IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

138 CWP-35085-2024
Date of decision: 20.12.2024

Amrik Singh

....Petitioner

Versus

Bhakra Beas Management Board and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Varun Sharma, Advocate, for the petitioner.

Mr. Anil Kumar Sharma, Advocate, for the respondents.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for directing the respondents to count the different spells of work charge service rendered by the petitioner w.e.f. 13.11.1997 to 02.03.2006 as driver in the office of Superintending Engineer, Bhakra Canal Power House Nangal (Ropar), for the purpose of total length of service for the purpose of pensionary benefits.

2. Learned counsel for the petitioner makes reference to the judgment dated 18.09.2024 passed in LPA-1996-2016, titled as **Balbir Singh vs. Bhakra Beas Management Board**, which has been decided in favour of the appellants therein, articulating thus:

> "11. Initiation of the river valley project i.e. Bhakra Dam Project and its journey from 1960 has been narrated in the foregoing paras and requires no

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.

repetition. During the course of arguments, it has been candidly admitted by learned counsel for respondents that BSL/BCB/BBMB projects were indeed a part of the larger picture. It is relevant to note that the controversy at hand indeed had been adjudicated upon and settled by Hon'ble the Supreme Court in Narata Singh's case (supra) wherein the employee was employed on work charge basis from 01.02.1953 to 18.09.1953 with the Irrigation and Power Department. From September, 1953 he served as work-charge employee with the Bhakra Dam project and resigned therefrom/was retrenched on 27.01.1962. He thereafter joined the Beas Dam project on 01.02.1962 and worked there till 15.04.1978 as a work-charge employee. He was retrenched from the project w.e.f. 15.04.1978 and was paid retrenchment compensation by the competent authority. He was thereafter appointed as Special Foreman on work-charge basis by Punjab State Electricity Board from 06.08.1982 till 05.01.1984. Services of Narata Singh were regularized from 06.01.1984. He superannuated from the service of the Board on 31.07.1990. His representation for grant of pension and other retrial benefits after taking into account the entire service rendered by him on work charge basis with Bhakra Dam project and Beas Dam project as well was rejected leading to the litigation which travelled up to Hon'ble the Supreme Court. Contention on behalf of the respondent - PSEB that as employee had rendered service in work charge capacity outside the Board, therefore, it could not be taken into account for the SUN|L purpose of calculating the pension and retrial benefits, was rejected by Hon'ble the Supreme Court. It was held that Division Bench of this Court had correctly relied upon its Full Bench decision in 'Kesar Chand v. State of Punjab and others' and had correctly directed that such work-charge service rendered by the employee should be taken in account for grant of pension. Hon'ble the Supreme Court also negated the plea raised by respondents therein that employee had joined service of the Board after a lapse of over four years, therefore, the gap cannot be condoned under Rule 4.23 of Punjab Civil Services.

12. Thereafter, the matter was again considered by a Single Bench of this Court in the case of Kewal

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.

Krishan v. BBMB in CWP-2855-2012, whereby it was directed that work-charge service rendered by him with the Beas Construction Board should be considered towards pensionary benefits. LPA No. 1809 of 2013, arising out of the said decision filed by the BBMB and others was dismissed by the Division Bench while relying upon the judgment of Hon'ble the Supreme Court in the case of Narata Singh's case (supra). Reliance upon the judgment of Hon'ble the Supreme Court in Jaswant Singh's case (supra) by BBMB was found to be misplaced while concluding as under:-

"It may be useful to notice at this stage that Bhakra Beas Management Board (BBMB) is the successor of Beas Management Board by virtue of Section 79(1) of the Punjab Reorganization Act and it has been so explicitly noticed by the Supreme Court in para No.7 of its judgment in Jaswant Singh and others v. Union of India and others, 1979(4) SCC 440.

In all fairness, learned counsel for the appellants relies upon the decision in Jaswant Singh and others' case (supra) and another one in Punjab State Electricity Board and others v. Jagjiwan Ram and others, 2009 (3) SCC 661 to contend that the work-charge service being monthly wages service cannot be . counted towards the regular length of service and no direction to UNIL 324.09.20' count such service for the pensionary benefits could be issued. We are, however, of the view that the cited decisions are in different contexts and have no applicability on the issue involved.

In Jaswant Singh and others' case (supra), the question raised was whether the petitioners who were employed by the Beas Construction Board/BBMB were employees of the 'Central Government' and if so, whether their conditions of service were governed by the Rules which applied to temporary employees of the 'Central Government'? Similarly in Jagjiwan Ram and others' case (supra), the question that arose for consideration was whether the work-charge service rendered by employees in the Punjab State Electricity Board before their appointment on regular basis could be counted for the purpose of grant of time bound promotional scale/promotional increments from the date of completion of 9/16/23 years service? It may be

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.

mentioned that the policy for the grant of time bound promotional scale expressly contemplated requirement of 9/16 years 'regular service'. On the other hand, the issue involved in the instant case has been squarely answered by the Hon'ble Supreme Court in Narata Singh and another's case. The apprehension expressed by the appellant-Board that the respondent has not been asked to refund the retrenchment compensation/gratuity etc. as a condition for the counting of work charge service towards pensionary benefits appears to have no legal or factual basis. The learned Single judge has allowed the writ petition in terms of the decision in Narata Singh's case (supra) in which such a condition was expressly imposed."

13. SLP-11480-2014 filed by BBMB was dismissed on 06.05.2014 while affording liberty to the Board to file a Review application, if so advised. Review application filed in the case of Kewal Krishan's (supra) was disposed on 22.08.2014 while observing that there was no occasion to recall the order dated 23.10.2013, though the question of law raised was kept open to be adjudicated in appropriate proceedings. It had been agitated by BBMB before Hon'ble the Supreme Court that employment of writ petitioner was under two separate employers and therefore, service rendered with Beas Construction Board and Bhakra Management Board could not be clubbed together for grant of benefits.

14. It is to be noted at this stage that CWP-15666-1998, titled 'Sohan Singh through LRs v. State of Punjab and others', filed by similarly situated employee challenging rejection of his claim for pension by BBMB on the ground that he did not have the prescribed number of qualifying years as the service rendered by him in the work charge capacity with the Beas Satluj Link project was not being counted, was allowed by a Division Bench of this Court on 01.12.2014. Identical pleas as have been raised in present bunch of cases were raised on behalf of BBMB in Sohan Singh's case (supra). The Division Bench while taking note of the history of the Bhakra Dam project besides considering Section 80 of the Reorganization Act, 1966 Act, as well as instructions dated 04.07.1981 issued by the BBMB concluded that:

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.

"Thus, it is clear that Bhakra Dam project which was earlier under the Government of Punjab and the Beas Construction Board which was earlier under the Central Government, on the reorganisation of the erstwhile State of Punjab, through the provisions of the 1966 Act merged into the respondent-board. This change was necessitated on the formation of successor States cut out from the erstwhile State of Punjab, Haryana, Himachal Pradesh etc. as the above project was catering to all of them. Thus, both the projects in which the petitioner served ultimately got merged into the respondent-Board. The above facts have been completely ignored by the respondent-Board while considering the case of the petitioner for counting the service rendered by him earlier in the Bhakra Dam Project and then later under the Beas Construction Board under the Central Government before joining the respondent-Board."

15. Reliance by BBMB on the judgment of Hon'ble the Supreme Court in the case of Jaswant Singh's case (supra) was also found to be misplaced. Argument in this regard as raised by the respondent - Board and the finding thereon read as under:-

"Learned counsel for the respondent-Board has argued that instructions dated 4.7.1991 would not apply to the case in hand as the same would apply only to Ex-Central Government Employees joining the Beas Construction Board. He further stated that once the petitioner had accepted the retrenchment compensation from the Beas Construction Board, he was not entitled to have his service in the Beas Construction Board counted towards qualifying service for the grant of pension from the respondent-Board. To support his proposition, learned counsel relies upon a Division Bench judgment of this Court rendered in Sukhdev Raj v. Bhakra Beas Management Board; 1994(4) RSJ 352 and the judgment of the Apex Court rendered in Jaswant Singh and others v. Union of India and others; AIR 1980 SC 115.

The submissions made on behalf of the learned counsel for the respondent-Board are to be considered only to be rejected. The argument that instructions dated 4.7.1991 would only apply in the case of Ex-Central Government Employee joining the Beas Construction Board is fallacious. A perusal of the

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.

instructions show that the benefit under the instructions is to be given to employees of the Beas Construction Board who join the respondent-Board. Viewed from another angle, the employees of the Beas Construction Board have been held to be employees of the Central Government in Jaswant Singh's case (supra). That being so, there is no reason not to include the service of the petitioner rendered by him in the Beas Construction Board towards qualifying service for benefit of pension. Irrespective of the above, once the service rendered in the Beas Constructions Board is to be counted for Ex-Central Government Employees, there is no reason in law or in fact not to count such service for Ex-employees of the Government of Punjab as such action would be in gross violation of Article 14 of the Constitution of India being arbitrary and discriminatory. Thus, viewed from any angle, the argument sought to be raised by the learned counsel for the respondent-Board does not warrant acceptance.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Reliance of the respondent-Board on Jaswant Singh's case (supra) is equally misplaced. In that case, the primary issue before the Apex Court was whether on the cessation of the Beas Construction Board its employees would automatically be absorbed in the respondent-Board which had taken over the Beas Construction Board. The answer to this question was negated by the Apex Court on several counts which we may go into as the issue in the present case is entirely different."

16. We further take note of the fact that this issue was also agitated before the Single Bench in CWP-3424-2011 titled 'Tirath Singh through LRs v. General Manager and Chairman Bharka Beas Management Board, Chandigarh and another'. Said writ petition whereby the employee had sought counting of his work-charge service with the erstwhile PSEB and Beas Construction Board for the purpose of pension before being regularized as an employee with the BBMB was allowed on 24.07.2013. LPA-1973-2013 filed by BBMB against the LRs of Tirath Singh namely Joginder Kaur and others, was dismissed on 25.11.2013. Similar contentions as raised before us were duly dealt with by the Division Bench vide its

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.

order dated 25.11.2013. Arguments raised on behalf of BBMB on the basis of Jaswant Singh's case (supra) and 'Punjab State Electricity Board and others v. Jagjiwan Ram and others', 2009(3) SCC 611 were duly negated. SLP (Civil) No. 12056 of 2014, filed by BBMB challenging said decision dated 25.11.2013 was withdrawn with liberty to file a review application on the ground that BBMB is not the successor of Beas Construction Board. Review application No. RA-LP-34-2015 in LPA-1973-2013 was dismissed on 08.05.2015 concluding as under:-

"(4) We find that though such a plea was raised before us in the LPA but the same was rejected after referring to Section 79(1) of the Punjab Reorganisation Act, 1966 read with para-7 of the judgement of the Hon'ble Supreme Court in Jaswant Singh & Ors. v. Union of India & Ors. 1979(4) SCC 440.

(5) We have heard learned counsel for the review-applicant. No meaningful argument has been advanced except to point out that a coordinate Bench kept open the question with regard to BBMB being the successor of Beas Construction Board or that learned Single Judge before whom the relevant decisions were not cited has rejected such claim.

(6) It is not in dispute that the deceased employee continuously served firstly in PSEB and then in Beas Construction Board and thereafter in Bhakra Beas Management Board. He continued to perform same duties except for the break caused during the period he was declared surplus.

(7) No case to recall/review the order dated 25.11.2013 is made out."

18. Hon'ble the Supreme Court in the case of Prem Singh v. State of Uttar Pradesh and others, 2019(4) SCT 386, while considering the validity of Rule 3(8) of UP Retirement Benefit Rules, 1961 and Regulations 370 of Civil Services Regulation of UP which were pari materia to the Rules as in question in Kesar Singh's case (supra) affirmed its decision in the case of Narata Singh. Reliance by the State of UP on the earlier decision of the Hon'ble Supreme Court in Jaswant Singh's (supra) was negated while holding that the question involved in the case of Jaswant Singh was different.

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.

xxx xxx xxx

20. It is to be noted at this stage that though it is mentioned in the written statements filed on behalf of BBMB before the writ Court that the employee had voluntarily resigned from service, it is undeniable that their services were indeed retrenched. In the case of Balbir Singh the Labour Court award dated 04.09.2008 itself is testimony to the same. Moreover, in all fairness, learned counsel for BBMB did not deny that services of the employees were indeed retrenched from the Beas Satluj Link project/Beas Construction Board/Bhakra Dam Project. The question of right of such an employee retrenched from the Boards which were admittedly the predecessors of BBMB and the right of such employees' entitlement for counting of their work-charge service with the predecessor Boards has been considered and decided in their favour in the various judgments as discussed in the foregoing paras.

xxx xxx xxx

23. Keeping in view the facts and circumstances as above, all the appeals are allowed, impugned decisions dated 17.08.2016, 03.02.2020 and 08.08.2023 are set aside. Consequently, writ petitions filed by appellants/writ petitioners are allowed to the extent that respondent - Board is directed to count service of appellants rendered by them under the Government of Punjab with Bhakra Dam Project, Beas Construction Board, Beas Satluj Link Board etc. for calculating qualifying service towards pension. Arrears of pension as payable to the appellants be released to them within a period of three months from receipt of certified copy of this decision. No interest thereon is liable to be released as the matter has been adjudicated upon and decided now. However, in case, amount in question is not released within three months from receipt of certified copy of this order, appellants shall be entitled to interest at the rate of 6% per annum from the date of order till actual deposit of the amount"

3. Notice of motion.

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.

4. Learned counsel for the respondents, despite his best efforts, has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

5. The present petition is accordingly disposed of in terms of **Balbir Singh** (supra).

20.12.2024 **(AMAN CHAUDHARY)**
parveen kumar **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No

PARVEEN KUMAR
2024.12.20 14:47
I attest to the accuracy and
integrity of this
order/judgment.