

Before :—*Jawahar Lal Gupta, J.*

PURAN SINGH,—*Petitioner.*

*versus*

THE POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH CHANDIGARH AND ANOTHER,—*Respondents.*

*Civil Writ Petition No. 3778 of 1985.*

13th September, 1991.

*Central Civil Service (Pension) Rules, 1972—Rl. 74—Age of superannuation—Employee completing 58 years—Order of retirement not passed within prescribed period—Does not affect age of superannuation—Purpose of such orders is to make public or Government officers aware of factum of retirement.*

*Held, that an officer/employee retires automatically on attaining the age of superannuation. Unless there is a specific rule permitting continuance in service beyond the age of superannuation and unless an order is passed by the competent authority under that rule, the retirement on attaining the age of superannuation is automatic.*

(Para 9)

*Held further, that rule 74 does not operate to automatically extend the service tenure of a government employee. The rule does not mean that till a retirement is notified or an order is issued, the officer continues in service. The purpose of the rule in my view is only to make the public or the Government officers aware of the factum of retirement. The rule does not confer any right on the civil servant. In my view, the petitioner cannot derive any benefit from this rule. As a consequence, the petitioner shall be deemed to have continued to serve in the Institute till September 30, 1984 when he attained the age of 58 years.*

(Paras 11 & 13)

*Ind Amended Civil Writ Petition under Articles 226/227 of the Constitution of India praying that after summoning the complete records of this case :—*

- (a) *A writ of Certiorari, quashing the adversely affecting part of the impugned orders at Annexures P-34 and P-35 be kindly issued.*
- (b) *The authorities be kindly directed to release arrears of salary from 1st April, 1982 to date till the retirement orders are passed with prospective date.*

- (c) *The authorities be kindly directed to consider the case of the petitioner and grant him benefits of Selection Grade and promoted posts of Deputy Superintendent and Superintendent from the dates mentioned in the petition.*
- (d) *The authorities be kindly directed to pay interest at the rate of 18 per cent P.A. from the date of arrears of salary/other benefits of any kind were withheld till the date their payment is made in favour of the petitioner.*
- (e) *Since this is a case of extreme harassment to the petitioner and he has been kept under constant mental tension/torture for about a decade and the arbitrary actions of the authorities have left the petitioner a skeleton and the petitioner has become mentally perturbed, this Hon'ble Court in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, be kindly pleased to order the grant of exemplary damages in favour of the petitioner so that the authorities may not repeat this instance with any other employee of the Institute.*
- (f) *The authorities be kindly directed to make the payments of the above arrears of salary/benefits etc. within a shortest period of about one month so that the petitioner may see the face of his entitled wages alongwith interest during his life period.*
- (g) *The authorities be also kindly directed to release the pensionary benefits immediately within one month they pass the prospective orders alongwith all pensionary benefits such as death-cum-retirement gratuity etc. without attaching any stipulation/condition in this behalf.*
- (h) *Any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may be issued.*
- (i) *Filing of certified copies of the Annexures P-1 to P-37 and service of prior notices to the respondents be kindly dispensed with.*
- (j) *This writ petition may kindly be accepted with costs.*

K. L. Arora, Advocate with R. K. Gautam Advocate, for the petitioner.

D. S. Nehra with Mr. Arun Nehra, S. S. Rathore, Advocates, for Respondent No. 1.

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**JUDGMENT**

*Jawahar Lal Gupta, J.*

The petitioner, who appears to have been originally working in the Education Department, was appointed in the Post-graduate Institute of Medical Education and Research (hereinafter referred to as 'the Institute') on October 5, 1966. This appointment was made on the recommendations of the Punjab Subordinate Services Selection Board. *Vide* orders dated April 12, 1982, the Institute ordered the reversion of the petitioner to the Education Department, Haryana, Chandigarh. The petitioner was relieved of his duties on May 3, 1982. The order of reversion appears to have been passed on the ground that the petitioner was a permanent employee of the Haryana Education Department. The petitioner challenged this order of reversion in the Court of Senior Subordinate Judge, Chandigarh. The suit was decreed on August 30, 1984. It was held that the petitioner was a permanent employee of the Institute and that his reversion was wholly illegal. The appeal filed by the Institute was dismissed by the District Judge, Chandigarh on September 8, 1986.

(2) In pursuance of the judgment of the Civil Court, the petitioner was relieved by the Haryana Education Department on September 27, 1984. He submitted his joining report at the Institute on September 28, 1984. His joining report was not accepted and the petitioner was called upon to submit a certified copy of the judgment. Ultimately, after a lapse of fairly long time, the Director of the Institute passed an order, dated August 12, 1987, to the following effect :—

“It has been decided that Shri Puran Singh, Assistant is to be treated as an employee of this Institute as per order of the Court and stands retired from service with effect from 30th September, 1984. He may, therefore be :—

- (i) paid provisional pension equal to the maximum which would have been admissible on the basis of qualifying service upto the date of retirement under rule 9 and Rule 69 of the C.C.S. (Pension) Rules, 1972;
- (ii) Death-cum-Retirement Gratuity will be payable after the conclusion of the proceedings and issue of final orders under Rule 69 (i) (c) of C.C.S. (Pension) Rules.

(iii) The official will not be entitled to apply for commutation of the provisional pension until the conclusion of the proceedings and issue of final orders under Rule 4 of the C.C.S. (Commutation of Pension) Rules.

(iv) Leave encashment may be allowed after obtaining no dues certificate as there is no possibility of Government money becoming recoverable from Shri Puran Singh on conclusion of the proceedings under Rule 39(3) of the C.C.S. (Leave) Rules.

(v) Dues of salary/wages for duty period or sanctioned leave for the period prior to 30th September, 1984 may also be paid after getting no dues certificate."

(3) Thereafter, in continuation of the above,—*vide* orders, dated August 27, 1987 (Annexure P. 35), it was ordered that "the interest on the delayed payment of death-cum-retirement gratuity will be admissible only if Shri Puran Singh, Retired Assistant is exonerated on the conclusion of the proceedings as per Government orders contained in Rule 68 of C.C.S. (Pension) Rules, 1972."

(4) The petitioner avers that the Director of the Institute has no jurisdiction to retire him retrospectively. He further claims the arrears of salary, pension, gratuity and further promotions etc. with effect from the date the persons junior to him were promoted.

(5) In the written statement filed on behalf of the respondents, it has been *inter alia* averred that under Rule 56 (a) of the Fundamental Rules and Regulation 37(i) of the PGIMER Regulations, 1967, the age of superannuation is 58 years. It is averred that in view of these provisions, the petitioner stood automatically retired with effect from September 30, 1984, when he attained the age of 58 years. It has been further averred that the Institute is not responsible for the salary for the period from May 4, 1982 to September 27, 1984 when the petitioner was actually working with the Education Department. It has also been averred that the case of "notional promotion of the petitioner to the post of Deputy Superintendent and for the grant of selection grade in the cadre of Assistant will be considered on completion of the departmental proceedings. No person junior to the petitioner was promoted to the post of Superintendent before 30th September, 1984, i.e. the date on

which the petitioner stood retired from service." It has been further averred that a charge-sheet had been issued to the petitioner on August 5, 1978 which had been withdrawn on May 17, 1979. Thereafter, a fresh charge-sheet had been issued on May 18, 1979. The enquiry proceedings were still pending and in view thereof, commutation of pension and payment of gratuity could not be allowed. It is broadly on the above premises that the claim of the petitioner has been contested.

(6) The petitioner has filed a replication, in which it has been *inter alia* averred that the petitioner has not been paid any salary by the Haryana Government after his reversion to the Education Department in the year 1982. Furthermore, it has been stated that the order of retirement has to be duly passed and notified, and since no order had been passed till the year 1987, the petitioner should be deemed to have continued in service and deserved to be granted all consequential benefits.

(7) I have heard Mr. K. L. Arora, learned counsel for the petitioner and Mr. Arun Nehra for the respondents. Mr. Arora has contended that the petitioner had factually continued in service till August 12, 1987 when the order at Annexure P. 34 was passed. On this basis, it has been argued that he should be deemed, to have been in the employment of the Institute till that date and all service benefits should be granted to him on that basis. It has been further claimed that the petitioner has a right to be considered for promotion with effect from the date persons junior to him were granted the selection grade and further promoted to the rank of Deputy Superintendent and Superintendent. Further, the petitioner has claimed all retiral benefits with interest at the rate of 18 per cent per annum. On the other hand, Mr. Arun Nehra, learned counsel for the respondents has contended that under the rules, an employee retires automatically on attaining the age of superannuation. Consequently the petitioner should be deemed to have retired with effect from the date he had actually attained the age of 58 years. The other claims made by the petitioner have also been controverted. Mr. Nehra also pointed out that the enquiry proceedings against the petitioner had been dropped more than a year back.

(8) The first contention raised by Mr. Arora is that there can be no order of retrospective retirement. He has placed reliance on Rule 74 of the Central Civil Service (Pension) Rules, 1972 to contend

that unless the date of retirement is duly notified or an office order is issued, the officer/employee continues in service.

(9) After hearing learned counsel for the parties, I am of the view that an officer/employee retires automatically on attaining the age of superannuation. Unless there is a specific rule permitting continuance in service beyond the age of superannuation and unless an order is passed by the competent authority under that rule, the retirement on attaining the age of superannuation is automatic. In the present case, no rule permitting continuance in service beyond the age of superannuation has been brought to my notice. Mr. Arora submits that the rules permit re-employment/extension in service beyond the age of retirement. No such order has been produced. In the absence of a specific rule and order, I am of the view that the employee shall be deemed to have retired on the date he attains the age of superannuation. Consequently, the action of the respondents in treating the petitioner as having retired from service with effect from September 30, 1984, to my mind, is wholly unassailable.

(10) Mr. Arora, however, relies on Rule 74 of the Pension Rules. This rule reads as under :—

*"74. Date of retirement to be notified :—*

When a Government servant retires from service :—

- (a) a notification in the official gazette in the case of a Gazetted Government servant, and
- (b) an office order in the case of a non-gazetted Government servant shall be issued specifying the date of retirement within a week of such date and a copy of every such notification or office order, as the case may be, shall be forwarded immediately to the Accounts Officer :

Provided that where a notification in the official Gazette or an office order, as the case may be, regarding the grant of leave preparatory to retirement to a Government servant is issued, a further notification or office order that the Government servant has

actually retired on the expiry of such leave shall not be necessary unless the leave is curtailed and the retirement is for any reason ante-dated or postponed."

(11) In my view, this rule does not operate to automatically extend the service tenure of a government employee. The rule does not mean that till a retirement is notified or an order is issued, the officer continues in service. The purpose of the rule in my view is only to make the public or the Government officers aware of the factum of retirement. The rule does not confer any right on the civil servant. In my view, the petitioner can not derive any benefit from this rule.

(12) The petitioner's claim for the arrears of salary from the year 1982 to September 30, 1984 has to be allowed. He had not drawn any salary from the Education Department. Arrears for the period from May 4, 1982 to September 30, 1984 have to be paid to the petitioner. Equally well merited is the petitioner's claim for consideration for promotion, etc. with effect from the date a person junior to him was promoted.

(13) As a consequence, the petitioner shall be deemed to have continued to serve in the Institute till September 30, 1984. All consequential benefits arising from this, namely, the payment of arrears of salary, the consideration for the grant of promotions with effect from the date/dates a person junior to him was promoted, commutation and release of pension and gratuity shall also follow. Since all benefits were withheld from May 1982 till now for no fault of the petitioner, he will be entitled to the payment of all those dues alongwith interest at the rate of 15 per cent per annum. All monetary dues of the petitioner, viz. arrears of salary, pension, Death-cum-Retirement, Gratuity, Leave encashment, etc. as also the difference in pay which may become due on account of the grant of promotion etc. shall be paid to the petitioner with interest at the rate of 15 per cent per annum within three months from the date of the receipt of a copy of this order by the Institute. The petitioner is also held entitled to his costs, which are assessed at Rs. 3,000.

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J.S.T.