bodies, for pensionary benefits and vice-versa. The matter has been considered carefully, and the Governor of Haryana is pleased to decide that the cases of State Govt. employees going over to Central Autonomous Bodies and that of the employees of the State Autonomous Bodies moving to Central Govt./Central Autonomous Bodies or Vice-Versa may be regulated as follows :-

A) In case post/service is pensionable in the new organisation.

Where an employee borne on pensionable establishment is allowed to be absorbed in such an organisation, the service rendered by him/her shall be allowed to be counted towards pension under the new organisation irrespective of the fact whether the employee was temporary or permanent in the old organisation. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he/she retires as a temporary employee in the new organization he/she will get, terminal benefits as are normally available, to temporary employees.

Annexure P-14

Some departments while implementing the New Pension

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

> *Scheme have sought clarification on the issue whether an employee who was already in service of Central Government or Central Autonomous Body (as defined in Para-2 of FD's instructions No. ½ (77) 87-2 FR-II, dated 22/8/1988) prior to 1/1/2006 on regular basis if re-appointed on or after 1/1/2006 in State Government Department or State Autonomous Body under the Government of Haryana will be covered under the New Pension Scheme or Punjab CSR Volume-I (Old Pension Scheme) if such employee was eligible for benefit of the above referred OM dated 22/8/1988.*
>
> *In this connection, it is clarified that such cases, where an employee who was eligible for the benefit of FD's instructions dated 22/8/1988 is re-appointed on or after 1/1/2006 in the Government Department will be covered under Punjab CSR Volume-II (Old Pension Scheme) which is applicable to Government Employee who joined government service prior to 1/1/2006 provided he had applied through proper channel and who was governed under the Old Non-Contributory Pension Scheme of his previous organization. Para-A (ii) and B (ii) of instructions no. ½(77)/87-2FR-II dated 22/8/1988 may be treated as deleted w.e.f. 1/1/2006.*

It is pertinent to note here that as per the averments taken by the respondents, Principal Secretary to Government of Haryana, Technical Education Department, is the Chairman of the respondent-Society and the Director General, Technical Education Department, Haryana is its Vice-

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

Chairman. After due consideration of the matter, Board of Governors of the respondent-Society have recommended the case of the petitioner, vide Annexure P-12, in the following terms:-

> "...Sh. Mohd. Najibul Hassan joined as Lecturer in Civil Engg at Govt. Polytechnic Education Society Uttawar on 28.02.2008 through direct selection by BOG of Govt. Polytechnic Education Society Uttawar. Before joining to this polytechnic he was working as Depot Materials Supdtt. in Northern Railway in the pay scale Rs.5500-9000. He applied through proper channel for the post of Lecturer in Civil Engg. He was relieved from Northern Railway to join Technical Education Department. He has served Railway Deptt. from 13.05.2000 to 27.02.2008. Since he was a regular employee of Central Govt. therefore he is eligible for the past service benefits along with pensionary benefits from State Govt.
>
> N.O.C. for appearing to the post of Lect. from Northern Railway is attached as Annexure-IX page 34."

However, reading of impugned orders (Annexures P-18 and P-21) would show that the respondent authorities have completely failed to appreciate the above-said different notifications, issued by the respondent-State itself, before issuing the impugned orders. Both the impugned orders are non-speaking and cryptic. Having said that, this Court feels no hesitation to conclude that since case of the petitioner was squarely covered vide above-said different notifications particularly Annexures P-2, P-13 and P-14, the impugned orders cannot be sustained.

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

Further, during the course of hearing, when a pointed question was put to the learned counsel for the State as to how the case of the petitioner was not covered under the notifications (Annexures P-13 and P-14), coupled with the notification (Annexure P-2), he had no answer and rightly so, because it was a matter of record. The respondent authorities were under legal obligation to assign cogent reasons before passing the impugned orders (Annexures P-18 and P-21), so that this Court, while exercising its power of judicial review, may be in a position to know as to what were the reasons weighing on the mind of the authorities, while passing the impugned orders. It is so said because the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Since the horizon of natural justice has been constantly expanding in the recent past, hardly any visible distinction is left in the functioning of the administrative and quasi-judicial bodies, so far as the necessity of recording the reasons is concerned. That is why reasons are called the soul of a judgment.

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Ram Phal v. State of Haryana, 2009(1) SCC (L&S) 645**. The relevant observations made by the Hon'ble Supreme Court in para 6 of the judgment in **Ram Phal's case (supra)**, which can be gainfully followed in the present case, read as under:-

> *"The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man's sense of justice and also a healthy discipline for all those*

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

who exercise power over others. This Court in Raj Kishore Jha v. State of Bihar has stated:

> *19....Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless."*

Again, while dealing with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice as well as recording reasons, the Hon'ble Supreme Court laid down the broad guidelines in this regard, in the case of **Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others (2010) 9 SCC 496**. The relevant observations made in para 47 of the judgment, which aptly apply in the present case, read as under:-

"47. Summarizing the above discussion, this Court holds :

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that since the impugned orders are cryptic and non-

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::

speaking, they cannot be sustained. The respondent authorities have failed to discharge their legal obligation and acted in violation of the above-said guidelines laid down by the Hon'ble Supreme Court, therefore, impugned orders cannot be sustained for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders dated 13.2.2012 (Annexure P-18) and 18.2.2013 (Annexure P-21), being violative of Articles 14 and 16 of the Constitution of India, cannot be sustained and the same are hereby set aside.

Consequently, petitioner is declared entitled for counting of his past service rendered with Northern Railway for the purpose of retiral benefits, in view of the provisions contained in notifications (Annexures P-13 & P-14). The respondent authorities are directed to do the needful within a period of three months from the date of receipt of a certified copy of this order.

Resultantly, with the observations made and directions issued, as hereinabove, instant writ petition stands allowed, however, with no order as to costs.

13.10.2014 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

For Subsequent orders see LPA-30-2015 Decided by HON'BLE MR. JUSTICE RAJESH BINDAL; HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

::: Downloaded on - 19-08-2022 16:59:10 :::