

Before : J. V. Gupta, C.J. & M. S. Liberhan, J.

HARCHARAN SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 3920 of 1990.

11th April, 1990.

Pepsu Service Regulations, 1952—Rl. 2.28, Appendix I—Inferior servant—Post of teacher—Whether can be included in this definition.

Held, that in the list of appointment classed as inferior, post of a Teacher does not find mention. Consequently, a person appointed Teacher cannot be said to be holding a post as inferior servant.

(Para 5)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that:—

- (i) the records of the case may kindly be summoned;
- (ii) issuance of a writ in the nature of Mandamus directing the respondents to allow the petitioner to continue upto the age of 60 years in service i.e. upto 31st March, 1992;
- (iii) issuance of a further writ of Mandamus that during the pendency of the writ petition, retirement of the petitioner may kindly be stayed. If the respondents are not restrained from retiring the petitioner he will suffer irreparable loss, injury and manifest injustice;
- (iv) sending of advance notices to the respondents may kindly be dispensed with;
- (v) filing of certified copies of the Annexures may also kindly be dispensed with as the same are not readily available with the petitioner;
- (vi) this writ petition be allowed with costs; and
- (vii) Any other writ, order/direction which this Hon'ble Court may deem fit in the circumstances of the case be also passed.

It is further prayed that during the pendency of the writ petition retirement of the petitioner be stayed in the interest of justice.

Ashok Sharma, Nabhewala, Advocate, for the Petitioner.

None, for the State.

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ORDER

M. S. Liberhan, J.

(1) The short question raised in this Writ Petition is what should be the age of retirement on superannuation of the petitioner who was employed as a Teacher in Erstwhile State of Pepsu, i.e. whether it is 60 years or 58 years.

(2) The facts are not in dispute. The petitioner joined the service of the Pepsu State on April 17, 1950 in place of one Arjan Singh who had retired on attaining the age of superannuation at the age of 55 years. The date of birth of the petitioner is April 1, 1932. According to the Service Book, his date of appointment is April 29, 1950. The petitioner continued working at various posts when Pepsu merged into State of Punjab with effect from November 1, 1956.

(3) The charter of the claim of the petitioner is that the petitioner was governed by Rules and Regulations of Erstwhile State of Pepsu known as Pepsu Civil Service Regulations and belonged to the inferior service as envisaged by the Regulations. Under Rule 2.28 of the Pepsu Service Regulations, 1952, the age of superannuation for retirement of a person holding the post categorised as inferior post within meaning of Pepsu Service Regulations was 60 years. In view of Section 115 of the State Reorganisation Act, 1956, the condition of service with respect to his age for superannuation cannot be changed i.e. reduced to 58 years.

(4) We have gone through the Writ Petition as well as the Rules and Regulations.

(5) Rule 2.28 of the Pepsu Service Regulations, 1952 (hereinafter referred to as Pepsu Regulations) defines 'Inferior Servant' to mean a Government Servant included in the list given in Appendix-I. In the list of appointment classed as inferior, post of a Teacher does not find mention. Consequently, a person appointed Teacher cannot be said to be holding a post as inferior servant. We have put to the learned counsel for the petitioner repeatedly to show any Rules, Regulations or other provisions wherein the post of Teacher has been categorised as inferior post in the Pepsu Cadre. He has been unable to show any such provisions. Specifically in the Appendix mentioned above enumerating inferior posts the post of Teacher is not included as an inferior post. There is no dispute that the age of retirement of persons holding posts other than the

inferior posts under Pepsu Regulations was 55 years which has subsequently been raised to 58 years after merger of Pepsu with the State of Punjab. No doubt in view of the provisions of section 115 of the State Reorganisation Act, 1956, the petitioner enjoys the protection against change in the conditions of his service, but learned counsel for the petitioner has miserably failed to point out in the course of arguments that in Pepsu State the age of superannuation for retirement of employees of the class to which the petitioner belongs was ever 60 years.

(6) Learned counsel for the petitioner referred to Regular Second Appeal No. 902 of 1964 (*State of Punjab v. Bachan Singh Driver*, decided on November 30, 1965) and Regular Second Appeal No. 1355 of 1974, decided on September 1, 1981. *Bachan Singh's case* (supra) was a case relating to a Driver who was found to be a Class IV Servant by the trial Court as well as by the appellate Court, and the same finding was affirmed by the High Court. In view of the fact that the Driver was treated as Class IV employee of Pepsu, it was found that he held the inferior class post as envisaged by the Pepsu Regulations. Consequently, he was entitled to continue in service up to the age of 60 years. The post of the Driver has been specifically mentioned in the list of appointments classed as inferior services shown in Appendix-I. The post of Driver being inferior class post was never in dispute before the High Court. Precedent cited is *pari materia* neither on facts nor on law involved in the case in hand. Similarly, in the other case, the claimant was holding the post of Carpenter which was admittedly a Class IV post and categorised as an inferior post. Re-designation of post was found to be of no consequence and retirement age of 60 years was held to be a condition of service protected by section 115 of the State Reorganisation Act, 1956. Again, the facts and the law laid down therein are totally irrelevant to the controversy in hand.

(7) Learned counsel for the petitioner referred to *Udham Singh Bhatti v. State of Punjab and another* (1), wherein the learned Judge found that *prima facie* for the purpose of granting stay during the pendency of the Writ Petition, the petitioner was holding an inferior post as envisaged by the Regulations and no findings were given as such. We fail to understand how it is a precedent, what point of law is laid down in this authority and how it is relevant to the controversy in dispute.

(1) 1990(1) R.S.J. 34.

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(8) In view of the fact that the petitioner does not belong to an inferior class of service envisaged by the Pepsu Service Regulations, 1952, his age of retirement cannot be taken to be 60 years. The submission that the age of retirement of the petitioner being a Teacher is 60 years, is bereft of any logic or reasoning particularly when the contrary inference can be drawn from the letter of appointment, Copy Annexure P2, by which the petitioner was appointed against the post of one Arjan Singh in the grade of Rs. 40-7-60 per month on the latter's retirement on attaining the age of 55 years.

(9) In view of the above observations, we find no force in the Writ Petition. The same is dismissed, with no order as to costs.

P.C.G.

Before : J. V. Gupta, C.J. and M. S. Liberhan, J.

AMARJIT SINGH KALEKA,—Appellant.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 766 of 1985

10th July, 1990.

Demobilized Armed Forces personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules, 1968—R. 5—Punjab Reorganisation Act, 1966—S. 82—Seniority—Benefit of military service—Assumed date of seniority—Retrospective effect of 1968 rules with effect from 1st November, 1966—Proper—Petitioner entitled to fixation of seniority from a deemed date.

Held, that on reading of Rule 5 of Demobilized Armed Forces personnel (Reservation of vacancies in the Punjab State Non-Technical Services) Rules, 1968 it is obvious that a concession has been given to the persons who have offered their lives in the service of the Nation and a plain reading of the Rule empowers the State Government to fix the year of allotment retrospectively even prior to the date of coming into force of the Rules. The Rule provides that a "deeming date" of allotment of a year of recruitment has to be given to the persons in terms of Rule 5 which is a