

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

(1) CWP No. 14433 of 2011 (O&M)

Gurmail Singh ...Petitioner

Versus

State of Punjab and others

...Respondents

(2) CWP No. 14454 of 2011 (O&M)

Lekh Raj ...Petitioner

Versus

State of Punjab and others

...Respondents

(3) CWP No. 24526 of 2013 (O&M)

Matapher ...Petitioner

Versus

State of Punjab and others

...Respondents

(4) CWP No. 1675 of 2014 (O&M)

Harbans Singh ...Petitioner

Versus

State of Punjab and others

...Respondents

(5) CWP No. 24818 of 2013 (O&M)

Darshan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(6) CWP No. 18117 of 2011 (O&M)

Darshan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

DATE OF DECISION: 27.05.2015

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. P.K. Goklaney, Advocate for the petitioner(s)(s)
(in CWP at Sr. No.1 to 3 and 5).

Mr. O.P. Gabba, Advocate for the petitioner(s)
(in CWP No. 18117 of 2011 and 1675 of 2014).

Ms. Harsimrat Rai, DAG, Punjab
for the State.

Mr. Suvir Kumar, Advocate for respondent No.4
(in CWP No. 18117 of 2011)

Mr. Navdeep Monga, Advocate for respondent No.5
(in CWP No. 18117 of 2011)

Mr. Ashish Verma, Advocate for respondent No.4
(in CWP No. 24526 of 2013)

Mr. P.C. Goyal, Advocate for respondent No.4
(in CWP No. 24818 of 2013)

Mr. V.K. Kaushal, Advocate for respondent No.4
(in CWP No. 14433 and 14454 of 2011)

Mr. Daman Dhir, Advocate and
Mr. A.K. Sharma, Advocate for respondent No.4
(in CWP No. 14433 and 14454 of 2011)

Ms. Jasvir Kaur, Advocate for respondent No.4
(in CWP No. 1675 of 2014).

Jitendra Chauhan, J. (Oral)

The aforementioned writ petitions are being decided by way of this common order, as the identical issues have been involved in the matter.

2. In the instant writ petitions, under Articles 226/227 of the Constitution of India, the petitioner(s) seek issuance of the directions to the respondents to release the pensionary benefits in view of the Rules and instructions issued by the Govt., from time to time along with interest @ 12% p.a., from the date when it became due till its realization.

3. The facts have been taken from writ petition No.14433 of 2011, titled as Gurmail Singh Vs. State of Punjab and others.

4. In the present writ petition, the petitioner(s) joined the Public Health Department as Pump Operator on 15.4.1974. The Punjab Water Supply and Sewerage Board (for short 'Board') came

into existence on 1.1.1977. The maintenance of Punjab Water Supply and Sewerage Board was transferred to the Punjab Water Supply and Sewerage Board and the services of the petitioner(s) were also transferred to Punjab Water Supply and Sewerage Board on 1.1.1977. The services of the petitioner(s) were regularized by the Board on 15.5.1980. The scheme of maintenance of Punjab Water Supply and Sewerage Board was transferred to Municipal Council Ferozepur on 2.8.2005. Subsequently, the services of the petitioner (s) was also transferred to Municipal Council, Ferozepur on 2.8.2005 along with other maintenance staff and ultimately the petitioner(s) retired from service on attaining the age of superannuation on 31.1.2011. After the retirement of the petitioner(s), the petitioner(s) made a request to the Municipal Council, Ferozepur for the release of pension after taking into account his entire service as “qualifying service” for the purpose of granting gratuity, pension and other retiral service benefits. The respondent-Municipal Council refused to release the same, mainly on the ground that before absorption of the petitioner(s) in the Municipal Council, he was the employee of Punjab Water Supply & Sewerage Board and they are liable to grant pensionary benefits from the date, when the services of the petitioner (s) were transferred to Municipal Council, since the Government has notified a “New Defined Contributory Pension Scheme” which is applicable w.e.f. 1.1.2004, as such the petitioner(s) is entitled only

pension under the new scheme.

5. On the other hand, a specific reply has been filed by the Board with a categoric stand that the petitioner(s) is permanent/regular employee of Municipal Council and the job of the Board is providing civil amenities, which is the responsibility of the Municipal Council/Corporation in the State of Punjab. The Board is entrusted with the above jobs of creation of infrastructure for Water Supply & Sewerage etc. by the such local/civil bodies and after the job is completed, the same is handed over to the local bodies for their operation and maintenance and the only responsibility of Board is the creation of infrastructure for and on behalf of Municipal Councils/Corporations on the assignment basis, such councils provide funds for the execution and operation of water supply & sewerage scheme in their local areas by way of passing of resolution in their councils, the respondent-Board act as a executing agency for which the Board recovers only 14% departmental charges on the schemes/works entrusted by the Municipal Council/ Corporation to the Board. It is also the stand of the Board that Municipal Council is the principal employer of the petitioner(s) and Board handle the assignment only on deposit work basis and Board has no legal liability, whatsoever for the release of pensionary benefits admissible to the petitioner(s), it was further stated by the Board that they have already transferred/paid the amount, which was due to the Board and

now it is responsibility of Municipal Council to release the gratuity and other retiral benefits of the petitioner(s).

6. The learned counsel for the petitioner(s) contend that the petitioner(s) were working in the Department of Water Supply and Sewerage Board and thereafter, their services were transferred in the Municipal Council, Ferozepur. The work and conduct of the petitioner(s) was to the total satisfaction of their superiors and there is no complaint or enquiry pending against them. The main grouse of the petitioner(s) is that after their retirement, they were not given the pension and other pensionary benefits despite various representations to the Board as well as to the Municipal Council.

7. The learned counsel for the respondent No.3-Municipal Council, Ferozepur states that prior to joining of petitioner(s) in Municipal Council, Ferozepur, he was working with Punjab Water Supply and Sewerage Division, Ferozepur. The main part of pensionary benefits such as leave encashment, gratuity etc., is to be paid by the Board.

8. The learned counsel for respondent No.4 in CWP No. 24818 of 2013, submits that the services of the petitioner along with other employees were merged with Municipal Council in October 2005. Prior to that, the petitioner(s) along with other employees were working under the Board being their parental department. The pension system is not applicable in the Board at that time when the

petitioner(s) were working in the Board and now their services were merged in Municipal Council. The petitioner(s) served more than 28 years in the Board and eight years in the Municipal Council. No share was deducted from their salary in both the Departments.

9. The learned State counsel submits that on the basis of information derived from respondent No.3, the petitioner(s) were employee of the Board. The Government has adopted new pension contributory scheme w.e.f. 01.04.2004. Neither the petitioner(s) have opted for the pension nor the respondent No.4-The Executive Engineer, Water Supply Sewerage Division, Ferozepur has sent the pension contribution amount of the petitioner.

10. The learned counsel for respondent No.5-Board submits that that in a meeting of the authorities, it was decided that that firstly the Board will make the payment to the petitioner(s) for leave encashment and gratuity only for the period they remained in service with the Board and the same amount will be recovered from Municipal Council, Ferozepur.

11. I have heard the learned counsel for the parties at length and have gone the record carefully.

12. As per record the petitioner(s) was initially appointed in the Department of Public Health as Pump Operator on 15.4.1975, thereafter on coming into existence of Board, his services were transferred to Board and his services after regularization by the

Board were transferred to the Municipal Council, Ferozepur on 2.8.2005. The petitioner on attaining the superannuation retired from service on 31.01.2011. It is admitted position that the services of the petitioner(s) were transferred to various department in the public interest. The Government had issued a policy dated 7.11.2005 (P4), wherein a few decisions had been taken by the Government with regard to the employees who were earlier in the Department of Public Health or were serving in the Punjab Water Supply and Sewerage Board. In this policy, a decision with regard to pension was also taken by the Government, the relevant conditions mentioned in the policy with regard to the release of pensionary benefits to the employees of Department of Public Health as well as Punjab Water Supply and Sewerage Board prior to their absorption in the Municipal Councils, are hereby reproduced as under:-

“1. Pensionary Benefits:

- i) *the Officers were working in the Department of Public Health of State Government prior to their absorption in Municipal Corporation Services were admittedly entitled to pensionary benefit, therefore, as provided in Rule (3) of the Punjab Municipal Corporation General Provident Fund and Pension Rules, 1994, the service rendered by these officers on the Department of Public Health shall be considered as “Qualifying Service” for reckoning the pensionary benefits, which includes family pension, pension, DCRG, continuation etc. subject to the condition that Public Health Department or Public Works Department, as the*

case may or the employee of his own deposits the Leave salary contribution, pension contribution and all other deductions made in respect of benefit of pension including the interest accrued thereon for the period they worked in Public Health or Public works department. The amount of GPF of each officer deducted in the department of Public Health or Public works will also be transferred to the Municipal Corporation in which the officer is presently posted and the said amount will be deposited in the GPF account of the officer concerned.

- ii) *The Officers who were working in the Punjab Water Supply and Sewerage Board prior to their absorption in Municipal Corporation Services were not entitled to benefit of Pension as they were paid the benefit of Contributory Provident Fund. The PWSSB will liable to transfer the total amount of Contributory Provident Fund plus the upto date interest accrued thereon to the Municipal Corporation, in which the concerned officer is posted. In the case of the officers who have opted for pension in terms of the Punjab Municipal Corporation General Provident Fund and Pension Rules, 1994, the employers share plus the up to date interest accrued thereon will be transferred to pension fund and the employees share plus interest accrued thereon will be deposited into the CPF account of the officer concerned. However, the officers who have not opted for pension, the total amount of CPF transferred by the PWSSB would be deposited in the CPF account of the concerned officer and which will be paid to the officer at the time of his retirement and in case of his death to his legal heirs in accordance with services rules.”*

13. From the perusal of the policy, it is clear that the

employees who were earlier in the Department of Public Health of State Government, prior to their absorption in Municipal Council, are entitled to pensionary benefits with certain conditions mentioned above. Similarly condition no.2 clearly reveals that the employees who were working in the Punjab Water Supply & Sewerage Board prior to their absorption in Municipal Council, were not entitled for the benefit of pension as they were paid the benefit of contributory provident fund. The Punjab Water Supply & Sewerage Board was made liable to transfer the total amount of the contributory fund plus upto date interest accrued thereon in which concerned employee is posted. So from the above said policy it is clear that the employees who were either in Public Health Department or in the Punjab Water Supply & Sewerage Board are entitled for pensionary benefits, subject to the conditions mentioned in the policy dated 7.11.2005 (P-4). Moreover it is established on record that the services of the petitioner(s) have been merged by the Municipal Council, Ferozepur along with other maintenance staff, by passing a resolution which has been duly approved by the committee, a specific affidavit was also taken by the petitioner(s) that in case the Punjab Water Supply and Sewerage Board does not deposit the payable amount, they would deposit their respective amount and would not let any burden rest upon the Municipal Council, Ferozepur. The case of the petitioner(s) along with other maintenance staff was also

recommended to the Director, Local Government, Punjab, Chandigarh for the release of pensionary benefits, it was specifically stated by the Municipal Council, Ferozepur that since the appointments of these employees of Punjab Water Supply and Sewerage Board, who have joined the Municipal Council, Ferozepur is prior to 1.1.2004 i.e. date from which the pension scheme of the new appointed employees has been abolished, as such these employees are entitled to get the benefit of Pension Scheme. It is also on record that the petitioner(s) along with other maintenance staff was asked to give option by the Municipal Council, Ferozepur and it is also on record that the petitioner(s) along with other maintenance staff gave their option for the release of pensionary benefits and an entry to this effect was also recorded in their service book.

14. The learned counsel for the petitioner(s) also relied on the judgment passed by this Court in CWP No.2574 of 2007 titled as Gurdial Singh Vs. State of Punjab and Others decided on 8.7.2010 (P-15), in this case this Court has also granted the pensionary benefits to the petitioner(s) who had initially joined the Department of Public Health and later on his services were transferred to Punjab Water Supply and Sewerage Board and again his services were transferred to Municipal Council, Sangrur and ultimately he retired from the services of Municipal Council, Sangrur. The pensionary

benefits were ordered to be released to him by taking into account the entire service rendered by the petitioner(s) as qualifying service for the purposes of pension and other service benefits. This court has no doubt in his mind that the employees who earlier to their absorption in Municipal Council, were on the establishment of Public Health or Punjab Water Supply & Sewerage Board, are entitled for the release of pension by taking into account their entire service as “qualifying service” for the purpose of pension and other service benefits, specially when the Government has already taken a policy decision (P-4) to grant the pensionary benefits to the employees of Department of Public Health as well as employees of Punjab Water Supply & Sewerage Board with certain conditions fully mentioned in the policy.

15. The writ petitions are accordingly allowed. The Managing Director of the Punjab Water Supply & Sewerage Board is directed to compute their proportionate liability towards the retiral dues of the petitioner(s) in accordance with Rules/Government Instructions and transfer the same to the Municipal Council, Ferozepur, in case any amount is due on their part, within a period of two months from the date of receiving a certified copy of this order

16. The Municipal Council, Ferozepur, is directed to take into account the entire service rendered by the petitioner(s) as ‘qualifying service’ for the purposes of pension and other service

benefits and shall release the consequential arrears to the petitioner (s) for the above mentioned entire service, within a period of three months, from the date of receiving a certified copy of this order, failing which he shall be entitled for interest @ 9% per annum. The petitioner(s) shall also be entitled to the revision of pension and arrears thereof shall be paid to them within the aforesaid stipulated period. The same relief is granted to other petitioners in the connected civil writ petitions.

27.05.2015

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter: Yes / No