IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15796 of 2013 (O&M)
Date of Decision: **September 28, 2015**

Sanjay Tiwari …Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Jaspal Singh Maanipur, Advocate for the petitioner.

Mr. P.S. Poonia, Advocate for the respondents.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition praying for issuance of directions to the respondents – Dakshin Haryana Bijli Vitran Nigam Limited to treat the period from 1.1.1991 to 11.7.1991 as duty period.

Brief background of the case is that on 20.10.1987, the petitioner was appointed as Apprentice Divisional Revenue Accountant in the erstwhile Haryana State Electricity Board – now respondent Nigam. Clause 3 of the appointment order required him to pass the Departmental Accounts Examination within a period of two years, which the petitioner could not pass within the stipulated period and consequently, his services were terminated along with two others on the same ground. On a representation dated 10.7.1991, the petitioner was offered fresh appointment and he joined on 12.7.1991. In this fresh offer of appointment, he was again required to pass the departmental examination within one year, but before the expiry of the said period, his services were terminated vide order dated 19.5.1992 and he was relieved on 21.5.1992.

The petitioner challenged the said termination order by filing CWP No.8323 of 1992, which was allowed vide order dated 25.9.2007 (Annexure P-1). In compliance thereof, he was taken back in service and has been continuing as such.

The grievance of the petitioner is that the period from 1.1.1991 to 11.7.1991 i.e. after his termination of services and before rejoining on offer of fresh appointment, is not being counted towards any service benefit. The petitioner has cited the order dated 26.7.1977 (Annexure P-2) passed by the respondent, whereby, the Upper Division Clerks whose services had been terminated on the ground of not passing the Departmental Accounts Examination, but were subsequently taken back and the intervening period was treated as `leave of the kind due' and was counted towards increment in relaxation of normal rules.

Respondents have filed written statement refuting the claim of the petitioner. It is stated that since the petitioner could not pass the Departmental Accounts Examination, his services were terminated on 28.12.1990. However, upon his representation, taking a lenient view, the Board of Directors of the respondent decided to appoint him afresh in the regular scale of pay i.e. Rs.1640-2900 with usual allowances. He joined as such on 12.7.1991 as a fresh appointee. It was made clear in the offer of appointment that no benefit of any kind of past service shall be given to him. He was required to pass the Departmental Accounts Examination within one year or two successive chances, whichever is earlier. He again failed to pass the said examination and consequently, his services were terminated on 19.5.1992, against which CWP No.8323 of 1992 was allowed vide order dated 25.9.2007 (Annexure P-1), on the premise that his appointment dated 10.07.1991 was a fresh appointment. Stating these facts, it is claimed that the petitioner is not entitled for regularisation of his service period from 1.1.1991 to 11.7.1991.

Distinguishing the case of Dharam Pal, UDC, the respondents have pleaded that decision to take the UDCs back in service was taken without issuance of any fresh order of appointments.

I have heard Learned counsel for the parties and have gone through the record.

The petitioner has sought regularisation of the intervening period between his two separate appointments consequent to two different appointment letters (dated 20.10.1987 & 10.7.1991). Initially, he had joined services on 20.10.1987, which were terminated on 28.12.1990. He never challenged the said termination, rather represented before the respondents, which taking a lenient view issued fresh offer of appointment dated 10.7.1991 (Annexure R-1), which also contained the following condition:

> *"viii) This appointment is being offered to you on clear understanding that it will be treated as fresh appointment and you will not take any claim for seniority over those who were initially inducted in service in October/December, 1987 and are still in service by virtue of passing the Departmental Accounts Examination for Divisional/Revenue Accountant."*

The petitioner accepted the appointment on the terms and conditions, as contained in the offer of appointment (Annexure R-1). He was well aware of condition (viii), quoted above, and yet willfully accepted the appointment. In case of Dharam Pal, there was no such fresh offer of appointment and the respondents had allowed the Upper Division Clerks to rejoin the services without any such condition.

The petitioner did not challenge his first termination dated 28.10.1990 at any stage and in the fresh offer of appointment 10.07.1991 (Annexure R-1), it was clearly indicated that he would not be entitled to any benefit on account of his past service. He accepted the offer and joined without demur. The termination order dated 19.5.1992 issued on account of the failure of petitioner to qualify the prescribed test within one year of the said appointment as stipulated in the appointment letter was quashed in CWP No. 8323 of 1992, treating his appointment dated 10.7.1991 as a fresh appointment and holding that as per the applicable Rules he was required to clear the departmental examination within a period of two years of completion of training. If the second appointment dated 10.07.1991 was not a fresh appointment, then there was no question of the petitioner being permitted to clear the departmental examination within two years from the date of this appointment . In that event, the period would have to be reckoned from the date of initial appointment (20.10.1987). In any case there was no question of giving him more than the one year as per the offer of appointment dated 10.07.1991. Having thus succeeded in that writ petition on the premise that his appointment dated 10.07.1991 was a fresh appointment, entitling him to the benefit of two years for clearing the departmental examination, he cannot now turn around and claim a relief by pleading that this appointment be not treated as a fresh appointment.

Also by filing this petition, the petitioner is seeking to challenge a term of the offer of appointment dated 10.7.1991 (Annexure R-1) after a period of about 22 years, which claim cannot be entertained at such a belated stage.

In view of above, there is no merit in the instant petition and the same is hereby dismissed.

September 28, 2015 **(HARINDER SINGH SIDHU)**
gian **JUDGE**