

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15239-2023 (O&M)

Reserved on 21.09.2023

Date of Decision:03.10.2023

JUSTICE DAYA CHAUDHARY

(Former Judge, Punjab and Haryana High Court)

.....Petitioner

V/s.

**UNION OF INDIA, MINISTRY OF CONSUMER AFFAIRS, FOOD &
PUBLIC DISTRIBUTION, DEPARTMENT OF CONSUMER AFFAIRS,
THROUGH ITS SECRETARY AND OTHERS**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Ms. Kushaldeep Kaur, Advocate,
for Mr. Gurminder Singh, Senior Advocate,
for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India, assisted by
Ms. Neha Sharma, Advocate,
for the respondent-UOI.

Mr. Navdeep Chhabra, Senior DAG, Punjab.

Mr. Veena Bhardwaj, Registrar,
State Consumer Disputes Redressal Commission, Punjab.

SANJEEV PRAKASH SHARMA, J.

1. The petitioner is a retired Judge of this Court and has preferred this Writ petition for issuance of a writ in the nature of *certiorari* for quashing of the impugned letter dated 16.05.2023 whereby the claim of the petitioner for granting the benefit of amended Rule 10 of the Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of the President and Members of the State Commission and District Commission) Rules, 2020 (hereinafter referred to as "the Rules of 2020") has been denied **AND** for issuance of a writ in the nature of *mandamus* directing the respondents to make necessary modification in the order of appointment/notification dated

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13.08.2021 (Annexure P-2) issued to the petitioner in consonance with the amended Rule 10 of 2020.

2. The brief facts of this case which need to be noticed are that the petitioner, who is a retired Judge of the Punjab and Haryana High Court, was appointed as the President of the State Consumer Disputes Redressal Commission (hereinafter referred to as “State Commission”) on 13.08.2021. Her appointment order reflects that she was appointed as President of the State Commission in terms of the Rules of 2020 notified under the Consumer Protection Act, 2019 (hereinafter referred to as “the Act of 2019”) on whole time basis for a term of 4 years, or till she attains the age of 65 years, whichever is earlier, from the date she assumes the charge of the post.

3. In terms of the said order, she joined on 13.08.2021 and presently holding the charge of the President of the State Commission.

4. Rule 10 of the Rules of 2020 provides as under: –

“10. Term of office of President or Member:—

*The President and every member of the State Commission and the District Commission shall hold office for a term of four years or up to the age of sixty-five years, whichever is earlier and shall be eligible for reappointment for another term of four years subject to the age limit of **sixty-five years**, and such reappointment is made on the basis of the recommendation of the Selection Committee.”*

5. Learned counsel for the petitioner has stated that the qualifications, procedure of appointment, terms of office, reservation and removal of the President and Members of the State Commission, was

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governed by the provisions of the Consumer Protection Act, 1986 (hereinafter referred to as “the Act of 1986”) wherein as per Section 16(3), the term of office of the President and the Members of the State Commission was 5 years or upto the age of 67 years, whichever is earlier. The Act of 1986 was repealed by the Act of 2019 which was brought into force w.e.f. 20.07.2020. Section 43 of the Act of 2019, empowered the Central Government to make the Rules by notification for laying down the qualifications of the appointment, method of recruitment, procedure of appointment, term of office, reservation and removal of the President and Members of the State Commission and accordingly, the Rules of 2020 were framed which provided Rule 10 (Supra), reproduced hereinabove.

6. Learned counsel for the petitioner submits that as per Rule 3(1) of the Rules of 2020, a person could be appointed as a President who is or has been a Judge of the High Court. Thus, a sitting Judge or a retired Judge of the High Court is qualified for appointment, and the petitioner who had retired as a Judge of this Court on 09.01.2021, on attaining the age of 62 years, was appointed as a President of the State Commission on 13.08.2021 at the age of 62 years and 7 months. However, it was realized that usually, a retired High Court Judge is appointed and therefore, he or she can never complete 4 years’ tenure as he or she retired as a Judge at the age of 62 years and further it takes some time to be appointed after undergoing the selection process. Thus, an anomaly under the Rules was felt by the Rule making authorities. Further, it was also noticed that the Members of the National Commission had the tenure/term up to the age of 67 years while, the age for the President of the

State Commission is 65 years only. In view thereof, the Central Government amended Rule 10 of the Rules of 2020 vide notification dated 15.09.2022 as under:-

“10. Term of office of President or Member.—

(1) The President of the State Commission shall hold office for a term of four years or upto the age of sixty-seven years, whichever is earlier and shall be eligible for reappointment for another term of four years subject to the age limit of sixty-seven years, and such reappointment shall be made on the basis of the recommendation of the Selection Committee.

(2) Every member of the State Commission and the President and every member of the District Commission shall hold office for a term of four years or upto the age of sixty-five years, whichever is earlier and shall be eligible for reappointment for another term of four years subject to the age limit of sixty-five years, and such reappointment shall be made on the basis of the recommendation of the Selection Committee.”

7. Learned counsel for the petitioner submits that in pursuance of the said amendment made under the notification, a letter was sent by the Registrar of the State Commission to the Principal Secretary to the Government of Punjab, Department of Food, Civil Supplies and Consumer Affairs to make necessary amendments in the appointment order letter issued to the petitioner in conformity with the amendment made in the Rules of 2020. However, the Government of Punjab vide its letter dated 16.05.2023 informed that the terms and conditions provided at the time of appointment of the petitioner shall remain in force and therefore, it refused to make the necessary amendments as prayed for.

8. Learned counsel for the petitioner has also pointed out that after coming into force the amendment of Rule 10 of the Rules of 2020, the Government of Himachal Pradesh has accordingly issued a notification amending the terms of office of the President of the Himachal Pradesh State Consumer Dispute Redressal Commission. Similarly, Maharashtra Government has also issued necessary orders amending the terms of the appointment of the President of the State Consumer Dispute Redressal Commission, Maharashtra in accordance with the amended Rule 10 of the Rules of 2020.

9. Learned counsel for the petitioner submits that once the amended Rule 10 has been substituted with that of the existing Rule 10, the conditions of the earlier Rule cannot be allowed to be enforced or continued.

10. *Per contra*, learned Additional Solicitor General of India has submitted that notification dated 15.09.2022 issued by the Central Government has come into force from the date of its publication and earlier Rule 10 stands already substituted and therefore, all the Presidents of the respective State Commissions would be governed by the terms of the office of President as laid down in the substituted Rule 10 of Rules 2020. Accordingly, the President of the State Commission of Punjab would be entitled to hold office for a term of 4 years or up to the age of 67 years, whichever is earlier.

11. Learned counsel for the State of Punjab submits that the provisions which have come into force by notification dated 15.09.2022 cannot be given retrospective effect and the petitioner, who was appointed on 13.08.2021, would be governed by the terms of the Rules which were existing

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as on the date of her appointment and as per the conditions of advertisement issued at that relevant time. It is submitted that the amendment in question is prospective for future appointments alone and not for the existing appointments.

12. I have considered the submissions of the counsel for the parties.

13. A look at the appointment order of the petitioner as the President of the State Commission, Punjab reflects that the appointment of the petitioner has been made for a period of 4 years or till she attains the age of 65 years, whichever is earlier, from the date she assumes the charge of the post in terms of the Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of the President and Members of the State Commission and District Commission) Rules, 2020 notified under the Consumer Protection Act, 2019. Thus, if the Act or the Rules are amended in favour or in detriment to the conditions of service, the concerned person appointed in terms of the said amended Rules will be governed by the said Rules.

14. Before adverting to the question involved in the present case, it would be apposite to discuss briefly about the judgments cited by the learned counsel for the petitioner in support of his submissions.

15. In the case of **Rajat Baran Roy and Others** Vs. **State of West Bengal;** (1994) SCC 235, a question arose whether the State Government could take recourse to retired Judicial Officers at the age of 58 years, after the retirement which has been increased from 58 to 60 years by the Central



Government OM and issuing of Government order increasing the age of IAS Officers to 60 years. The apex Court has held as under:-

“12. By virtue of the Government Order of the State of West Bengal dated 20.6.1992 when the State Government applied the change in service conditions as per the Office Memorandum dated 15.5.1998 to the members of its services automatically the said change in the age of retirement became applicable to the members of the West Bengal Higher Judicial Service also. In other words, when the retirement age of the officers of the Indian Administrative Service stood extended from 58 years to 60 years, the retirement age of the members of the West Bengal Judicial Service also automatically got extended from 58 years to 60 years. Therefore on and from the above date, the age of superannuation of a member of the West Bengal Higher Judicial Service came to be governed by the above rules. Consequently, the directions including the rider there on issued by this court in the 1993 case ceases to operate. Therefore, in our opinion, the contention of the respondents that the rights of the petitioners to continue in service till the age of 60 years is derived from the directions issued by this Court in the 1993 case, cannot be accepted, and we hold that so far as the members of the West Bengal Higher Judicial Service are concerned, their age of superannuation is 60 years, as contemplated in the Official Memorandum of the Government of West Bengal dated 15.5.1998 as made applicable to the Higher Judicial Service of West Bengal in its order dated 20.6.1992 and the said Office Memorandum and the Government Order having not fixed any pre-retirement assessment at the age of 58, it was not open to the High Court to have recommended the compulsory retirement of the petitioners, following directions of this court which had ceased to exist.”



16. In the case of **Employees State Insurance Corporation** Vs. **Union of India and Others**; (2022) 11 SCC 392, in 2008, the ESIC Recruitment Regulations, 2008 were enforced which provided for promotion from the Assistant Professors to the post of Associate Professor on completion of four years of service. However, ESIC Recruitment Rules, 2015, came into force on 05.07.2015 which stipulated a requirement of 5 years service as Assistant Professor for promotion to the post of Associate Professor. It was contended before the Supreme Court that as the Assistant Professors had joined at the time when their promotions were governed by the ESIC Recruitment Rules, 2008 which provided four years of service for promotion, they should be promoted on completing 4 years of service and the mandate of amended/new Regulations, 2015 of completing 5 years of qualifying service for promotion ought not be applied. The Supreme Court observed that a subsequent amendment to the Recruitment Regulations would override the conditions which have been originally advertised under the advertisement. It also relied on the judgment rendered in the case of **Rajasthan Public Service Commission** Vs. **Chanan Ram**; (1998) 4 SCC 202 and held as under:-

“28. CAT and the High Court failed to notice the applicability of the ESIC Recruitment Regulations, 2015 to the promotions of the Teaching Cadre in the appellant Corporation. The ESIC Recruitment Regulations, 2015 have precedence over the Office Memorandum dated 29-10-2008 which implemented the DACP scheme in respect of officers of the Central Health Service under the Union Ministry of Health and Family Welfare. The concession by the counsel of the appellant before CAT does not

stand in the way of the appellant supporting the correct position of law before this Court.”

17. In **Pepsu Road Transport Corporation, Patiala** Vs. **Mangal Singh and Others**; (2011) 11 SCC 702, the pension regulations and conditions therein were held to be applicable on the employees who were already serving in the Corporation and subscribing to CPF and gratuity scheme.

18. Learned Counsel for the petitioner has referred to the cases of **Zile Singh** Vs. **State of Haryana and Others**; (2004) 8 SCC 1, **Commissioner of Income Tax I, Ahmedad** Vs. **Gold Coin Health Pvt. Ltd.**; (2008) 9 SCC 622 and **Union of India** Vs **V.V.F. Limited and Another**; (2020) 20 SCC 57 to contend that existing provisions may be introduced to clarify or remove an anomaly in the operation of law and such provisions will have a retrospective effect.

19. However, this Court finds that the issue before this Court is only to the effect whether the present amendment substituting the earlier Rule will apply to the existing holders of office or whether the Rule as it was existing on the day when they were appointed, shall govern their terms and conditions of service.

20. In Zile Singh (Supra) the apex Court has held as under:-

“13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is

deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis' ___ a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole. (ibid, p.440)

14. *The presumption against retrospective operation is not applicable to declaratory statutes. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended ... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (ibid, pp.468-469).*

15. *Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the*

legislature had sufficiently expressed that intention giving the Statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p.392).”

21. Applying the said principles, it is apparent that the present amendment is a substitution of the original Rule and it shall come into effect from the date it has come into force. Thus, from the date it has come into force, the terms and conditions of the President and Members of the State Commission shall be governed by the substituted provisions. The earlier provision which provided the term of office to and on attaining the age of 65 years or four years on the post, whichever is earlier, is no more part of the statute.

22. The word “substituted” used in the Rules of 2022, in ordinary course of language, would mean **to replace word or phrase or sentence by another**. As per the Cambridge Dictionary, “substitute” means **to use something or someone instead of another thing or person**. Thus, the earlier Rule 10 which was existing in the statute namely the Rules of 2020 stands replaced by the new Rule. The earlier Rule will no more be in existence, e.g. if a Coach of a Team is substituted by another Coach, in such circumstances, the previous Coach will have no say with regard to the team performance after the new Coach has been assigned against him. Similarly, the terms and conditions for office tenure of the President and Members, which were

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existing prior to notification dated 15.09.2022, shall have no further relevance or existence after coming into force of the terms of office of the President and Members as substituted by the new Rule 10. In fact, even if the State Government does not issue the orders correcting the age of the President or the Member in terms of the new Rule 10, their terms shall be in accordance with new Rule 10.

23. The interpretation of the Rule can also be understood by another example that suppose, if by way of an amendment, the age is decreased and tenure is also decreased, whether the concerned person holding the post can claim continuance of appointment on the basis of his original terms of appointment which provided for longer tenure or longer age as the case may be. The answer is “NO”. The appointment on a particular post is essentially governed by the Rules and the appointment order cannot be said to be a separate term of contract and it cannot be enforced *dehors* the existing amended Rules and therefore, the tenure would relate to the Rule governing the post as amended from time to time, unless the language of the Rule provides otherwise.

24. Having analyzed as above, this Court concludes that the action of the respondents in interpreting Rule 10 of the Rules of 2022, as amended by amendment which has come into force w.e.f. 15.09.2022, is wholly misconceived and erroneous. Therefore, letter dated 16.05.2023 issued by the Principal Secretary, Department of Food, Civil Supplies & Consumer Affairs has no legal sanctity and the same deserves to be quashed. This Court further finds that the said letter stated to be on the approval of the competent authority

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also goes contrary to the opinion placed on record by the petitioner sent by the Principal Secretary, Department of Legal and Legislative Affairs, Punjab. Accordingly, it is held that the terms of office of the President and Members, who are holding the post at present or who may hold the post in future, shall be governed by the amended Rule 10 of the Rules 2020.

25. Accordingly, this Writ Petition is **allowed** and it is directed that the respondents shall issue orders in accordance with Rule 10 of the Rules of 2020 as amended on 15.09.2022, and the petitioner, who is holding the post of the President of the State Commission, shall continue to hold office for a term of four years or upto the age of 67 years, whichever is earlier. The respondents would be obliged to allow her to continue on the post accordingly.

26. All pending applications in this Writ Petition shall stand disposed of accordingly.

3rd October, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

Whether speaking / reasoned : Yes / No
Whether Reportable : Yes / No