

**HARYANA PUBLIC SERVICE
COMMISSION**

Cases referred:

1. 1967 Service Law Reporter 1 – Marvyn Continho Vs. Collector of Customs, Bombay
2. 1967 Services Law Reporter 632 – Roshan Lal Tandon Vs. Union of India
3. 1972 Services Law Reporter 79 – S.M. Pandit & Anr. Vs. State of Gujarat & Ors.
4. 1974(1) Services Law Reporter 470 – Ramachandra Shanker Doodhar & Ors. Vs. State of Maharashtra & Ors.
5. 1982 (1) SCC 618 – Randhir Singh Vs. Union of India

ORDER

While effecting appointments of member of a Public Service Commission, it is imperative to ensure that as nearly as may be half of the members of the Public Service Commission are such, who at the time of their appointment, have rendered government service for a period of at least ten years. The aforesaid mandate is contained in the proviso under Article 316(1) of the Constitution of India. It is, therefore, apparent that Article 316 of the Constitution of India classifies members of the Public Service Commission under two broad heads, one being those members of the Public Service Commission who have rendered government service for a period of ten years to their appointment; and that other are those members who have not rendered the contemplated length of service under the government at the time of their appointment.

Every State Government has the power to make regulations for determining the conditions of service of the members of the Public Service Commission. The aforesaid power flows to the State Government under Article 318 of the Constitution of India. Article 218 of the Constitution of India is being extracted hereunder:-

“318. Power to make regulations as to conditions of service of members and staff of the Commission:-

In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may be regulations:-

- a. Determine the number of members of the Commission and their conditions of service; and

- b. Make provision with respect to the number of members of the staff of the Commission and their conditions of service;

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment”

In exercise of powers vested under Article 318 of the Constitution of India, the Haryana Government framed the Haryana Public Service Commission (Conditions of Service) Regulations, 1973 (hereinafter referred to as the 1973 Regulations). Regulation 6 of the 1973 regulations is relevant for the present controversy and is, therefore, being extracted hereunder:-

“6. Pay

- (1) The Chairman shall receive a remuneration of seven thousand rupees in a month and each of the other members a remuneration of six thousand rupees a month. They shall also be entitled to such other allowance as may be admissible in future from time to time, to government employees drawing the same pay in addition to four hundred rupees a month as car allowance, provided a car is maintained.
- (2) Chairman or the Member, if at the time of his appointment as such, is a retired Government employees, he will be entitled to the remuneration in sub-regulation (1) in addition to the pension sanctioned to him.

Provided that the amount of remuneration plus the gross amount of pension or the pension equivalent to other forms of retirement benefits does not exceed the pay last drawn by him before his retirement or the remuneration mentioned in sub-regulation (1) whichever is higher.

Provided further that the total remuneration plus the gross of pension and the pension equivalent to other forms of retirement benefits, excluding the allowances, shall in no case exceed eight thousand rupees per month.

3. The Chairman or the member who at the time of his appointment as such, is in the service of the Central or State Government and does not exercise option under sub-regulation

(1) of regulation 9 shall be paid the remuneration drawing by him immediately before his appointment as Chairman or Member as the case may be or the remuneration mentioned in sub regulation (1) whichever is higher, till the date of his retirement from Government service in the normal course and thereafter his remuneration shall be regulated as provided in sub regulation (2).

4. A member who in the absence of the Chairman on leave or otherwise is asked to perform the additional duties of the Chairman, shall be entitled to an additional remuneration at the rates of two thousand rupees a month;

Provided that such additional duties are performed for a period of not less than fourteen days.

The petitioner in the instant case has inter alia impugned the constitutional validity of the first proviso under Regulation 6(2) of the said regulations. The petitioner has impugned the order dated 22.4.1995, whereby the State Government, while fixing the remuneration payable to the petitioner, ordered deduction of pension payable to him (on account of the service rendered by him under the Government as well as deductions of pension equivalent to Death-cum-Retirement gratuity paid to him for service rendered by him under the government) from the remuneration fixed under Regulations 6(1) of the 1973 Regulations while determining the remuneration payable to him”.

In order to determine the validity of the impugned order dated 22.5.1995, it is necessary first to notice certain factual details connected with the claim of the petitioner. In this behalf, it would be pertinent to mention that the petitioner was appointed as a Member of the Haryana Public Service Commission on 6.7.1994. Prior to his aforesaid appointment, he was holding the post of Deputy Commissioner, Panipat. Consequent upon his aforesaid appointment as a member of the Haryana Public Service Commission, he was deemed to have retired from the Indian Administrative Service for which he was a member before his appointment as a member of the

Haryana Public Service Commission with effect from the forenoon of 6.7.1994. It is also pertinent to mention that the petitioner had rendered more than ten years service under the government prior to his appointment as member of the Haryana Public Service Commission.

The petitioner's emoluments had to be fixed in terms of Regulation 6 of the 1973 Regulations (extracted above). Regulations 6(1) of the 1973 Regulations mandate that a member of the Public Service Commission shall be entitled to a monthly remuneration of Rs.6000/-. In addition thereto he would also be entitled to allowances as may be admissible from time to time to Government employees, besides a sum of Rs.450/- per month as Car allowance (if he maintains a car). It is clearly expressed under Clause (2) of Regulation 6 of the 1973 Regulations that the aforesaid remuneration of Rs.6000/- per month etc. would be in addition to the pension payable to him on account of his earlier appointment under the government i.e. pension to which he had become entitled to prior to his appointment as a member of the Public Service Commission.

The main controversy in the instant case, however, revolves around the interpretation of the first proviso under Regulation 6(2) of the 1973 Regulations. The first proviso under Regulations 6(2) of the 1973 Regulations envisages two categories. The first category comprises of members of the Public Service Commission, who prior to their appointment were drawing wages in excess of the remuneration stipulated under Regulations 6(1) of the 1973 Regulations. The second category is referable to member of the Public Service Commission, who prior to their appointment as members of the Public Service Commission (i.e. while in Government service), were drawing wages at a level lower than the remuneration prescribed for a member of the Public Service Commission under Regulation 6(1) of the 1973 Regulations.

For the first category (noticed in the foregoing paragraph), the first proviso requires that a member who was drawing a higher wage prior to his appointment as a member of the Public Service Commission than the one stipulated under Regulation (1) of the 1973 Regulations, shall not be entitled to carry home emoluments in excess of the wage that was being drawn by him

while in government service. In other words, the condition of his earlier employment prior to his appointment as a member of the Public Service Commission (relatable to wages) is sought to be protected with the condition, that the remuneration payable to him under Regulation 6(1) of the 1973 Regulations when added to the retiral benefits payable to him in lieu of the government service rendered by him would not exceed the last wage drawn by him while in government service. This stipulation under the first proviso to Regulation 6(2) of the 1973 Regulations, is allegedly referable to the proviso under Article 316 of the Constitution of India, which envisaged that the conditions of service of the members of the Public Service Commission cannot be varied to the disadvantage of those, who were earlier in government service. The controversy in hand is primarily aimed at determining whether the first proviso is aimed at protecting and preserving the wage drawn by a member under the Government prior to his appointment as a member of the Public Service Commission, in terms of the mandate of Article 318 of the Constitution of India.

For the second category (noticed in the paragraph preceding the foregoing paragraph), the first proviso to Regulation 6(2) of the 1973 Regulations requires, that if a member of the Public Service Commission was drawing a wage as a government employee, at a level lower than the remuneration envisaged under Regulation 6(1) of the 1973 Regulations, he shall, consequent upon his appointment as a member of the Public Service Commission, draw the remuneration determined under Regulation 6(1) of the 1973 Regulations. The aforesaid stipulation contained in the first proviso under Regulation 6(2) of the 1973 Regulations, does not violate the mandate of the proviso under Article 318 of the Constitution of India since such a member would obviously draw emoluments at a level higher than the wages drawn by him under the government.

In so far as validity of the first proviso under Regulation 6(2) of the 1973 Regulations, the contention of the learned Counsel for the petitioner is that the earlier employment rendered by a person similarly situated as the petitioner, does not have any nexus with the duties and responsibilities he is required to discharge as a Chairman/member of the Public Service

Commission. It is, therefore submitted that he is entitled to be paid for the duties as discharge, by disregarding the emoluments payable to him on account of the service rendered by him under the Government, just like the other members of the Public Service Commission. Inviting the attention of the court to Article 14 and 16 of the Constitution of India, and Article 39(a) and (d) thereof, it is submitted that the remuneration as a member of the Public Service Commission, the only aspect which must be kept in mind is the duties and responsibilities which the member is required to discharge. It is contained that any thing other than the aforesaid consideration would be extraneous to the issue. Additionally it is submitted that there can be no discrimination in so far as emoluments payable to members of the Public Service Commission are concerned, by classifying members of the Public Service Commission into two categories (as indicated in the opening paragraph of the instant judgment). Any discrimination on the basis of the aforesaid classification, according to learned counsel would violate the principle of equal pay for equal work. In this behalf it is pointed out that the rule of equal pay for equal work came to be recognised by the Supreme Court in *Randhir Singh Versus Union of India* 1982 (1) SCC 618, wherein the Apex Court concluded that the same flows from Articles 14, 16 and 39(a) and (d) of the Constitution of India.

So as to canvass the claim of the petitioner for remuneration payable to the members belonging to the category envisaged by the proviso under Article 316(1) of the Constitution of India, namely those who have been employed under the Government for at least ten years, learned counsel for the petitioner has invited this Court's attention to the decisions rendered by the Apex Court in *Marvyn Continho Versus Collector of Customs, Bombay* 1967 Services Law Reporter 1, *Roshan Lal Tandon Versus Union of India* 1967 Service Law Reporter 632, *S.M.Pandit and another versus State of Gujarat and others* 1972 Services Law Reporter 79 and in *Ramchandra Shanker Doodhar and others Versus State of Maharashtra and others* 1974 (1) Services Law Reporter 470. In all the aforesaid judgments, the Apex Court evaluated the rights of the concerned officers/officials for onward promotion. The cadre posts (in the cases referred to above) from

which further promotions were sought, were manned by appointments made by way of direct recruitment and also by way of promotion from the feeder cadres. For further promotion the rules permitted promotion only to direct recruits. In other words the feeder cadre was classified into two categories, one comprising of promotees and the other comprising of direct recruits, direct recruits alone to the exclusion of promotees were eligible for further promotion. In the absence of any distinction (between the promotee members of the cadre and the direct recruits in the same cadre) based on the duties which the two categories were required to discharge; the classification based on their origin which disentitled promotees from further promotion, was held to be violative of Article 14 and 16 of the Constitution of India in the cases referred to above. Based on the aforesaid conclusion, it is the contention of the learned counsel for the petitioner, that irrespective of their origin or the broad category to which they belong (as indicate in the opening paragraph of this judgment), no member of the Public Service Commission can be paid less than the remuneration stipulated under Regulation 6(1) of the 1973 Regulations. In this behalf, it is pointed out that all the members of the Haryana Public Service Commission discharge the same functions. Additionally it is pointed out that the Public Service Commission functions as a collective body and the duties assigned to the members of the Commission are also interchangeable irrespective of the source of their appointment. In the absence of any material placed on the record of this case, depicting any justifiable distinction between the two categories, the statutory regulation which envisages lower emoluments for one category of members, in comparison to higher emoluments payable to other members, would be violative of Article 14 and 16 of the Constitution of India read with Article 39(a) and (d) thereof.

Through the instant order, it is proposed to dispose of seven writ petitions, including Civil Writ Petition Nos.4029 of 1987, 11835 of 1989, 1355 of 1991, 2898 of 1992, 13298 of 1995 and 5353 of 2000. In all the writ petitions, the challenge is as against the constitutional validity of the first proviso under Regulation 6(2) of the 1973 Regulations. The validity of the first proviso shall have to be evaluated separately for the two categories involved namely the first category comprising of members of the Public Service Commission, who prior to their

appointment were drawing wages in excess of the remuneration fixed under Regulation 6(1) of the 1973 Regulations; and the second category comprising of members who prior to their appointment fixed drawing wages at a level lower than the remuneration fixed under Regulations 6(1) of the 1973 Regulations.

The petitioner in the instant case was drawing a wage under the government which has less than the remuneration stipulated under Regulations 6(1) of the 1973 Regulations. It is not a matter of dispute that the duties and responsibilities discharged by the members of the Commission ir-respect of their source of appointment are the same. It is also not a matter of dispute that duties assigned to the members of the Commission recruited from the two broad sources expressed in Article 316(1) of the Constitution of India are inter changeable. It is, therefore, inevitable to conclude that the members of the Public Service Commission cannot justifiably classified on the basis of the duties and responsibilities assigned to them. The Apex Court in *Marvyn Continho's* case (supra), *Roshan Lal Tandon's* case (supra), *S.M.Pandit's* case (supra) and in *Ramchandra Shankar Doodhar's* case (supra) has repeatedly concluded that the source of recruitment of an incumbent cannot be basis of a valid classification. The written statement filed on behalf of the respondents does not disclose any justification on the basis of which different members of the Public Service Commission can be paid different levels of remuneration. Thus viewed, it is imperative to conclude that the impugned order which required the petitioner in the instant case *Ram Phal Singh* to be paid remuneration laws then the one stipulated under Regulation 6(1) of the 1973 Regulations, violates the principle of equal pay and equal work. In this behalf it would be pertinent to mention that while calculating the emoluments payable to the petitioner, deduction of pension payable to him (on account of service rendered by him under the government) as well as deduction of pension equivalent to Death-cum-Retirement Gratuity paid to him (for service rendered by him under the Government) are being made from the stipulated remuneration of Rs.6000/- under Regulation 6(1) of the 1973 Regulations. The aforesaid deductions comprising of pension, as well as pension equivalent to Death-cum-Retirement Gratuity, constitute earnings of the petitioner in lieu of the service rendered by him under the government. The action of

making the instant deductions amounts to depriving the petitioner of his existing rights, prior to his appointment as a member of the Public Service Commission. The aforesaid earnings are not relatable to the duties and responsibilities which a member of the Public Service Commission discharge as a member of the Public Service Commission. It is wholly unreasonable to make the aforesaid deductions from the remuneration of the petitioner because the aforesaid payments have no nexus to the duties and responsibilities of the petitioner as a member of the Public Service Commission. The only issue relevant for determining the emoluments payable to the members of the Public Service Commission is the duties and responsibilities discharged by them as members of the Public Service Commission. All the members of the Public Service Commission discharge the same duties collectively as a unified body and the duties and responsibilities of the members of the Public Service Commission are inter-changeable, there can, therefore, be no justification to pay them differently for the duties discharged by them. In view of the above, it is natural to conclude that the first proviso under Regulation 6(2) of the 1973 Regulations which envisages a stipulation wherein a number of the Public Service Commission fixed under Regulation 6(1) of the 1973 Regulations, is clearly ultra vires the provision of the Constitution of India, and is therefore liable to be set aside and is accordingly set aside. The petitioners and others who were drawing wages under the government at a level less than the remuneration under Regulation 6(1) of the 1973 Regulations (prior to their appointment as members of the Public Service Commission), are hereby held to be entitled to the remuneration fixed under Regulation 6(1) of the 1973 Regulations, without any deduction therefrom.

In so far as the first category namely members of the Public Service Commission who were earlier employees under the Government and were drawing wages in excess of the remuneration under Regulation 6(1) of the 1973 Regulations, is concerned, they are entitled to the constitutional protection envisaged by the proviso under Clause (b) of Article 218 of the Constitution of India. There is an obvious justification for the aforesaid, namely had such members of the Punjab Public Service Commission continued to discharge duties under the government they would have continued to draw wages in excess of the remuneration stipulated under Regulation 6(1) of the 1973 Regulations. So as to ensure that the best available talent would

readily accept membership of the Public Service Commission, it was imperative to ensure that they would not suffer any monetary loss by accepting the instant assignment. The proviso under Clause (b) of Article 318 of the Constitution of India, therefore, provides that the conditions of services of the members of the Public Service Commission, who were earlier employees under the Government, would not be varied to their disadvantage after their appointment. The first proviso under Regulation 6(2) of the 1973 Regulations, also stipulates that a member of the Public Service Commission who was drawing a remuneration under the government in excess of the one fixed under Regulation 6(1) of the 1973 Regulations would not be entitled to draw a remuneration in excess of the last pay drawn by him under the Government. The emoluments which would have been drawn by such members, had they continued to serve under the government will have to be paid to such members. The remuneration payable to such member will, therefore, be ascertained from the wages that would be payable to such member as if he had continued by a fiction of law, to serve under the Government. To pay such members of the Public Service Commission, the last wage drawn by them before their appointment as member of the Public Service Commission, would violate the constitutional protection granted to them by the proviso under Clause (b) of Article 318 of the Constitution of India. Accordingly, it is obvious that the first proviso under Regulation 6(2) of the 1973 Regulations, which restricts the remuneration payable to a member of the Public Service Commission (who was drawing wages under the Government at a level higher than the remuneration fixed under Regulation 6(1) of 1973 Regulations, the last pay drawn by him under the government at the time of his appointment as a member of the Public Service Commission, is violative of the proviso under Clause (b) of Article 318 of the Constitution of India. In view of the above, the first proviso under Regulation 6(2) of 1973 Regulations, whereby the emoluments payable to an erstwhile employee under the government who were drawing a wage in excess of the remuneration fixed under Regulation 6(1) of 1973 Regulations is restricted to the last wage drawn by him under the Government is liable to be set aside and is accordingly set aside. The remuneration payable to such member shall have to be the same as the wage he would have drawn had he continued to serve under the government.

It would be pertinent to mention that the petitioners had also claimed higher pension than the one being granted to them under the 1973 Regulations. In so far as the instant issue is concerned, the same has been determined by this Court in *Shri Chander Bhan Versus State of Haryana* (Civil Writ Petition No.1386 of 1992, decided on 28.7.1997). In view of the aforesaid decision, the claim of the petitioners relating to pension, according to learned counsel representing them stands adjudicated to their satisfaction in *Chander Bhan's* case (*supra*). Accordingly nothing further needs to be stated on the claim of the petitioners relating to pension.

The instant writ petition as all the connected writ petitions detailed above are hereby allowed. The respondents are directed to re-determine the remuneration payable to the petitioners based on the conclusion drawn hereinabove within three months from today and actually disburse the arrears payable to them within a further period of one month.

[Note: S.L.P. (Civil) No.12336/2005 preferred by the State of Punjab & Others against the above judgment was dismissed by the Hon'ble Supreme Court on 13.7.2005 at the time of admission itself.]