IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No. 190 of 2022
Date of decision: 15.06.2023

State of H.P. & others .....*Appellants*

Versus

Rajinder Fishta ...*Respondent*

Coram:
The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.
The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.
Whether approved for reporting?

For the appellants: Mr. Anup Rattan, Advocate General with Mr. Navlesh Verma, Mr. Pranay Pratap Singh, Additional Advocates General with Mr. Gautam Sood & Mr. Arsh Rattan, Deputy Advocates General.

For the respondent: Mr. J.L. Bhardwaj, Senior Advocate with Mr. Sanjay Bhardwaj, Advocate.

M.S. Ramachandra Rao, Chief Justice *(Oral)*

This Letters Patent Appeal is preferred by the State challenging order dt. 03.06.2022 passed by the learned Single Judge in CWP No. 4389/2019.

2) The respondent in the Letters Patent Appeal had retired on 31.05.2013 as a Tehsildar, Paonta Sahib. However, he was given extension of service by the Government for a period of one year w.e.f. 01.06.2013 to 31.05.2014 vide Notification dt. 30.05.2013 issued in the name of His Excellency, the Governor.

3) The said notification stated that such extension would not entitle him for any additional increment/additional financial benefits, except last pay drawn on 31.05.2013.

4) Contending that he is entitled to be granted a regular increment which was due to him from the month of July, 2013, the respondent approached appellant no. 1-competent authority on 19.11.2013 for release of the same, but the latter did not take any decision thereon.

5) The respondent again made a representation on 07.02.2014 which was rejected on 25.04.2014.

6) He then filed the writ petition challenging order dt. 25.04.2014 issued by appellant no. 1 rejecting his representation for grant of regular increment and seeking a Writ of Mandamus directing the appellants to award him the regular increment w.e.f. July, 2013 as per the instructions issued by the Government of Himachal Pradesh contained in Chapter 22 of the Handbook on Personnel Matters Vol.II with all consequential benefits and also interest @ 12% per annum from the date it fell due till its realization.

7) The appellants-State contested the same by taking a plea that as per Notification dt. 30.05.2013 extending the services of the respondent, he would not be entitled for any additional increment/additional financial benefits.

8) The learned Single Judge rejected the said plea of the appellants.

9) He noted that though the Notification mentioned that the respondent would not get any additional increment/additional financial benefit for the extension in service granted to him from 01.06.2013 to 31.05.2014, clause 22.2, Chapter 22 of the Handbook on Personnel Matters, Vol-II specifically entitles an employee, who is given an extension of service, to increments as well.

10) He relied upon judgment of the Supreme Court in ***State of Punjab & another Vs. Dharam Pal,*** [1] and ***Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma & others***,[2] and held that as per the instructions issued by the State Government, the respondent would be entitled to increments w.e.f. July, 2013.

11) He, therefore, allowed the writ petition, quashed impugned order dt. 25.04.2014; and directed the appellants to pay annual increment for the extended period of one year w.e.f. July, 2013 with all consequential benefits within four months.

12) Assailing the aforesaid judgment, the appellants have preferred this appeal.

13) Mr. Navlesh Verma, learned Additional Advocate General re-iterated the stand of the appellants that since the respondent has been denied the benefit of additional increment vide Notification dt. 30.05.2013, while extending his services for a period of one year from 01.06.2013 to 31.05.2014, and since the respondent had accepted the extension in service with the said condition, he has to be taken as having acquiesced in the denial of the additional increment; and the learned Single Judge had erred in granting the said benefit to the respondent.

14) Learned Counsel for the respondent refuted the said contention and supported the order passed by the learned Single Judge.

15) Clause 22.2, Chapter 22 of the Handbook on Personnel Matters, Vol-II states that:

"22.2 <u>Distinction between Extension and Re-employment</u>.

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[1] (2017)9 SCC, 395
[2] (1998) 5 SCC 87

The term "extension" is different from the term "re-employment". Extension in service is continuance in service and the incumbent does not superannuate or retire on reaching the date of superannuation. Further the period of extension counts for qualifying service for the purpose of pension, gratuity and other retirement purposes, besides entitling the incumbent to full pay and allowances and increments etc. In addition the incumbent remains a member of service he was so appointed and will be bound by the specific Rules governing the service. Re-employment is quite different. Employment after actual superannuation or retirement is called "re-employment". In this case the re-employment may be from the date following the date of pension and his pay is fixed under special orders. A re-employed person is governed by the general rules governing service conditions of a Government servant and such other Rules as may be specified in the terms of re-employment. The period of reemployment, does not qualify as service for pension and other benefits, insofar as his service from he had superannuated is concerned. However, the eligibility of a reemployed person to a second pension based on the basis of a re-employment will depend on the terms of the re-employment."(emphasis supplied)

16) This Handbook contains executive instructions in relation to personnel matters of State Government employees. Clause 22.2, Chapter 22 Vol-II

thereof draws a distinction between "extension in service" and "re-employment". It states that "extension in service" is continuance in service and the incumbent does not superannuate or retire on reaching the age of superannuation; that the period of extension in service counts for qualifying service for the purpose of pension, gratuity and other retirement purposes, besides entitling the incumbent to full pay, allowances and the increment etc. It also says that the incumbent remains a member of the service, he was so appointed, and he will be bound by the specific rules governing the service.

17) The said Clause distinguishes "extension of service" from "re-employment" by stating that employment after actual superannuation or retirement is called "re-employment" and the period of re-employment does not qualify his service for pension and other benefits, insofar as his service from which he had superannuated.

18) Having framed the executive instructions of the nature contained in Clause 22.2, Chapter 22 of the Handbook on Personnel Matters, Vol-II holding that the increment would be payable in case of extension in service, the appellants cannot deny the said benefit to the respondent since Clause 22.2, Chapter 22 of the Handbook on Personnel Matters, Vol-II is binding on the appellants.

19) It cannot be disputed that the executive instructions of this nature will supplement the statutory rules and in the absence of statutory rules, these instructions would operate. (***State of Jharkhand v. Jitendra Kumar Srivastava***[3]**).** Obviously following these instructions, the appellants would have granted full pay, other allowances and also

[3] 2013(12) SCC 210

increments to those employees whose services had been extended. It is not their case that this was not done. Why the appellants sought to deny the said benefit of grant of additional increment to the respondent and discriminated him alone compared to others who have got same benefits, is not explained. The State as a model employer cannot discriminate among its employees in this manner and give a benefit which is conferred under the applicable rules/instructions to some, and deny the same to others.

20) We may also look at it from another angle as to the bargaining powers of the respondent vis-a-vis the appellants. Undoubtedly, the respondent being a mere employee of the appellants, would be in a weaker position and would not have an equal bargaining power with the appellant, and he would have had to either accept the extension on the terms contained in Notification dt. 30.05.2013 or leave it, however, unreasonable or unfair the term of the order of extension is.

21) The Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly,***[4] has observed as under:

> "*89……..We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art. 14. This principle is that, the courts will*

[4] (1986) 3 SCC 156

not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the. contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its, own facts and circumstances."

22) This principal has been re-iterated in several decisions of the Hon'ble Supreme Court including the decision in ***LIC of India & another Vs. Consumer Education & Research Centre & others.***[5]

23) Therefore, having regard to the hugely unequal bargaining power between the respondent and the appellants, it cannot be said that the respondent had a choice in the matter at all and he had acquiesced in the condition of the extension order dt. 30.05.2013 that he would not get any additional increment.

24) That apart, the learned Single Judge had recorded that the respondent had made a representation on 19.11.2013 shortly after he was given extension in service on 30.05.2013 to the Principal Secretary (Revenue) to the Government of Himachal Pradesh seeking the regular increment w.e.f. July 2013 and had also re-iterated the same through another representation dated 07.02.2014 which came to be rejected on 25.04.2014. Therefore, there was no laches on the part of the respondent in enforcing this claim for the said increment.

25) Having framed the executive instructions of the nature contained in Clause 22.2, Chapter 22 of the Handbook on Personnel Matters, Vol-II holding that the increment would be payable in case of extension in service, the appellants cannot deny the said benefit to the respondent since Clause 22.2, Chapter 22 of the Handbook on Personnel Matters, Vol-II is binding on the appellants.

26) The State should act as a model litigant and should not put forth frivolous, vexatious and technical, but unjust, contentions to obstruct the path of justice, as held by the Hon'ble Supreme Court in ***Urban***

[5] (1995) 5 SCC 482.

Improvement Trust, Bikaner Vs. Mohan Lal,[6] *and* ***Popatrao Vyankatrao Patil vs State of Marashatra & others***[7].

27) Also, it is not in dispute that the increment in question for which this appeal is filed by the State has a small value of appropriately Rs.2500/- only, which is very meager and hardly puts financial burden which would have warranted the filing of this appeal by the appellants.

28) We are distressed that in such small value matters also, the State continues to litigate and harass the citizens.

29) For all the aforesaid reasons, we do not find any merit in this appeal and is accordingly dismissed with costs of Rs. 10,000/- to be paid by the appellants to the respondent within four weeks. Pending application(s), if any, also stands disposed of.

(M.S. Ramachandra Rao)
Chief Justice.

June 15, 2023
(hemlata)

(Ajay Mohan Goel)
Judge.

[6] (2010) 1 SCC 512
[7] (2020) 19 SCC, 241