

SUPREME COURT OF INDIA

Chaman Lal

Vs.

State of Punjab

C.A.No.2273 of 2011

(Balbir Singh Chauhan and Arjan Kumar Sikri JJ.)

16.05.2014

JUDGMENT

BALBIR SINGH CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and decree dated 1.12.2009 in Regular Second Appeal No. 2299 of 2009, passed by the High Court of Punjab & Haryana at Chandigarh, affirming the judgment and decree dated 16.9.2008, passed by the Additional District Judge, Amritsar in Civil Appeal No. 122 of 14.6.2006 as well as the judgment and decree dated 23.5.2006, passed by the Civil Judge (Sr. Division) Amritsar in Civil Suit No. 275 of 2004, wherein and whereunder the courts have dismissed the suit of the Appellant for grant of retiral benefits for not being Government servant.

2. Facts and circumstances giving rise to this appeal are as under:

A. That the Appellant had worked in the Army as Truck driver from 26.10.1962 to 10.1.1968. He was subsequently employed as a truck driver in the Fish Farmers Development Agency from 16.7.1980 to 20.5.1998. After being declared surplus, he was absorbed in the Animal Husbandry, Fisheries and Dairy Development, Punjab on 1.6.1998 and stood superannuated on 31.3.2002.

B. The Appellant instituted Civil Suit No. 275 of 2004 claiming retiral benefits in view of letter dated 20.4.1998 issued by the Govt. of Punjab which provided for regularisation of ad hoc employees by absorbing them

against the departmental posts. The said suit was dismissed vide judgment and decree dated 23.5.2006.

C. Aggrieved, the Appellant preferred Civil Appeal No. 122 of 2006. It was also dismissed vide judgment and decree dated 16.9.2008.

D. Aggrieved, the Appellant preferred the Regular Second Appeal which has been dismissed vide impugned judgment and decree.

Hence, this appeal.

3. Shri D.K. Garg, learned Counsel appearing for the Appellant has submitted that as the Appellant had been absorbed in the Fish Farmers Development Agency, he is entitled to take the benefit of entire service rendered in various places. Thus, the courts below committed an error in refusing the relief of pension and other retrial benefits. The Appellant had been given a hostile discrimination while a similarly situated person, namely, Charanjit Lal got a decree from the Civil Court, Gurdaspur on 16.9.1996 in Suit No. 4 of 1992. Thus, the appeal deserves to be allowed.

4. Per contra, Shri Jagjit Singh Chhabra, learned Counsel appearing for the State has opposed the appeal contending that the Fish Farmers Development Agency is a society registered under the Societies Registration Act, 1860 (hereinafter referred to as Act 1860). If a civil court had granted the relief by mistake or the Plaintiff therein succeeded in getting a collusive decree, which is contrary to law, its benefit cannot be extended to other similarly situated persons for the reason that Article 14 of the Constitution is not meant to perpetuate an illegality. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned Counsel for the parties and perused the record.

6. Before we proceed further, it may be pertinent to mention here that Appellant after retirement had approached the High Court by filing the Writ Petition No. 1505 of 2004 (Chaman Lal v. State of Punjab and Ors.) seeking relief of proficiency set up, against the State wherein the High Court refused the relief by recording a finding that the Fish Farmers Development Agency, Amritsar was

neither a Government agency nor a department but rather was a society registered under the Act 1860.

7. The Trial Court considered the issue of entitlement of the Appellant for the aforesaid relief and held as under:

Division Bench of Hon'ble Punjab & Haryana High Court in the State of Punjab and Anr. v. Shri D.N. Rampal, Deputy Advocate General 1985 (1) SLR 14, where Hon'ble Punjab & Haryana High Court held that Rule 3.12 provides three qualifications for pension. It says that the service of a Government employee does not qualify for pension unless it conforms to three conditions 1(i) the service must be under Government, (ii) the employment must be substantive and permanent and (iii) the service must be paid by Government.

Counsel for the Plaintiff argued that in the present case all three conditions are fulfilled so the Plaintiff is entitled to regularization of his services as per the provisions of Punjab Civil Services Rules, Volume-II, Rule 3.16, where the Govt. pleader for the Defendant/State argued that the Plaintiff cannot claim benefit of service rendered by him prior to 1.6.1998 as services rendered by him in Fish Farmer Development Agency from 20.5.1980 to 31.5.1998 was rendered by him in a society registered under the societies Act and regarding this fact a categorical Findings has been recorded by the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 1501 of 2001 between the parties and the copy of order is Ex. D3 perusal of the order of Hon'ble Punjab & Haryana High Court in Civil Writ Petition No. 1501 titled 'Chaman Lal v. State of Punjab and Ors. shows that in that case also the question involved was that whether services rendered by the Plaintiff in Fish Farm Development Agency, Amritsar can be considered for the purpose of proficiency step up to the Plaintiff and the Hon'ble Punjab & Haryana High Court recorded a findings that the same cannot be considered for proficiency step up. The relevant portion of the findings recorded by the Hon'ble Punjab & Haryana High Court is reproduced as under:

It has been stated in the preliminary objection that the Petitioner was appointed in the office of Fish Farm Development Agency, Amritsar, as a

Truck Driver on a non-pensionable post. The Agency is a registered society under the societies Registration Act, 1860. It is an autonomous body. It is not a part of the department of Fisheries Punjab. In fact, the Petitioner was appointed as a driver in the Department of Fisheries by the Director and warden only on 22.5.1998. In view of the above, no relief can be granted to the Petitioner.

So when the Hon'ble Punjab & Haryana High Court has recorded categorical findings that the services rendered by the Plaintiff prior to 22.5.1998 was rendered by him in a society registered under the Societies Registration Act, then the Plaintiff cannot be held to be in service under the Govt. prior to 22.5.1998, so his service rendered prior to that date cannot be considered for the purpose of calculation of pension. So all these issues are decided against the Plaintiff and in favour of the Defendants.

8. The First Appellate Court re-appreciated the entire evidence, on the issue. After making reference to the judgment of the High Court rendered in the case of the Appellant, the court held:

When there is adjudication between the parties qua this fact and the Hon'ble High Court vide order, referred to above, has given the verdict that the Plaintiff rendered the services towards the Fish Farmers Development Agency, Amritsar, as a truck driver which is non-pensionable post and the agency is a registered society under the Societies Registration Act, 1860, it is an autonomous body. Their Lordship further observed that the service of the Plaintiff with the Fish Farmers Development Agency is not a department of Fisheries, Punjab and now the Petitioner/Appellant is appointed as driver with the Fisheries Department by the Director only on 28.5.1998.

In view of the above, the appeal was dismissed.

9. The High Court while dealing with the issue held as under:

Both the Courts below have given concurrent finding that since Fish Farmers Development Agency is an autonomous Board and is controlled by Co-operative Society and as such the services rendered by the Plaintiff with the said Society cannot be counted for the purposes of pensionary benefits.

That concurrent finding of fact could not be assailed. The Petitioner has filed CWP No. 1501 of 2001 under Article 226/227 with a prayer to direct the department to release the additional increment in the form of proficiency step up after 8, 16, 24 and 32 years of the service but the same writ petition was dismissed according to the Plaintiff.

10. In fact, there has been adjudication on the same issue between the same parties and the High Court negated Appellant's claim. We are of the considered opinion that the Appellant does not deserve any relief whatsoever and the appeal is liable to be dismissed.

11. Coming to the next submission advanced by Shri Garg regarding the discrimination as a similar relief claimed by the Appellant has been granted to similarly situated person, namely, Charanjit Lal by a Civil Court and the said judgment and decree attained finality and had not been challenged.

Shri Garg has taken us through the said judgment and decree. We are shocked that in the said suit the Plaintiff therein, for the reasons best known to him, did not implead the State of Punjab as a Defendant. The suit had been filed only against the Fish Farmers Development Agency, Gurdaspur and the Chief Executive Officer of the said Agency. No one else was added as a party. Relief of pension was sought against the State of Punjab, which was not even impleaded as a party in the suit. In fact, no relief was sought against the Defendants therein. Thus, the State was not bound by such a judgment and decree. (Vide: Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar and Anr. AIR 1963 SC 786).

12. We fail to understand how the suit was maintainable as it is a settled legal proposition that in view of the provisions of Section 79 and Order 1 Rules 9 & 27 of the Code of Civil Procedure, 1908 and Article 300 of the Constitution of India, if a relief is sought against the State or the Union of India, the State or Union of India must be impleaded as a party. In case it is not so impleaded, the suit is not maintainable for want of necessary party. This view stands fortified by the judgment of this Court in *The District Collector, Srikakulam and Ors. v. Bagathi Krishna Rao and Anr.* AIR 2010 SC 2617, wherein after placing reliance on earlier judgments of this Court particularly, *Ranjeet Mal v. General Manager, Northern*

Railway, New Delhi and Anr. AIR 1977 SC 1701; and Chief Conservator of Forests, Govt. of A.P. v. Collector and Ors. AIR 2003 SC 1805, this Court held that if the relief is sought against the State, it is necessary for the Plaintiff to implead the State and in absence thereof the suit itself would not be maintainable.

13. Thus, we are of the considered opinion that the suit was wrongly decreed. It is also intriguing to note from the said judgment that the Defendant appeared and filed the written statement and admitted the claim of the Plaintiff therein. Therefore, the judgment is not worth putting any reliance on it. The finding of fact had been recorded therein that:

Karam Singh, DW. 1 admitted during cross-examination that Punjab Govt. gives funds to Defendant No. 1 agency, admitted that Defendant No. 1 agency is being run by Punjab Government admitted that employees in the agency are sent by Punjab Government and admitted that employees of Punjab Government are appointed for service in the agency and he admitted that he himself is also Government employee.

(Emphasis added)

So here is a suit which was decreed on the admission of the Defendant against whom no relief was prayed for, and without impleading the necessary party. We are equally amazed to find that State of Punjab implemented the judgment. It leaves much to be desired.

14. Thus, in view of the fact that the judgment and decree in the case of Charanjit Lal seems to be collusive and in a suit which itself was not maintainable, we are unable to accept the submission advanced by Shri Garg, learned Counsel for the Appellant.

15. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise it may not be a ground to grant similar relief to others. This Court in Basawaraj and Anr. v. The Spl. Land Acquisition Officer AIR 2014 SC 746 considered this issue and held as under:

It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration and Anr. v. Jagjit Singh and Anr. AIR 1995 SC 705, M/s. Anand Button Ltd. v. State of Haryana and Ors. AIR 2005 SC 565; K.K. Bhalla v. State of M.P. and Ors. AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab AIR 2010 SC 1937).

16. In view of the above, we do not find any of the arguments advanced by Shri D.K. Garg, learned Counsel for the Appellant worth acceptance.

The appeal is devoid of any merit and is accordingly dismissed. No order as to costs.