

STATE OF PUNJAB & ANR.

v.

H.B. MALHOTRA

MAY 12, 2006

[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

Service Law:

Punjab Civil Service Rules, 1969; Rule 592: Employee—Disciplinary proceedings against—Employee offering to retire voluntarily on ground of health—Acceptance of offer by employer—Disciplinary proceedings dropped—Non-payment of retiral benefits—Challenge to—High Court directing the employer to release the benefits—On appeal, Held: Once disciplinary proceedings were dropped against the employee even if offer of voluntary retirement not accepted, he would be deemed to be continuing in service till he reaches the age of superannuation—Hence, he is entitled to full retiral benefits—State to pay all such benefits to him—Directions issued.

The respondent was an employee of the State of Punjab. Disciplinary proceedings have been initiated against him. During the pendency of the proceedings, he offered to retire voluntarily from the services on account of his ill-health. Accepting the offer, the disciplinary proceeding was dropped against him by the authorities. However, his retiral benefits were not released. He filed a writ petition before the High Court. The High Court directed the authorities to release all the retiral benefits including pension to the respondent. A review petition filed by the employer-State was dismissed by the High Court. Hence the present appeal.

Appellant-employer contended that the High Court has failed to take into consideration the fact that the respondent was not eligible to obtain the retiral benefits pursuant to or in furtherance of his offer of voluntary retirement; that the Voluntary Retirement Rules were not in force at the relevant time; and that the respondent did not complete the qualifying period of service;

Dismissing the appeals, the Court

HELD : No contention was raised by the appellant before the High

A Court in terms of the extant rules, the respondent was not entitled to pension and/or other retiral benefits. It has not been explained before the High Court or for that matter before this Court as to why no action was taken on the offer made by the respondent and why the disciplinary proceedings had been dropped. If the disciplinary proceedings as against the respondent were dropped and that the offer of voluntary retirement had not been accepted, he would be deemed to be continuing in service till he reached the age of superannuation; the logical consequence whereof could be that he would be entitled to the full retiral benefits which were payable to him in accordance with law. The State, therefore, will have to pay the retiral benefits to which the respondent was entitled to pursuant to or in furtherance of the offer made by it before the High Court. Hence, in the peculiar facts and circumstances of this case, it is not proper to interfere with the judgment of the High Court. [396-B-C-D]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5025-5026 of 2005

From the Final Order 2.2.2004 and 23.7.2004 of High Court of Punjab & Haryana at Chandigarh in C.W.P. No. 14907/2002 and R.A. No. 119/2004 in C.W.P. No. 14907 of 2002

E Ms. Kawaljit Koohar, D. Jha, Adv., for Arun K. Sinha, Adv., for the Appellants

Respondent-in-person (NP)

The Judgment of the Court was delivered by

F **S.B. SINHA, J.** : The State of Punjab is before us being aggrieved by and dissatisfied with the judgment and order dated 2.2.2004 passed in C.W.P. No.14907/2002 as also the order dated 23.7.2004 passed in R.A.No.119/2004 in C.W.P. No.14907/2002, whereby and whereunder it refused to review the said orders.

G The basic fact of the matter is not in dispute.

H The respondent herein was an employee of the State of Punjab. A disciplinary proceedings is said to have been initiated against him. During the pendency of the said proceedings he expressed his intention to retire voluntarily from the services on account of his health problems. Accepting

the said offer, the said disciplinary proceeding was dropped. The respondent, however, was not paid his retiral benefits. He filed a writ petition before the Punjab and Haryana High Court which was marked as C.W.P. No.14907/2002. The High Court on 24.7.2003, passed the following order:

“Mr. Karan Singh, Director, Public Relations, Government of Punjab is present in Court. He has assured the court that he would look into the matter personally and pass appropriate order as expeditiously as possible and would also keep in mind the sickness of the petitioner.

At request adjourned to 25.9.2003.”

Pursuant to or in furtherance of the said order the Director, Information & Public Relations, Punjab, by an order dated 18.9.2003 accepted the respondent’s offer for voluntary retirement from service w.e.f. 5.6.1969 (A.N.) stating:

“The disciplinary proceedings have been ordered to be dropped vide order No. OR(Estt.1) 03/6412-14 dated 22.9.2003 keeping in view his old age and efflux of time in deciding the issue. He never joined duty after proceeding on leave on 6.6.1969 as such the date on which he last attended the office is to be construed as his last day of working in the Department i.e. 5.6.1969. Consequently complaint orders are passed for voluntary retirement from service w.e.f. 5.6.1969 (A.N.) as per his request dated 21.11.1969.”

On February 2, 2004, the High Court passed the impugned order directing :

“Despite the fact that the aforesaid order was passed on 18.9.2003, learned counsel for the respondents acknowledges that no payment has been made to the petitioner. He further states that the petitioner himself had made a request that his retiral benefits be deposited in the Chief Minister’s Relief Fund.

It stands acknowledged that no payment has been made to the petitioner till date primarily on account of the fact that pension papers have not been signed by the petitioner.

A In view of the above, the respondents are directed to have the pension papers signed by the petitioner within one week from today. Keeping in account his advanced age, the respondents are requested to get the papers signed from the petitioner by not requiring him to attend the office. Having got the papers signed the respondents are directed to release all retiral benefits including pension etc. to the petitioner within four weeks from today. Pensionary benefits shall, however, be limited to a period of three years and two months preceding the date of filing of the writ petition. We also hereby clarify that the instant writ petition was filed on 13.9.2002.”

C A review application, supported by an affidavit affirmed by the Director, Information & Public Relations, Punjab, was filed in the High Court alleging that the respondent herein did not satisfy the mandatory provisions of Rule 592 of the Punjab Civil Service Rules, 1969, for grant of retiral benefits to him, which were, in any event, not applicable in the case of the respondent. The said review application was also dismissed by the D High Court holding:

E “It is not a matter of dispute that the non-applicant/petitioner did not discharge duties w.e.f. 23.4.1969, no action under Punjab Civil Service Rules, was taken against him although a department enquiry was commended against him which we were informed, was later on dropped suo motu. In the aforesaid circumstances, we are satisfied that the respondent must be deemed to have accepted the medical infirmity of the Non-applicant/petitioner to discharge his duties. Thus viewed even if an order was passed under wrong statutory rules, there was sufficient scope the claim of the non-applicant/petitioner for retirement on medical grounds. In the facts and circumstances of this case obvious from the plight of the non-applicant/petitioner who has appeared before us in person we are satisfied that the ends of justice would be met if the order of voluntary retirement passed by the Director, Information & Public Relations, Punjab, in favour of the non-applicant/petitioner w.e.f. G 5.6.1969 is treated as under retirement on medical grounds. In the circumstance noticed above, the petitioner shall be entitled to pensionary benefits, as directed by us in our order dated 2.2.2004.”

H The High Court issued a further direction as contained in its earlier order dated 2.2.2004, to be complied with within a period of two months

from the said date. The appellants are thus before us.

Ms. Kawaljit Kochar, learned counsel appearing on behalf of the appellants submitted that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration the fact that the respondent herein was not eligible to obtain the retiral benefits pursuant to or in furtherance of his offer of voluntary retirement made in the year 1969, and also in view of the fact that the Voluntary Retirement Rules were not in force at the relevant time. In any event, the respondent did not complete the qualifying period of service.

The pleas raised before this Court by the counsel were available to the appellants in the writ petition. But as noticed hereinbefore, the Director, Information & Public Relations, Punjab, itself made a representation in the Court that he would look into the matter personally and pass appropriate orders as expeditiously as possible keeping in mind the fact that the respondent herein was not keeping well. He being the Head of the Department and thus a responsible officer, was expected to know the consequences of making such representation before a superior Court. It is not in dispute that the appellant No.2 himself has passed an order on 18.9.2003 accepting the offer of voluntary retirement made by the respondent w.e.f. 21.11.1969. Even if the said order was passed by way of a mistake, the least which could be done by the said authority was to recall the said order after complying with the principles of natural justice. Not only such an action was not taken, an order was allowed to be passed by the High Court on 2.2.2004 without making any endeavour whatsoever to get the purported mistake corrected.

It is stated before us that such a contention had been raised in the counter affidavit filed on behalf of the State in the writ petition before the High Court as also at the hearing thereof. On perusal of the judgment of the learned Single Judge of the High Court, we do not find that such a contention was raised. If the High Court had failed to take into consideration any submission made before it, in view of the well-settled principle of law, the remedy of the appellants was to approach the High Court.

A review petition indeed was filed but therein also no such contention was raised that the disciplinary proceedings having been initiated against the respondent, the respondent was otherwise not entitled to any retiral benefits. In fact, as noticed hereinbefore, the said disciplinary proceedings have rightly or wrongly been dropped. It is, therefore, not open for the appellants

A to contend that a contention had indeed been raised before the High Court in the review proceedings. In any event, the same could not have been entertained by the High Court as the said question has not been raised in the writ petition.

B We have noticed hereinbefore that a voluntary statement was made by appellant No.2 and the High Court proceeded on that basis. We also do not find that any contention was raised before the High Court that in terms of the extant rules the respondent was not entitled to pension and/or other retiral benefits. It has not been explained before the High Court or for that matter before us, as to why no action was taken on the offer made by the respondent and why the disciplinary proceedings had been dropped. If the disciplinary proceedings as against the respondent were dropped and that the offer of voluntary retirement had not been accepted, he would be deemed to be continuing in service till he reached the age of superannuation, the logical consequence whereof could be that he would be entitled to the full retiral benefits which were payable to him in accordance with law. The State, therefore, will have to pay the retiral benefits to which the respondent was entitled to pursuant to or in furtherance of the offer made by it before the High Court.

E We really do not appreciate the manner in which the State took the judicial process for a ride. We may place on record that a Division Bench of this Court by order dated 8.8.2005 had directed that the G.P. Fund should be paid to the respondent within a period of four weeks from the said date. Learned counsel appearing for the State of Punjab could not inform us whether that amount has been paid to the respondent or not.

F In the peculiar facts and circumstance of this case, we do not think it proper to interfere with the judgment of the High Court. The appeals are dismissed. The respondent, who was appearing in person, was present in Court for a few days but he was not present on the day when the matter was taken up for hearing. The High Court has noticed that he is very aged, about 80 years by now.

G Therefore, the State should bear and pay the costs of the respondent which is quantified at Rs. 10,000 It is directed accordingly.

H S.K.S.

Appeals dismissed