

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

CWP-4582-2011 (O&M)

Date of decision: 28.07.2015

Raj Kumar

...Petitioner

Versus

Bhakra Beas Management Board and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Madan Mohan, Advocate for the petitioner.

None for the respondents.

Jitendra Chauhan, J.

By way of the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing of order dated 08.08.2008, passed by respondent No.4, thereby, rejecting the claim of the petitioner for counting work charge service rendered by the petitioner towards pensionary benefits.

It is submitted that the petitioner joined the service of Punjab Government on 30.08.1965, as Time Clerk, Bhakra Dam Project, Directorate of Construction and Plant Design on work charge basis and worked as such till 30.06.1969, when he was retrenched on account of reduction of strength. Thereafter, he

worked as Time Clerk on work charge basis with the BSL Personnel Division, Sundernagar from 11.07.1969 to 12.06.1979. From 08.05.1981 to 30.03.1984, he worked as Time Clerk (work charged) BSL Project, Plant Design and Township, District Sundernagar. On 15.03.1990, the petitioner was appointed as Store Clerk on regular basis at Nangal Workshop Division, BBMB, Nangal Township and retired on 28.02.2003. The learned counsel for the petitioner submits that similar question came for determination of a Division Bench of this Court in Sohan Singh through LR's Vs. State of Punjab and others, CWP No.15666 of 1998, decided on 01.12.2014.

There is no assistance on behalf of the respondents.

In Sohan Singh's case (supra), it has been held as under:-

“So far as the service rendered by the petitioner while executing the Beas Satluj link under the Beas Construction Board is concerned, the same can be viewed from yet another angle. For this, reference to the instructions dated 4.7.1991 issued by the Board would be relevant. The relevant extract of the same is reproduced for ready reference:

“Subject: Grant of benefit of past service rendered by Ex-CGEs of B.C.B. Inducted into BBMB for the purposes of pension, Gratuity, Leave and Proficiency Step-up (S) According to the existing instructions/orders the past service rendered by the Ex-Central Government Employees of B.C.B. Inducted in B.B.M.B on fresh appointment is not counted in the B.B.M.B for the purposes of grant of

proficiency step-up(s), Entitlement of Casual/Earned Leave and grant of retirement benefits such as Pension, Gratuity, etc.

2. In partial modification of the instructions contained in Board's letter No.8170-32/88208/BP/10/1-rr dated 26.3.84, 234/3-1200/82/10/Irr dated 28.4.84, 9921-60/B-1200/23/I-Irr Dated 31.3.86 & 15022-164/B-2/468/86/R&A dated 2.5.89 and in pursuance of the decision taken by the Board vide Item No.142.05 of its 142nd meeting held on 11.4.1991 at Chandigarh, I am directed to convey approval of the Board to the effect that the service rendered by Ex-Central Government Employees in B.C.B. inducted into B.B.M.B on fresh appointment shall be counted in the B.B.M.B for the purpose of:-

- (i) grant of Proficiency step-up(s)*
- (ii) for determining the entitlement of Casual/earned leave for service in BBMB without any claim of carrying forward the Earned Leave earned for service in BCB;*
- (iii) grant of retirement benefits of Pension & Gratuity.”*

Sub-section 1 and sub-section 2 of Section 80 of the 1966 Act which is also relevant provides as under:

“80. Construction of Beas Project.-(1)

Notwithstanding anything contained in this Act or in any other law, the construction (including the completion of any work already commenced) of the

Beas Project shall, on and from the appointed day, be undertaken by the Central Government on behalf of the successor States and the States of Rajasthan:

Provided that the Governments of the successor States and the State of Rajasthan shall at all times provide the necessary funds to the Central Government for the expenditure on the Project (including the expenses of the Board referred to in subsection (2)) and such amounts shall be apportioned among the successor States and the State of Rajasthan in such proportion as may be fixed by the Central Government after consultation with the Governments of the said States.

(2) For the discharge of its functions under subsection (1), the Central Government may-

(a) by notification in the Official Gazette and in consultation with the Governments of the successor States and the State of Rajasthan, constitute a Board to be called the Beas Construction Board with such members as it may deem fit and assign to the Board such functions as it may consider necessary; and

(b) issue such directions to the State Governments of Haryana, Punjab and Rajasthan and the Administrator of the Union Territory of Himachal Pradesh or any other authority, and the State Governments, Administrator or other authority shall comply with such directions.”

From the above, it is clear that as per the above instructions dated 4.7.1991 read with Section 80 of the 1966 Act, the petitioner's service from 17.2.1965 to 30.4.1984 was under the Central Government and that being so, it was required to be counted towards qualifying service towards pension. In this regard, reference can usefully be made to the judgment of the Apex Court in ***Jaswant Singh and others v. Union of India and others***; AIR 1980 Supreme Court 115 wherein it has been held that the employees of the Beas Construction Board would be employees of the Central Government for all intents and purposes. Relevant observations from ***Jaswant Singh's*** case (supra) are extracted below:

"These provisions leave no doubt that the petitioners, though appointed under orders issued by or on behalf of the Beas Control Board or the Beas Construction Board are employees of the Central Government."

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 Supreme Court 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 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.

The reliance of the learned counsel for the respondent-Board on ***Sukhdev Raj's*** case (supra) is misplaced. In that case, the issue so raised was culled out in para-1 of the judgment which is reproduced below:

Petitioners Sarvshri Sukhdev Raj, Avtar Singh, Parkash Chand, Banta Singh, Sohan Singh, Balwant Singh, Sohan Lal and Nikku, who are employees of Bhakra Beas Management Board (for short, the Board), Irrigation Wing, have sought a mandate to the respondents to regularize their services after they had put in more than five years' service, in this petition under Article 226/227 of the Constitution of India."

From the above, it is clear that the issue raised in the above cited case was regarding the claim of regularisation of services and was thus entirely different from the facts of the present case. 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 negatived by the Apex Court on several counts which we may go into as the issue in the present case is entirely different."

In Sohan Singh's (supra), the petitioner had rendered

service at different intervals with (i) Bhakra Dam, under the Punjab Government; (ii) BSL Project, under the Beas Construction Board; and (iii) Bhakra Power House Divn., under the Bhakra Beas Management Board. The Division Bench, after discussing the relevant rules and case law on the subject, allowed the petition by holding that the service rendered by the petitioner on work charge basis was liable to be counted towards qualifying service for the purposes of pensionary benefits.

After considering the facts and circumstances of the present case, this Court is of the considered opinion that the case of the petitioner herein is squarely covered by the ratio of law laid down in Sohan Singh's case (supra).

Accordingly, the present petition is allowed in the same terms as of Sohan Singh's case (supra).

28.07.2015

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(JITENDRA CHAUHAN)
JUDGE