

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-1430-1995

Date of decision : 29.04.2015

Avtar Singh

...Petitioner

V/S

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Prateek Mahajan, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

Prayer in the present petition, filed under Articles 226 and 227 of the Constitution of India, is for issuance of directions to the respondents to grant all the pensionary benefits to the petitioner for the service rendered by him in Zila Parishad, Amritsar from 24.07.57 to 18.11.76 including interest @18% PA.

The fact in brief leading to the filing of the present petition are that on 24.07.57 the petitioner joined as Road Inspector in Zila Parishad, Amritsar-respondent No.3. The department of Zila Parishad was taken over by the State Government and services of the petitioner were provincialised in the PWD (B&R) Department.

Accordingly the petitioner was transferred from Zila Parishad to

PWD (B&R) and joined the respondent's department on 18.11.76 on the same post i.e. Junior Engineer in the same pay scale and retired on 31.03.93. The petitioner has been allowed pension only for the period from 18.11.76 to 31.03.93, without considering the service rendered by him with the respondent No.3 from 24.07.57 to 17.11.76. Feeling aggrieved, the petitioner made several representations and served a legal notice dated 11.11.94 (Annexure P-1) upon the respondents. In response to this notice, the respondent No.2 intimated vide letter dated 09.01.95 that the petitioner is not entitled for the pensionary benefits of the service rendered by him with the respondent No.3.

Learned counsel for the petitioner contends that the similarly situated persons i.e. employees of Zila Parishad, namely Sh. Sat Pal, Sh. Laxman Singh, Sh. Hanso and Sh. Raghbir Singh, whose services were taken over by the State Govt. have been given the benefits of service rendered by them to respondent No.3-Zila Parishad for the purpose of fixation of pension and other retiral benefits by the respondent State. The fact that similar benefit has been allowed to the other employees is not disputed. He refers to the judgments i.e. Vijay Laxmi Vs. State of Punjab 1994(2) SCT 85, Ram Chander Vs. State of Haryana (1999) ILR(2) Punjab and Haryana 141, Gita Ram Vs. State of Haryana 1990 (2) RST 619 &

Rati Ram Vs. State of Haryana 1995(4) SCT 491 (DB).

Learned counsel for the respondents have placed reliance on the provision of Rule 3.17(i) of Punjab CSR Vol.II to contend that Services rendered in non-pensionable establishment cannot be counted in determining qualifying services for grant of pension and other retiral benefits.

I have considered the rival contentions of the learned counsel for the parties and have carefully gone through the paperbook and the judicial precedents, with their able assistance.

Rule 3.17(i) reads as under:-

“3.17 If an employee was holding substantially a permanent post on the date of his retirement, his temporary or officiating services under the State Government followed without interruption by confirmation in the same or another post shall count in full as qualifying service except in respect of xx xx xx xx

(i) Period of temporary or officiating services in non-pensionable establishment.”

In Ram Chander and others Vs. State of Haryana and others (1990) ILR 2 Punjab and Haryana 111, CWP No.10069 of 1988, decided on 19.07.1989, it has been held as under:-

“that when the State Government allowed the benefit of provincialised service to Hazari Lal, it

will amount to discrimination if such benefit is not allowed to the petitioners who had rendered to service with the Zila Parishads/District Boards prior to 1966. The stand of the respondents that declining similar relief to the petitioners as they have not approached the Court of law, is not understandable. The State should not force its employees to approach the Court of law for relief which the State can conveniently grant on its own, more so, when in similar circumstances the State had allowed the relief to one of its employees. Hence the State is directed to allow the relief to the petitioners taking into consideration the entire period of service rendered with Zila Parishad/District Board prior to 1966 in the matter of giving pensionary and gratuity benefits.”

In Smt. Om Pati Vs. State of Haryana and others

2007(1) S.C.T. 294, CWP No.10209 of 2014, decided on 26.09.2006, it has been held as under:-

“that Constitution of India, Article 14 and 16 – Punjab Civil Services Rules, Vol. II, Rule 6.16 (a) (b) and (1) – Family pension – Qualifying service – Haryana Govt. instructions dated 22.11.1991 extending the benefit of previous service rendered in Zila Parishads/Panchayat Samities – Past service rendered in Panchayats and Panchayat Samities followed by absorption in Panchayat

Department, whether ad-hoc or regular, would count towards qualifying service for pension – Once the deceased had rendered total qualifying service for family pension, his dependents are entitled to family pension as per rule - For that purpose the employees of Zila Parishads/Panchayat Samities are deemed to be Govt. servants.”

Keeping in view the fact that the similarly situated persons i.e. employees of respondent No.3-Zila Parishad whose services were taken over by the State Govt. have been given the benefits of services rendered by them with the respondent No.3-Zila Parishad for the purpose of fixation of pension and other retiral benefits by the respondent State, this petition is allowed and the competent authority is directed to release all the pensionary benefits, given to the similarly situated employees, to the petitioner for the period of service rendered by him i.e. from 24.07.57 to 18.11.76, with the respondent No.3, to the petitioner within four months after the receipt of certified copy of this order.

29.04.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**

whether referred to reporter? Yes/No.