

# SUPREME COURT OF INDIA

State of Punjab

Vs.

Suresh Kumar Sharma

C.A.No.7872 of 2004

(Dalveer Bhandari and Deepak Verma JJ.)

23.09.2010

## JUDGEMENT

### **Dalveer Bhandari, J.**

1. This appeal is directed against the judgment delivered by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No.662/2004 dated July 12, 2004. The respondent herein- Suresh Kumar Sharma was appointed as Assistant Advocate General, Punjab by the order dated 28th April, 1986 of the Government of Punjab. The order reads as under :

“GOVERNMENT OF PUNJAB DEPARTMENT OF HOME AFFAIRS AND JUSTICE (JUDICIAL BRANCH) The Governor of Punjab is pleased to appoint the following Advocate as Assistant Advocates General, Punjab in the scale of Rs.2000-2300 plus usual allowances attached to these posts, from the date they assume charge :-

1. Shri Suresh Kumar Sharma
2. Shri Ranjit Singh Gill
3. Ms.Sukhcharan Kaur Bhatia”

2. The terms and conditions of their appointment will be as under :- "(i) They will be whole time Government employees and will do all criminal and miscellaneous work entrusted to them by the Advocate General, Punjab, (ii) Their appointment is purely temporary and services are terminable without assigning any reason and without notice, (iii) For conducting civil cases only, they will be paid two third of the prescribed fee, (iv) If on any particular day they have no criminal case to conduct in the High Court, fees payable to them in civil cases will be reduced by the amount of their salary for that day, (v) In the matter of leave and traveling allowances, they will be governed by the Punjab Civil Services Rules, (vi) House Rent Allowance will be admissible to them, (vii) Their services are contractual in nature and,

as such, they will not be entitled to any other benefit viz. Pension, gratuity and encashment of leave etc. (viii) Their appointment would be against a non-pensionable post.

“Dated Chandigarh the 28th April, 1986 Sd/- (R.P.OJHA) Financial Commissioner & Secretary to Government of Punjab Department of Home Affairs and Justice. No.1/5/86-4 Judl./1111.....”

It may be pertinent to mention that Ms.S.K.Bhatia was also appointed along with the respondent herein. According to Mr.P.S.Patwala, learned senior counsel appearing for the respondent, this case is covered by the judgment of this Court in Civil Appeal No.5810/2000, The brief facts of this case, which are relevant to dispose of the appeal are recapitulated as under :

The respondent was appointed as Assistant Advocate General and thereafter he was appointed as Deputy Advocate General and Senior Deputy Advocate General in the State of Punjab. The respondent superannuated on 31.03.2003. The pensionary benefits were denied to the respondent, then he approached the High Court and made grievance that the respondent was wrongly denied pensionary benefits. It may be pertinent to mention that some similarly placed persons were also denied pensionary benefits after their superannuation and in the Writ Petitions of V.P.Parashar, D.N.Rampal and S.K.Bhatia the High Court allowed their writ petitions and directed the State of Punjab to give them pensionary benefits.

Mr.Patwalia has particularly referred to the judgment of S.K.Bhatia who was appointed along with the respondent herein.

The learned single Judge has also quoted the terms and conditions of the appointment of S.K.Bhatia, which would also be the same in the case of respondent herein. The terms and conditions of the appointment reads as under :

"(i) They will be wholtime Government employees and will do all criminal and miscellaneous work entrusted to them by the Advocate General, Punjab, (ii) Their appointment is purely temporary and services are terminable without assigning any reason and without notice, (iii)For conducting civil cases only, they will be paid two third of the prescribed fee, (iv) If on any particular day they have no criminal case to conduct in the High Court, fees payable to them in civil cases will be reduced by the amount of their salary for that day, (v) In the matter of leave and travelling allowances, they will be governed by the Punjab Civil Services Rules, (vi) House Rent Allowance will be admissible to them, (vii) Their services are contractual in nature and, as such, they will not be entitled to any other benefit viz. Pension, gratuity and encashment of leave etc.

(viii) Their appointment would be against a non-pensionable post."

The learned single Judge, after elaborately dealing with the arguments of learned counsel for the parties, clearly came to the conclusion that appointment of S.K.Bhatia was not in the nature of contract of personal service but as a regular government employee.

The learned single Judge has held :

"...I hold that the appointment of the petitioner was not in the nature of contract of personal service, but as a regular Government employee."

The judgment of the learned single Judge in the case of S.K.Bhatia was challenged before the Division Bench of the High Court of Punjab and Haryana. The judgment of the Single Judge was upheld by the Division Bench. The order of the Division Bench reads as under :

"Heard Learned Single Judge has held, inter alia, on the basis of the notification dated 3rd March, 1980, as also the view taken in D.N.Rampal Case and in V.P.Parashar's case that the appointment of the petitioner was not in the nature of contract of personal service but as regular government employee. The learned Single Judge has also held that stipulation of the condition that the employment is contractual was wholly arbitrary, unjust and unconstitutional.

Further, the learned Single Judge has applied the ratio of the decision of the Supreme Court in *Shrilekha Vidyarthi Versus State of U.P.*<sup>1</sup>, and distinguished the *Officers Association & Ors.*<sup>2</sup>, on the basis of mode of initial appointment of the respondent as Assistant Advocate General and therefore her appointment as Deputy Advocate General.

Dismissed. 6-2-1998 Sd/-Arun B.Saharya Chief Justice Sd/-Swatanter Kumar Judge"

The State of Punjab challenged the judgment of the Division Bench before this Court. This Court, in appeal, passed the 5 following order :

"IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.5810 OF 2000 State of Punjab & Anr. ...Appellants S.K.Bhatia & Ors. ...Respondents ORDER The matter relates to termination of the first respondent as Dy.Advocate General by State of Punjab.

The matter relates to termination of the first respondent as Dy.Advocate General by State of Punjab.

The respondent challenged the termination order dated 19.7.1993 as illegal on the ground her appointment was as a regular government servant and not a contractual engagement as counsel. The learned Single Judge, by judgment dated 30.5.1997. upheld her contention and allowed her writ petition, declared the termination order

dated 19.7.1993 as illegal and quashed it. He also held that the first respondent was entitled to all consequential benefits. The intra-court appeal filed by the appellants was dismissed by the Division Bench on 6.2.1998. The said judgment is under challenge.”

2. The impugned judgment of the High Court dated 6.2.1998 in the case of the first respondent was followed by the High Court in a subsequent similar case relating to termination of a Sr.Dy.Advocate dated 22.4.2004 in C.W.P.No.8273/1999). The state challenged the decisions of the High Court in the case of the first respondent (in this appeal) and in the case of Shri G.S.Cheema (in C.A.No.6057/2004).

“Both appeals were being listed together for final hearing.”

3. When the appeals came up on 29.1.2009, the learned counsel for the state submitted that the state government has taken a decision to implement the order of the High Court in the case of Shri G.S.Cheema and absorb him in service. Recording the said submission, C.A.No.6057/2004 was dismissed.

4. With reference to this appeal (relating to Ms.S.K.Bhatia), the learned counsel for the state sought time to secure specific instructions.

“Thereafter, the matter was adjourned to 19.2.2009 at the request of the counsel for the state and again adjourned at his request today. When the matter came up today, learned counsel for the state submitted that he has not received any instructions from the state.”

5. When the state government has accepted the decision rendered by the High Court in case of G.S.Cheema, which followed the impugned judgment, the state government has to adopt the same yardstick in this case also, unless there are any distinguishing factors or circumstances. The learned counsel for the appellant has not been able to show any difference between the facts of this case, and the facts in the case of G.S.Cheema.

6. We are also informed that during the pendency of the proceedings, the first respondent has attained the age of superannuation and all that therefore remains to be done is to process and disburse the terminal/retiral benefits.

7. In view of the above we dismiss this appeal.

“Needless to say that the retiral benefits due to the respondent in accordance with law, will have to be processed expeditiously that is within four months.

(R.V.Raveendran) (Markandey Katju) New Delhi, March 17,2009."

Mr.Patwalia submits that the case of the respondent is squarely covered by the case of S.K.Bhatia because she was also appointed on the same day by the same order in the same position and the benefits which were extended to S.K.Bhatia should also be given to the respondent herein.

We have heard learned counsel for the parties.

Learned counsel appearing for the State of Punjab could not distinguish the case of the respondent with the case of S.K.Bhatia and other cases. Consequently, the respondent herein, who has already attained superannuation from service would also be entitled to get pensionary and other benefits due to him in accordance with law. We direct that all the pensionary and other benefits, if any, be given to the respondent within four months from the date of communication of this order. In the special facts and circumstances of the case, we deem it appropriate to direct the State of Punjab to pay costs of Rs.25,000/- to the respondent. Let the costs be paid within four weeks from the date of communication of this order. The appeal is, accordingly, allowed and disposed of.”

<sup>1</sup> *JT 1990 (4) SC 211*

<sup>2</sup> *JT 1994(1) SC 225*