
Act, it is not necessary for us to go into the other questions raised in this petition.

(9) The writ petition is accordingly allowed. The impugned award of the Labour Court is set aside. In the circumstances of the case, there will be no order as to costs.

J.S.T.

Before Hon'ble G. S. Singhvi & N. K. Sodhi, JJ.

PARDUMAN SINGH,—Petitioner.

versus

THE STATE OF PUNJAB & ANOTHER,—Respondents.

C.W.P. No. 15842 of 1993

The 7th September, 1994.

Constitution of India, 1950—Arts. 226/227—Grant of pre-mature increment to those who attended duty on 8th February, 1978—Vide circular pre-mature increment denied to those who were on suspension on day of strike—Petitioner on suspension during that period—However reinstated with full back wages thereafter—Denied benefit of pre-mature increment—Petitioner employee held not entitled to grant of pre-mature increment—Circular upheld.

Held, that the intention of the Government in issuing Annexure P. 5 was to give benefit to those who had in fact attended their duties punctually despite the fact that there was a call for strike by the non-gazetted employees. A person, like the petitioner, who was under suspension on 8th February, 1978 and who was subsequently exonerated in the departmental enquiry as a result of which his period of suspension was treated as spent on duty, cannot claim that he had attended the office by countering obstruction from his co-employees. For the purpose of grant of pay and other service benefits, he may notionally be treated on duty but it is not possible to accept the contention of the learned counsel for the petitioner that he should be deemed to have physically attended his duties. Infact, the suspension itself envisages a situation where an employee is kept away from his actual duties. The very object of suspension is to prevent an employee from holding the office during the period of suspension. Therefore, an employee, like the petitioner, who could not have been physically present on duty during the period of suspension, cannot subsequently claim that he should be deemed to be physically on duty on 8th February, 1978 merely because an

order has been passed by the competent authority treating his period of suspension as spent on duty.

(Para 7)

Further, held that we have carefully gone through the order passed by a learned Single Judge on 22nd January, 1990 in *Kuldip Singh's case* (supra). The learned Judge has held that suspension of an employee is ordinarily not penal in character but if the employee is deprived of monetary benefits the suspension becomes penal. The learned Judge has further held that once the suspended employee is reinstated he shall be deemed to have been continuing in service and is, therefore, entitled to all benefits which other employees had drawn during the period of his suspension. The learned Judge also held that since the respondents had deprived the petitioner of an opportunity of non-participation in the strike and prevented him from exercising that option by placing him under suspension, he cannot be made to suffer for the wrong committed by the respondents. We are unable to agree with the views expressed by the learned Single Judge. As already held above, reinstatement of an employee from suspension after exoneration in a departmental enquiry no doubt entitles him to be treated in service for grant of pay, allowances and other benefits but even in such cases the Government has the power to deny payment of full pay and allowances where it finds that the employee was gainfully employed during the period of suspension. That apart, an order treating the period of suspension as one spent on duty has the effect of notionally continuing the employees in service for grant of various service benefits. That cannot, however, be stretched to mean that the employee was physically present on duty and had in fact attended the office during the period of suspension. The learned Single Judge has not referred to the object with which the Government of Punjab had issued the circular letter dated 6th February, 1978 for grant of pre-mature increment to the employees. The learned Single Judge has failed to take note of the fact that grant of pre-mature increment was a sort of reward to the employees who had attended their duties on the day of strike. Grant of such a concession to the employees cannot be placed at the pedestal of legal right vesting in the employees. Therefore, the learned Single Judge was not right in holding that by denial of pre-mature increment to a suspended employee the Government had visited such an employee with penalty.

(Para 8)

I. S. Rangpuri, Advocate, for the Petitioner.

A. K. Walia, A.A.G. Punjab, for the Respondent.

JUDGMENT

G. S. Singhvi, J.

(1) The petitioner, who retired from service in November, 1989, on attaining the age of superannuation, has filed this writ petition for issue of a writ of *mandamus* directing the respondents to grant him

pre-mature increment with effect from 8th February, 1978 in terms of Annexure P.5. He has also made a prayer for quashing Annexure P.6 by which the Government has decided not to grant the benefit of the aforesaid pre-mature increment to an employee who was under suspension on 8th February, 1978.

(2) In brief, the facts of the case are that while the petitioner was holding the post of Superintendent in the Colonization Department, Government of Punjab, he was placed under suspension,—*vide* order dated 11th October, 1977 (Annexure P.1) issued by the Director, Colonization, Punjab, A departmental enquiry was initiated against him under rule 4 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. After considering the report of the Enquiry Officer, the disciplinary authority passed the order dated 11th May, 1981 (Annexure P.3) and exonerated the petitioner. *Vide* order dated 22nd May, 1981 (Annexure P.4) the disciplinary authority directed that the period of suspension, with effect from 11th October, 1977 to 23rd August, 1978, be treated as period spent on duty 1 per cent cut imposed on the pay of the petitioner was restored.

(3) In the year 1978 employees of the Government of Punjab resorted to mass strike. However, some employees attended their duties. In order to give additional benefit to such employees. The Government of Punjab took a policy decision to grant one pre-mature increment to those employees who were on active duty on 8th February, 1978 and also to give them a letter of appreciation. This policy decision has been placed on record as Annexure P.5. On account of some controversies, a clarificatory letter dated 6th January, 1979 (Annexure P-6) was issued by the Government whereby amongst other things it clarified that an official who was under suspension on 8th February, 1978 shall not be entitled to the benefit of the said pre-mature increment. Petitioner has claimed that this decision of the Government is arbitrary and unreasonable because once the Government has treated the period of his suspension as spent on duty he will be deemed to have been on active service on 8th February, 1978 and will, therefore, be entitled to the grant of benefit of pre-mature increment. This plea is that by Annexure P.6 an arbitrary discrimination has been practised by the Government *qua* the employees who were under suspension on the relevant date.

(4) Respondents have rebutted the claim of the petitioner by asserting that the benefit of the premature increment was given to those employees who had attended their duty on 8th February, 1978

and an employee who was under suspension cannot be treated to have attended his duty. Their plea is that the object of grant of premature increment was to give incentive to the employee who had not participated in the strike and had attended their duties in opposition to the call of strike.

(5) Learned counsel for the petitioner has argued that with the passing of the order at Annexure P-4 the disability attached to the petitioner stands removed and, therefore, for all purposes the petitioner will be deemed to have been on active duty on 8th February, 1978. Learned counsel argued that respondents cannot take benefit of their own wrong, namely, by first placing the petitioner under suspension and then not treating him on duty even though he was ready and willing to serve the Government. Learned counsel argued that if the petitioner had not been suspended he would have certainly attended his duties on 8th February, 1978 and, therefore, Annexure P.6 issued by the Government of Punjab denying the benefit of pre-mature increment to an employee who was under suspension should be declared as arbitrary and unconstitutional. He relied on an order dated 22nd January, 1990 passed by a learned Single Judge in C.W.P. No. 2511 of 1987 (*Kuldip Singh v. The State of Punjab and others*). Learned Assistant Advocate-General argued that the very object of the grant of a pre-mature increment was to give an additional advantage to those employees who had weathered opposition from their co-employees and attended their duties. He argued that this was a sort of reward to those who remained loyal to the Government and who had discharged their duties in public interest. He further argued that a person who was under suspension cannot be deemed to have been physically on active duty merely because at a subsequent point of time his suspension is revoked and he is treated on duty by virtue of exoneration in the departmental enquiry.

(6) We have thoughtfully considered the matter and perused the record of the case. Relevant portion of Annexure P.5 dated 16th February, 1978 reads as under :—

“Subject : Grant of benefits to the employees who did not participate in the strike on 8th February, 1978.

No. 550-3GP-78/3379, dated the 6th February, 1978.

Vide instructions noted in the margin, the Punjab Government employees were cautioned not to resort to strike on 8th

February, 1978, as the Government was already considering their demands and had already extended certain concessions. In spite of this, certain section of non-gazetted employees resorted to strike on 8th February, 1978. *On the other hand, a large number of non-gazetted employees did not observe the strike and in fact attended their offices punctually even though, in several cases, they countered obstruction to such attendance. In appreciation of this gesture of discipline which is essential for smooth functioning of public administration, Government have decided to extend the following benefits to those non-gazetted employees of the Punjab Government who did not participate in the strike on 8th February, 1978 :—*

- (i) They will be granted one premature increment in the scale of pay in which they were working on 8th February, 1978 by operation of rule 4.10 of the Punjab Civil Services Rules, Volume I, Part I. This increment will be effective from the 8th February, 1978 and will not disturb the date of normal increment which would be admissible on the due date.

The above decision regarding the grant of premature increment will not be applicable to those who reached the maximum of the scale of pay before 8th February, 1978. Further the grant of this premature increment will not mean the crossing of Efficiency bar automatically. In other words in cases where the grant of the aforesaid premature increment would involve crossing of efficiency bar it will be released only after the formal decision in the prescribed manner in regard to the crossing of efficiency bar is taken.

AND

- (ii) A letter of appreciation may be issued to all such employees who did not resort to strike on 8th February, 1978 by the appointing authority concerned in the enclosed form."

(7) By Annexure P.6 some points raised by various departmental authorities have been clarified and at item No. (v) of this document the Government has clarified that benefit of premature increment is

not to be given to an employee who was under suspension on 8th February, 1978. A cumulative reading of the two documents (Annexures P.5 and P.6) makes it clear that the employees of the Government of Punjab had resorted to strike on 8th February, 1978 even though the Government was considering their demands and had, in fact, accepted some of them. A section of the employees did not participate in the said strike and in fact attended their duties. Some of them were obstructed by the striking employees from attending the office. Notwithstanding the opposition, they did perform their functions on that particular day. In order to give reward to those employees the Government decided to give one premature increment to them and also to give them a letter of appreciation. The intention of the Government in issuing Annexure P.5 was to give benefit to those who had in fact attended their duties punctually despite the fact that there was a call for strike by the non-gazetted employees. A person, like the petitioner, who was under suspension on 8th February, 1978 and who was subsequently exonerated in the departmental enquiry as a result of which his period of suspension was treated as spent on duty, cannot claim that he had attended the office by countering obstruction from his co-employees. For the purpose of grant of pay and other service benefits, he may notionally be treated on duty but it is not possible to accept the contention of the learned counsel for the petitioner that he should be deemed to have physically attended his duties. In fact, the suspension itself envisages a situation where an employee is kept away from his actual duties. The very object of suspension is to prevent an employee from holding the office during the period of suspension. Therefore, an employee, like the petitioner, who could not have been physically present on duty during the period of suspension, cannot subsequently claim that he should be deemed to be physically on duty on 8th February, 1978 merely because an order has been passed by the competent authority treating his period of suspension as spent on duty.

(8) We have carefully gone through the order passed by a learned Single Judge on 22nd January, 1990 in *Kuldip Singh's case* (supra). The learned Judge has held that suspension of an employee is ordinarily not penal in character but if the employee is deprived of monetary benefits the suspension becomes penal. The learned Judge has further held that once the suspended employee is reinstated he shall be deemed to have been continuing in service and is, therefore, entitled to all benefits which other employees had drawn during the period of his suspension. The learned Judge also held that since the respondents had deprived the petitioner of an opportunity of non-participation in the strike and prevented him from exercising that

option by placing him under suspension, he cannot be made to suffer for the wrong committed by the respondents. We are unable to agree with the views expressed by the learned Single Judge. As already held above, reinstatement of an employee from suspension after exoneration in a departmental enquiry no doubt entitles him to be treated in service for grant of pay, allowances and other benefits but even in such cases the Government has the power to deny payment of full pay and allowances where it finds that the employee was gainfully employed during the period of suspension. That apart, an order treating the period of suspension as one spent on duty has the effect of notionally continuing the employees in service for grant of various service benefits. That cannot, however, be stretched to mean that the employee as was physically present on duty and had in fact attended the office during the period of Suspension. The learned Single Judge has not referred to the object with which the Government of Punjab had issued the circular letter dated 6th February, 1978 for grant of premature increment to the employees. The learned Single Judge has failed to take note of the fact that grant of premature increment was a sort of reward to the employees who had attended their duties on the day of strike. Grant of such a concession to the employees cannot be placed at the pedestal of legal right vesting in the employees. Therefore, the learned Single Judge was not right in holding that by denial of premature increment to a suspended employee the Government had visited such an employee with penalty.

(9) For the aforesaid reasons, we do not find any merit in the writ petition which is hereby dismissed.

J.S.T.

Before Hon'ble R. P. Sethi & Sat Pal, JJ.
SURINDER SINGH BANGAR.—Appellant.

versus

THE UNION OF INDIA AND ANOTHER.—Respondents.

L.P.A. 503 of 1989.

26th September, 1994.

Letters Patent Appeal. 1919—Clause X—Promotion Policy para 12.2. as per Bank Circular—Appellant put in five years of service—Minimum eligibility criteria in terms of years of service for promotion is five years—Whether appellant entitled to promotion—Held.