(1968) 05 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 2568 of 1966

Jaswant Singh Basur	APPELLANT
Vs	
The Punjab State	RESPONDENT

Date of Decision: May 21, 1968

Acts Referred:

- Constitution of India, 1950 - Article 226, 318
- Punjab State Public Service Commission (Conditions of Service) Regulations, 1958 - Regulation 5, 5(1)

Citation: (1969) 2 ILR (P&H) 50

Hon'ble Judges: Gurdev Singh, J

Bench: Single Bench

Advocate: R.L. Aggarwal, for the Appellant; K.R. Mahajan, for the Respondent

Judgement

Gurdev Singh, J.

The question for decision in this petition under Article 226 of the Constitution is a short one relating to the interpretation of regulation 5 of the Punjab Public Service Commission (Conditions of Service) "Regulations, 1958, hereinafter called the Regulations. The matter has arisen in the following manner.

2. The Petitioner, Section Jaswant Singh Basur, a member of the Indian Administrative Service, while serving in the State of Punjab, was appointed as Chairman of the Punjab Public Service Commission with effect from 24th April, 1961, vide Punjab Government notification, dated 2nd May, 1961. During the term of his office as Chairman of the Commission, he retired from the Indian Administrative Service on 24th March, 1962, and on his attaining the age of 60, he retired from the Public Service Commission on 23rd November, 1966.

3. The Public Service Commission (Conditions of Service) Regulations, 1958, promulgated under Article 318 of the Constitution govern the conditions of service of the Chairman and Members of the Punjab Public Service Commission. The

provision regarding their salary is contained in Regulation 5, the relevant portion of which reads thus:

5(1). The Chairman shall receive a remuneration of Rs. 2,250 a month and each of the other Members a remuneration of Rs. 1,800 a month.

Provided that--

(i) if the Chairman or a Member at the time of appointment as such is a retired Government servant, either his pension shall be held in abeyance, or his remuneration shall be decreased to the extent of his pension;

(ii) if an officer who is already in service, is appointed whether as Chairman or a Member, he shall till his retirement from such service receive his own grade pay plus Rs. 200 per mensem as additional pay, subject to an overall maximum of Rs. 2,250 per mensem in any individual case;

(iii) a Member, who, immediately before the commencement of these regulations, was in receipt of pension in addition to the remuneration payable to him as member so as to make the total exceed Rs. 1,800 a month, shall be entitled to receive for the period he continues to serve as such member, the same remuneration and pension he was drawing at the time of his retirement.

4. It is not disputed that the Petitioner''s pay at the time of his appointment as Chairman of the Punjab Public Service was fixed in accordance with proviso 2 of this Regulation. In addition to the pay that he was drawing at the time of his appointment as Member of the Indian Administrative Service he was drawing Rs. 200 per mensem till the day of his retirement from the Indian Administrative Service (24th March, 1962).

5. On his retirement from the Indian Administrative Service, the Accountant-General, Punjab, verified that he was entitled to Rs. 652.50 per mensem as his pension and Rs. 23,490 on account of death-cum-retirement-gratuity. This gratuity was, however, not paid to him, and the Accountant-General informed him that it would be released on the expiry of his term as Chairman of the Punjab Public Service Commission. On his retirement from the Indian Administrative Service, the Petitioner''s salary was fixed at Rs. 2,250. This full amount was, however, not paid to him and subjected to deduction of Rs. 173.69 P. being the pension equivalent to death-cum-retirement gratuity. His pension was also held in abeyance. The Petitioner naturally protected against this and claimed that after his retirement from the Indian Administrative Service he was entitled to receive the full salary of Rs. 2,250; as Chairman and neither his pension could be kept in abeyance nor anything deducted on account of his death-cum-retirement gratuity. Though the stand taken by him was accepted by the Punjab Government in its letter (copy annexure E), dated 12th April, 1966, subsequently, on the advice of the Accountant-General, his claim to the full salary without any deduction, and payment of pension was turned down, vide

Government''s letter, dated 11th November, 1966 (copy annexure L). This action was stated to have been taken on the basis of the Government of India, Ministry of Home Affairs'' letter, dated 4th October, 1965, the relevant portion of which reads as under,--

3(e). If an officer retires from the service during his term of office on the Commission, his pension and pay should be regulated in the manner indicated below:

(i).....

(ii) His pay on the Commission should be reduced by the amount of pension and pension equivalent of death-cum-retirement gratuity.

6. The Petitioner feeling aggrieved has approached this Court under Article 226 of the Constitution for a writ of mandamus requiring the Respondent-State to pay him full salary at the rate of Rs. 2,250 per mensem with effect from 24th March, 1962, together with the pension that he had earned as member of the Indian Administrative Service. Though this petition has been pending since December, 1966, no return has been filed despite the order of Narula, J. dated 25th April, 1968, that the return must be furnished within ten days and the case be set down for hearing on 17th May, 1968. Mr. K.R. Mahajan has, however, appeared on behalf of the State to oppose this petition. He has defended the action of the State solely on the ground that it is in accordance with the instructions contained in Government of India''s letter (annexure K), dated 4th October, 1965, to which reference has already been made.

7. It is well-settled, and this fact is not disputed, that executive instructions do not have the force of law nor can they be given effect to in derogation of the statutory provisions or rules and regulations applicable to a case. It is conceded that the instructions contained in this letter of the Government of India have no statutory force, and the Respondent''s learned Counsel has solely relied upon them as an authoritative interpretation of the relevant regulations by the Government of India.

8. The short question for consideration in this case is whether there is anything in regulation 5 of the Punjab Public Service Commission (Conditions of Service) Regulations, 1958, which admittedly govern the Petitioner''s pay; to entitle the State to deduct anything on account of death-cum-retirement gratuity from his salary as Chairman of the Commission or to withhold the pension to which he has been held entitled on his retirement from the Indian Administrative Service. Under this regulation, ordinarily the Chairman of the Punjab Public Service Commission is entitled to receive Rs. 2,250 as his monthly salary. Exception is, however, made in the case of an incumbent of that office if at the time of his appointment he is still in Government service. Proviso (1) to this regulation 5(1) provides that if the Chairman or a Member of the Commission at the time of his appointment is a retired Government servent, then either his pension shall be held in abeyance or his

remuneration shall be decreased to the extent of his pension. In other words, it means that if a retired Government servent is appointed as Chairman, he can draw his fixed full salary of Rs. 2,250 throughout the term of his office, but in that case his pension for the period he serves on the Commission is not to be paid to him or his pay is reduced by the amount of the pension drawn by him. This clearly indicates that if a retired Government servant is appointed as Chairman, he cannot draw anything more than the maximum salary of Rs. 2,250 fixed for the Chairman under this regulation.

9. Proviso 2, on which reliance is placed on behalf of the State, relates to the case of an officer who has not retired from service but while continuing in Government service is appointed as Chairman or a member of the Punjab Public Service Commission. Under this proviso the Chairman is entitled to receive not the fixed salary of Rs. 2,250 but the last salary which he was drawing in his own grade on the date of his appointment plus Rs. 200 as additional pay subject to the condition that his total monthly salary in no case shall exceed Rs. 2,250. Again, the intention clearly is that the Chairman shall not receive anything more than the maximum salary fixed in the opening part of Regulation 5(1).

10. It is not disputed on behalf of the Petitioner that in accordance with proviso (2) he was drawing his salary as Chairman of the Punjab Public Service Commission up till 24th March, 1962, when he retired from the Indian Administrative Service.

11. None of the three provisos, however, covers the Petitioner''s case. There is nothing in regulation 5 or in any other regulation of the Punjab Public Service Commission (Conditions of Service) Regulations, 1958, which regulates the emoluments or salary of a Government official who retires from his parent department while still serving as a member or Chairman of the Commission. In order to determine whether the Petitioner was entitled to receive the full salary of Rs. 2,250 per mensem after his retirement from the Indian Administrative Service, we have to see if there is anything in these regulations, which entitles the Government to deduct any amount equivalent to death-cum-retirement gratuity from his salary or to withhold the payment of the pension that he has earned. Admittedly, there is no provision in these Regulations that specifically empowers the Government to make such deductions or to keep the payment of his pension in abeyance. At the most all that can be said on behalf of the State is that the intention, as can be gathered from the various provisos to regulation 5(1), is that no Chairman of the Punjab Public Service Commission shall receive anything in excess of the maximum salary of Rs. 2,256 fixed under the Regulations except where he was drawing more prior to the commencement of these regulations. That may be the intention, but the question is whether such an intention has been expressed in the Regulations. The answer to this question is clearly in the negative. Had the intention been that a member from services who retires from parent service during the term of his office as Chairman as Member of the Punjab Public Service Commission

should not receive his pension and should be subjected to deduction of an amount equal to death-cum-retirement gratuity so long as he continues to service in the Commission, I fail to see why this could not be specifically stated in these Regulations. The proviso to a substantive provision is generally in the nature of an exception, and it is well-settled that it must be strictly construed. Reference in this connection may be made to Bindra''s book on the Interpretation of Statute, Third Edition (1961), where it is stated at page 45:

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. There is no magic in the words of a proviso. The proper way to regard a proviso is as a limitation upon the effect of the principal enactment....When the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment so as to exclude from it by implication what clearly falls within its express terms.

A proviso is to be strictly construed, and it has no existence apart from the provision which it is designed to limit or qualify. Generally speaking, a proviso is intended to restrain the enacting clause and to except something which would have otherwise been within it or in some measure to modify the enacting clause. It is a rule of interpretation that the appropriate function of a proviso is to restrain or modify the enacting clause, or preceding matter, and it should be confined to what precedes unless the inception that it shall apply to some other matter is apparent.

12. Applying this rule of interpretation to Regulation 5, the conclusion is obvious that the salary which Chairman of the Punjab Public Service Commission is entitled to draw is Rs. 2,250 and no deduction from this amount can be made except in cases clearly falling under the three provisos to regulation 5 and to the extent stated therein. As has been observed earlier, none of the provisos to regulation 5 covers the Petitioner''s case so as to justify the impugned action of the Government. Admittedly, there is no other regulation which entitles the (Government to withhold the Petitioner''s pension for the period during which he served as Chairman of the Punjab Public Service Commission after his retirement from the Indian Administrative Service. Similarly, there is no specific authority conferred on the Government to deduct anything from his fixed salary of Rs. 2,250 on account of the benefit to which the Petitioner is entitled on his retirement by way of gratuity. It may be casus omissus but that would not alter the situation. In fact, so far as the death-cum-gratuity benefit is concerned, no deduction on that account can be made even in cases falling under the various provisos to Regulation 5. Learned Counsel for the State has not been able to support the impugned order of the Government except by reference to the instructions contained in the Government of India''s letter (annexure K). As has been observed earlier, executive instructions do not have the force of law, and any action taken thereon, if it is contrary to or unwarranted by the provisions of law must be struck down. I, accordingly, accept the petition and

order that the necessary writ shall issue directing the Punjab State to pay the amount that it has deducted as equivalent of death-cum-retirement gratuity from the Petitioner''s salary as Chairman of the Punjab Public Service Commission since 24th March. 1962, and also the pension which has been held in abeyance since that day. In the circumstances of the case, I, however, leave the parties to bear their own costs.