



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1405 of 2017

Reserved on : 13.11.2024

Date of Decision: 09.12.2024

B.S. Danewalia (since deceased) through LR

.....Appellant

Versus

State of Punjab and Ors

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Sandeep Kumar, Advocate for the appellant.

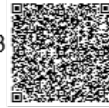
Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J

1. The present Letters Patent Appeal cast under Clause 10 of the Letters Patent, 1894, is preferred against the judgment dated 25.04.2017 passed by the learned Single Judge of this Court in CWP-4756-1999, whereby the claim of the appellant for re-fixation of his pay and pension to the post of Director General of Police, Punjab, which was created in place of the Inspector General of Police, Punjab, by the Government of India, rather was rejected.

Factual Background

2. The facts leading to the present appeal in nutshell, are that, the appellant was serving as the Inspector General of Police, Punjab w.e.f 20.07.1977. At that time, there was only one post of Inspector General of Police and he was



then the Head of the Police force in the State of Punjab. His pay scale was Rs.2500-2750 with special pay of Rs.250/- per month. On 20.02.1980, the Akali Government in the State of Punjab was dismissed and the appellant was sought to be transferred from the post of Inspector General of Police to a non-cadre post. Therefore, to register his protest, the petitioner proceeded on leave in preparation to his retirement, and took premature retirement w.e.f 05.06.1980. At that time, his pay scale was Rs.2500-2750/- with special pay of Rs.250/- per month and dearness allowance of Rs.350/-, thus making the total emoluments in the sum of Rs.3225/- per month.

3. It is the case of the petitioner that till the retirement of the petitioner, other forces such as CBI, BSF etc were headed by Director General of Police, whereas, the head of the State Police Force was called Inspector General of Police. In the year 1982 i.e after the retirement of the petitioner, the post of Director General of Police/Inspector General of Police, was introduced vide notification dated 16.07.1982. One Mr. Birbal Nath of 1951 Batch IPS, who during the phase of the appellant serving in the Punjab Police rather was junior to the petitioner, but yet he became designated as Director General of Police. The petitioner further claimed that if he had continued in service and would have reached the age of normal superannuation i.e 58 years as on 03.08.1983, therebys he would have been the first Director General of Police in the State of Punjab.

4. With effect from 01.01.1986, the pay of the Director General of Police/Inspector General of Police was revised to Rs.7600-8000 and further qua the post of Inspector General of Police, prescribed pay scale was Rs.5900-6700. On 10.02.1988, the respondents revised the pension of the appellant w.e.f 01.01.1986 and fixed the pension of the petitioner in the pay scale of Rs.5900-6700 considering the appellant to be Inspector General of Police, whereas, his pay should have been fixed to the corresponding pay scale of Rs.7600-8000 qua the



post of Director General of Police/Inspector General of Police. Though, the petitioner submitted a representation in this regard but the same was rejected.

5. Therefore, the appellant filed the supra writ petition before this Court, which however was dismissed vide impugned judgment dated 25.04.2017.

6. Hence the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT

7. Learned counsel representing the appellant contends, that vide notification dated 16.07.1982 (Annexure P-1), the post of Inspector General of Police was substituted/upgraded by the post of Director General of Police/Inspector General of Police and therefore, his post was equivalent to the post of Director General of Police. Pursuant to the said Notification, one Birbal Nath-junior of the appellant was designated as Director General of Police, whereas, the appellant who would have retired on reaching the age of 58 years thus on 03.08.1983 but would have been the first Director General of Police, being the head of the State Police Service as the Inspector General. He contends that the pension of the appellant has wrongly been fixed by the respondents and the findings recorded by the learned Single are not based upon a correct appreciation of the material on record.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS

8. Opposing the prayer, learned counsel appearing for the respondent submits, that the claim of the appellant has rightly been rejected. It is contended that Sh. S.N. Mathur, IPS and Sh. Harjit Singh, IPS (Punjab 1949), who were senior to the appellant retired respectively on 31.12.1982 and 30.11.1983 and the one of supra officers would have been designated as Director General of Police/Inspector General of Police, given theirs being senior to the appellant. The appellant was not in service when Sh. Birbal Nath was posted on 10.09.1980 as Director General of Police/Inspector General of Police. It is pointed out that the



Government of India, Ministry of Personnel Public Grievances & Pensions, Department of Personnel & Pensioners Welfare, New Delhi vide their letter dated 10.02.1998, had directed that the pension of all pre-1986 retirees may be updated by notional fixation of pay as on 01.01.1986, by adopting the same formula as for the serving employees and accordingly the petitioner, who retired as Inspector General of Police on 05.06.1980 in the pay scale of Rs.2500-125/2-2750, thus his pay was notionally fixed as on 01.01.1986 @ Rs.6100/- in the pay scale of Rs.5900-200-6700, which was the conversion of pay scale of Rs.2500-125-2-2750. In terms of the said notional fixation of pay scale of the present appellant, his pension was accordingly also fixed.

9. The gravamen of the grievance of the present appellant, is that, the notional fixation of the pay of the present appellant, was made in the pay scale appertaining to the post of Inspector General of Police, whereas, the notional fixation of his pay, was required to be made against the post of Director General of Police. Consequently, in short the prima facie effect thereof but is that, the corresponding fixation of pension of the present appellant, thus concomitantly also suffers from a grave and pervasive legal fallacy.

10. We have heard learned counsel for the parties and perused the entire record of this case.

CONCLUSIONS OF THIS COURT:

11. The relevant portion of the judgment dated 25.04.2017 passed by the learned Single Judge is reproduced as under :

“I am of the view that the post of the petitioner held by him in the rank of Inspector General of Police at the time of his retirement on 5.6.1980 cannot be equated for the purpose of grant of re-fixation of pay and pension to the post of Director General of Police, which was created in place of Inspector General of Police by the Government of India vide notification dated 16.7.1982 (Annexure P1). It also comes out that the petitioner was not the only Inspector General of Police at the time of



retirement and there were two ex-cadre post also. The petitioner was in fact sought to be posted on non ex-cadre post when he sought premature retirement in protest. Therefore, it is not necessary that the petitioner must have been holding the cadre post of Director General of Police when the same was substituted for Inspector General of Police on 16.7.1982. He could have also been posted on the post of Inspector General of Police on non-cadre post. Therefore, the plea of learned counsel for the petitioner that he being head of the police should be equated to the post of Director General of Police is not acceptable. It also comes out that some posts of Inspector General of Police were created later on in the year 1986. However, for the purpose of fixation of pay and pension, the post held by the petitioner at the time of retirement is to be seen along with his grade and the equivalent grade w.e.f. 1.1.1986 is to be given which has been correctly given in the present case. Therefore, the petitioner is not entitled to fixation of pay in the grade of Director General of Police w.e.f. 1.1.1986 as claimed by him.

Consequently, the present writ petition is found to be without any merits and the same is dismissed accordingly.”

12. Before proceeding any further, it would be apt to reproduce the Notification dated 16.07.1982, which read as under:

**“Published in Part II Section 3(i) of Gazette of India
EXTRA ORDINARY DATED 16TH JULY 1982
No.11052/1/82-AIS(II)-8
Government of India/Bharat Sarkar
Ministry of Home Affairs/Girh Mantralaya
Department of Personnel & Admn Reforms
(Karmik Aur Prashashik Sudhar Vibhag)**

New Delhi the 16th July 1982

Notification

G.S.R. 499 (E).... In exercise of the powers conferred to sub section (1) of Section 3 of the All India Service Act, 1951 (61 of 1951) read with rule 11 of the Indian Police Service (Pay) Rules, 1954, the Central Government after consultation with the Governments of the States concerned, hereby makes the following rules further to amend the Indian Police Service (Pay Rules, 1954, namely:

1. xxxx xxx
2. In the Indian Police Service pay (Rules), 1954 in schedule III, under the heading “A posts carrying pay above the time scale pay of the Indian Service under the State Government”, in the table:
 - (a) against the entry Assam-Meghalaya securing in the first column, for the corresponding entries in the second and third columns “Inspector General of Police-2500-125/2-27 the following entries shall be substituted namely:
“Director General and Inspector 3000/-
General of Police, Assam

2500-125/2-2750”

“Director General/ and Inspector General of Police

3000/-”

Deputy Secretary in the Govt of India

XXXX

XXX

Deputy Secretary to the Government of India.

$$X_{xx}$$

XXXXXX

XXXX”

b) At the time of coming into being of Annexure P-1, the present petitioner who had sought pre mature retirement on 05.06.1980 was not the only Inspector General of Police nor he could have legitimately expected, even when he would have normally superannuated on 03.08.1983 i.e at stage when the Notification supra was in vogue, thus to adorn the post of Director General of Police, Punjab. The reasons for stating so became groomed in the fact that at that time two other officers namely, Sh. S.N. Mathur, IPS and Sh. Harjit Singh, IPS thus were seniors



to the present appellant and thereby they were in the reckoning or were in the front line, than the present appellant was at the stage supra rather for being considered for being promoted to the upgraded post of DGP, Punjab.

14. That the petitioner was serving on a non-cadre post, thereby when he was thus rendering service on a non-cadre post whereby effectively his right if any to seek, even if assumingly retrospective effect becomes assigned to Annexure P-1, whereby post of Inspector General of Police, Punjab became upgraded/substituted to the post of Director General of Police, rather thereby yet became declared in the impugned verdict, to be disentitling the present appellant to seek re-fixation of his pay in the grade of Director General of Police w.e.f 01.01.1986.

REASONS FOR THIS COURT ALLOWING THE PRESENT APPEAL AND FOR DISCONCURRING WITH THE IMPUGNED VERDICT RENDERED BY LEARNED SINGLE JUDGE

15. The aforesaid reasons assigned by the learned Single Judge of this Court to decline the relief to the present appellant are dis-concurred with, thus on the hereinafter premises:

i) Insofar far as the supra ground relating to the fact that no retrospectivity was assignable to Annexure P-1 whereby the post of Inspector General of Police, Punjab, became substituted to the post of Director General of Police though appears to be impressive on the facade but the gloss of the said argument, looses its shine, thus for the reason that (a) since this Court in the judgment reported in **Agia Ram and others vs. Union of India and Others, 2012**

(1) SCT 540, relevant paragraphs 4 & 5 whereof become extracted hereinafter:

“4 From the aforesaid facts, it is clear that the post of Mistry-cum-Supervisor has acquired new name of Junior Engineer-II, which was also in the same scale of ` 1400- 2300, in the pre-revised pay scale. However, the case of the respondent was that on the restructuring the pay scale granted to the post of Junior Engineer-II because it would be available only to the Mistry-cum-Supervisor who are



working as such and has enjoyed the designation of Junior Engineer- II.

5. Having heard learned counsel for the parties, we are of the considered view that once the post of Mistri-cum- Supervisor has acquired a new nomenclature and it has also been given higher scale of pay then the cosmetic cover which has been put forward by the respondent cannot be permitted to hide the real face of the erstwhile Mistri/ supervisor. For all instants and purposes, they would all be treated as Junior Engineer-II. Once the pay scale of the post of Mistri/ supervisor is deemed to be revised then their pension is also be required to be re-fixed w.e.f. 1.11.2003.”

16. When has categorically expostulated therein, the principle that even when a post is substituted and though on the date of upgradation of the post, the person who were earlier adorning the post, which subsequently became upgraded but had retired, on such substitution/upgradation taking place, yet the benefit of the subsequently upgraded post but cannot be snatched from those persons who were earlier thereto adorning the apposite post concerned, that is, of the Inspector General of Police. In other words, it has been expounded therein, that the benefit of upgradation of post, but is to be assigned to the person concerned, who were earlier holding the post which subsequently became upgraded but irrespective of the fact that they had retired from the post, which subsequently became upgraded. The effect of the above is that, even if the present appellant had sought pre-mature retirement on 05.06.1980, but yet in case if he had not sought pre-mature retirement and would have been normally superannuated on 03.08.1983, that is the date, when the post of Inspector General of Police, which he was earlier occupying, thus subsequently became upgraded on 16.07.1982, qua the fullest beneficent effect of the upgradation of the said earlier post of Inspector General of Police, to the post of Director General of Police, but was prima facie to be assigned to the present appellant, thus irrespective of the fact that he had taken pre-mature retirement. Importantly when, if he would have normally



superannuated on 03.08.1983 that is the year, when the Notification was brought into force therebys he would have adorned the post of Director General of Police. If this view is not taken by the said Court therebys the apposite fortuitous circumstance, inasmuch the appellant earlier taking pre-mature retirement but would unnecessarily snatch from the present appellant the benefit of the upgradation of the post of Director General of Police, especially when at the time of his normally superannuating in the year 1983, the Notification supra was in force. Therefore, to undo the ill effects if any of the abovesaid fortuitous circumstances, rather not untenably impeding the present appellant from receiving the fullest grace of Annexure P-1, thereupons this Court is required to be declaring that the Notification supra was thus to the assigned fullest effectivity to the present appellant.

ii). Now coming to the grounds/reasons as taken in the impugned judgment that in case, present appellant had continued to serve the Punjab Police upto the stage when he would have normally superannuated on 03.08.1983, therebys also, since then there were two seniors above the present appellant namely, Sh. S.N. Mathur, IPS and Sh. Harjit Singh, IPS and who would have respectively superannuated on 31.12.1982 and on 30.11.1983, therebys only to the supra the benefit of the upgradation of the apposite post was required to be bestowed. Therefore, therebys the benefit of upgradation of the post of Inspector General of Police to that of Director General of Police was not to be bestowed upon the present appellant. In sequel, the present appellant was not entitled to his pension being fixed w.e.f 01.01.1986 as became claimed and which claim became rejected.

17. However, since it is not controverted by the respondents that one Birbal Nath was admittedly a junior to the present appellant, who however became designated as Director General of Police, Punjab, therebys it appears that the



respondents’ claim qua the supras were seniors to the present appellant, and they would have been the front runners, for being considered to be appointed as Director General of Police, Punjab, but naturally thus loosing all its force. Contrarily and when admittedly, when a junior supra became appointed to the upgraded post of Director General of Police, therebys if the present appellant had not sought pre-mature retirement and would have served till 03.08.1983 i.e his normal date of superannuation, thereupon when he would have been appointed to the upgraded post of Director General of Police from the earlier post of Inspector General of Police, which he had earlier held. Resultantly, therebys the apposite benefit cannot be snatched from him, thus merely on flimsy supra premises.

18. The above inference would be in complete alignment with the expostulation of law supra as carried in the verdict supra, especially when the said expostulation of law for all the supra stated reasons, becomes applicable to the fullest vis-a-vis the facts at hand, which are naturally similar to the facts enunciated in verdict supra.

19. Now the respondents have contended and so also in the impugned order it is declared that since the present appellant was holding an ex-cadre post, therebys the said fact becoming the ground for declining the claimed retrospective relief to the present appellant.

20. However even the reason supra for declining the writ relief to the present appellant is liable to be interfered with, thus in the light of the IPS (Pay) Rules, 1954, apposite Rule 9(2) whereof become extracted hereinafter:

“9(1) xxx xxxx
9(2) *The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled to, had he been pointed to the post under a body incorporated or not, which is wholly or substantially controlled by the Government.*
9(3) to 9(7) xxx xxxxx”



21. It categorically underlined therein that even when any officer is appointed on an ex-cadre post, thereupon he is entitled to equivalent pay, perks and status of the cadre post. Therefore, even if the present appellant was holding an ex cadre post at the time when he sought his voluntary retirement yet when in terms of the above hereinabove extracted rules, he became entitled to all the pay, perks and status attaching to the cadre post i.e Inspector General of Police, Punjab. Resultantly, therebys even if the present appellant, thus earlier was adoring an ex cadre post, yet the said fact was not required to work as an obstacle against his claiming the benefits of the abovesaid post becoming upgraded to the post of Director General of Police, especially when he would have normally superannuated at the stage, when the Notification was in vogue, whereupon he would have prima facie been appointed as the Director General of Police, Punjab.

22. As a sequel to what has been stated above it is sufficient to hold that the impugned judgment dated 25.04.2017 passed by learned Single Judge suffers from a perversity and the same is accordingly set aside.

23. Petition stands allowed in the above terms and accordingly, the respondents are directed to re-fix the pensionary benefits vis-a-vis the present appellant w.e.f 01.01.1986 along with interest @ 6 % per annum.

(Sureshwar Thakur)

Judge

(Sudeepti Sharma)

Judge

December 9th, 2024

manoj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No