IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6987 of 2011
Decided on : 08.12.2015

Gurdev Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Amit Chopra, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia , J. (Oral)

The petitioner prays for a writ of mandamus for counting of his service rendered with the Punjab Land Development and Reclamation Corporation (hereinafter referred to as the 'Corporation') towards pensionary service in the Government Department. The petitioner's request has been opposed by the State on the ground that he was not declared as surplus by the Redeployment Cell, Department of Personnel & Administrative Reforms, Punjab and on account of the lack of notification, the employment with the Government Polytechnic College was a fresh appointment. The petitioner had served with the Technical Department for 5 years 9 months and 16 days only and, therefore, he has less than 10 years service which was a minimum period for an employee to get pension.

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The petitioner had worked as Sepoy with the Indian Army from 31.03.1963 to 31.03.1978 for a period of 15 years. Thereafter, he joined the corporation on 15.01.1981 in pursuance of appointment letter dated 30.12.1980 as a *Chowkidar* and was successful in completing his probation period on 29.07.1981 (Annexure P-1). On account of the Corporation closing down, the Agriculture Department prepared the list of surplus employees and service record of the employees of the Corporation for adjusting as per the decision taken on 21.01.1997. As per the decision, the case of adjustment of surplus staff of the Corporation was not to be referred to the Redeployment Cell, Department of Personnel & Administrative Reforms, as per decision taken by the Financial Commissioner Development, Punjab. This would be clear from the contents of the letter dated 24.04.1997 (Annexure P-2) addressed to the Managing Director of the Corporation also, which reads as under:-

> *"3. It is made clear that the case for adjustment of surplus staff of Pb. Land Dev. & Recl. Corpn. Ltd. is not to be referred to the Redeployment Cell, Department of Personnel & Administrative Reforms as per decision taken by the Financial Commissioner Development, Punjab. You, are therefore, requested to adjust the surplus staff of Pb. Land Dev. & Recl. Corpn. Ltd. on priority basis and immediately as per the minutes of the decision conveyed to you under intimation to this department within seven days."*

It is the case of the petitioner that in view of the

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Corporation thus shutting down, he had taken employment with SRS Polytechnic for Women, Ludhiana under the Technical Department on 15.07.1997 (Annexure P-3) and was relieved on the same date and he joined the said institute on 16.07.1997 (Annexure R-3). It is, thus, apparent that there was no gap as such between the petitioner's employment with the Corporation and the respondent No.3-institute. The petitioner, thus, worked from 15.01.1981 to 15.07.1997, which is a period of more than 16 years and he prays for this period to be counted for the purposes of his pensionary benefits. However, it is apparent that he retired on 31.03.2003, whereas the request for the pension was only raised for the first time on 02.11.2010 (Annexure P-8).

As noticed, it has been opposed on the ground that there was no formal declaration of being rendered surplus and the fact that he was a new appointment. It is not denied by the State that the Corporation has closed down and it is also apparent that a decision was taken as reproduced above that the staff of the Corporation had to be adjusted with the Agriculture Department.

The petitioner has, thus, taken re-employment afresh with the respondent No.3 after have putting long 16 years with the Corporation which was under control and run by the State Government. The said period cannot just be wished away as it is sought to be by the State, which is duty bound to provide and

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count for that period for the purpose of pension, which the petitioner is now seeking.

The issue regarding the counting of this service period which has been rendered with the Corporation has been subject mater of various judgments before this Court. In ***'R.P. Singla Vs. State of Punjab and another' 2002 (4) SLR 422***, the employee was seeking the period of 13 years of service with the State Government to be counted, before he had joined the Electricity Board and the said period was sought to be treated qualifying period for the purpose of pension. It was, accordingly, held that the service had to be counted on the basis of share liability and the State could not escape from depositing the pensionary benefits for the period rendered by the petitioner in the State service.

The Division Bench of this Court in ***'State of Punjab & others Vs. Subhash Chandra Chadha and another' 2010 (1) SLR 304*** was also seized with a similar controversy, wherein the period spent with the Punjab State Handloom and Textiles Development Corporation Limited (PUNTEX) was sought to be counted for the purpose of pensionary benefits and the view taken by the Single Bench was approved.

The Division Bench dismissed the appeal, wherein the direction had been issued to count the entire period of the service of the employee with the Corporation for computing the pension

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and other post retiral benefits. Counsel for the State has pointed out that there was no absorption order and, therefore, the said judgment would not be applicable.

A similar view was taken in ***CWP No.7120 of 2002*** titled as ***'Smt. Krishna Khullar Vs. State of Punjab & another' decided on 26.02.2008***, wherein the service rendered by the employer with Punjab Women & Children Development Corporation (PUNWAC) was sought to be treated for counting the same as qualifying service. The order rejecting the claim was, accordingly, quashed and the State was directed to reconsider the petitioner's claim for the purpose of post retiral benefits.

In ***CWP No.10008 of 2006*** titled as ***'Ram Singh & another Vs. State of Punjab & others' decided on 23.02.2010,*** the State had denied the relief to the employees of the same Corporation, which is in the present case. A direction had been issued, keeping in view the judgment passed in ***Smt. Krishna Khullar's case (supra)*** to count the service rendered by the petitioners in the Corporation towards pensionary service in the Government Department. In the said case, the service of the employees had been transferred to the Agriculture Department as *Beldars* and they had been absorbed on 10.07.1997. But, in spite of that the State had refused to grant the benefit. The decision of the Single Judge was upheld in ***LPA No.1122 of 2010 decided on***

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04.10.2010, while placing reliance upon the Division Bench judgment passed in ***Subhash Chander Chadha's case (supra)***.

Another Division Bench of this Court in ***LPA No.604 of 2013*** titled as ***'State of Haryana and another Vs. Shadi Lal Malik (deceased through his LRs) and others' decided on 14.10.2014*** also granted similar relief to the employees of the Haryana Dairy Development Corporation, while upholding the judgment of the Single Bench. The view taken was that the employees working with the Corporation and Federation which were fully owned by the State of Haryana were under its administrative control and the State could not draw any artificial distinction that the services rendered were not with the Government, as provided under the Punjab Civil Services Rules (Rule 3.8 and 3.12).

Reliance was also placed upon an earlier judgment passed in ***'Vijay Laxmi and others Vs. State of Punjab and others' 1994 (2) RSJ 502.*** The relevant portion reads as under:-

> *"In view of this fact it is difficult for us to accept the submission of the State of Haryana. The State of Haryana having created the Corporation and the Federation to execute its own scheme and the Corporation and the Federation being fully under the control of the State, both financially and administratively, no distinction could be allowed to be drawn between employees of the Corporation/Federation viz-a-viz Government employees, particularly for the purpose of counting their service towards qualifying service for the grant of pension.*

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> *According to us, any such classification/distinction would be hit by Article 14 of the Constitution of India. If the stand taken by the State of Haryana is to be accepted, that would mean that 24 years of unblemished service of the respondent-employee would be washed and resultantly, his widow and other family member would not get pension. Once, it is admitted that both the Corporation and the Federation fully owned by the State of Haryana and under its administrative control and then it is not open to the State of Haryana to draw an artificial distinction as suggested by the counsel for the appellant-State. According to us, the distinction drawn being arbitrary and violative of Article 14 of the Constitution of India deserves to be ignored. For the reasons given hereinabove, the reliance of the State of Haryana on Rules 3.8 and 3.12 of the Chapter III of the Punjab Civil Services Rules is misplaced."*

The submission of the State counsel that there was no formal order of declaring surplus or absorption, thus, without any basis. The perusal of Annexure P-2 and Annexure P-4 would go on to show that, it was the duty of the State to adjust the employees on account of the Corporation shutting down and, therefore, if the petitioner has been re-employed with another department, the State was under the bounden duty to recognize the employment being a model employer. Accordingly, the objection raised is without any basis and not sustainable.

The issue, however, remains regarding the payment of the arrears also as admittedly the petitioner has kept quite on his claim for more than 7 years. He had retired on 31.03.2003 and

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had moved a representation on 02.11.2010.

Accordingly, keeping in view the fact that the pension is his recurring right and it would have accrued to him every month and in view of the judgment of the Full Bench in ***'Saroj Kumari Vs. State of Punjab' 1998 (3) SCT 664*** limitation would be no bar as such.

Thus, the petitioner's right to get arrears is restricted to a period of 38 months prior to the serving of the representation dated 02.11.2010.

Accordingly, the present writ petition is allowed with a direction to respondent No.2 to count the period of service of the petitioner from 15.01.1981 to 15.07.1997 with the Corporation for the purpose of pension. In case, the petitioner is required to deposit some amount for his share, the same can be adjusted against the arrears which are to be paid to him.

The needful be done within a period of 3 months from the receipt of the certified copy of this order.

(G.S. SANDHAWALIA)
JUDGE

DECEMBER 08, 2015
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