

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

CWP No.21479 of 2015

Date of decision : 08.10.2015

**Verinder K. Rishi son of Shri Shyam Sunder Rishi,
resident of House No. 388, Phase VII, S.A.S.Nagar, Mohali.**

.....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr.Sanjeev Sharma, Advocate
for the petitioner.

DARSHAN SINGH, J.

The present Civil Writ Petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing the impugned order dated 19.12.2014 passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called the 'Tribunal') in Original Application No. 607/PB/2013. The writ in the nature of Mandamus has also been prayed directing respondents to release the pensionary benefits in respect of the services rendered from 04.10.1971 to 30.07.1974 in the Department of Animal Husbandry in the

State of Punjab and in continuity thereof upto 06.06.1981 i.e. the date when he joined service with respondent no. 6 i.e. Punjab State Small Industries Corporation Limited, as per the provisions of the pension rules alongwith interest @ 18 % per annum on the arrears.

2. The facts in brief are that petitioner was appointed as a Laboratory Assistant with respondents no. 3 and 4 and continued in service upto 30.07.1974. He applied through proper channel and was appointed as a clerk at Central Civil Secretariat on 31.07.1974 without any break. He served with the Central Government till 06.07.1981. The total service rendered by the petitioner with respondents no. 1 to 4 was about three months less than ten years. He again applied through proper channel for the post of Assistant with respondent no. 6 and was selected and appointed as such. He continued to serve there till 30.09.2008, when he retired. All his appointments with respondents no. 3 and 4, respondents no.1 and 2 and with respondent no.6 were through proper channel and were without any break in service. On the basis of information sought under the provisions of Right to Information Act, the petitioner has rendered service with respondents no.3 and 4 from 04.10.1971 to 30.07.1974. He served a notice upon respondents no.1 and 2 to consider his claim for grant of pensionary benefits in respect of the service rendered by him with respondents no.1 to 4. In reply to the

notice, respondent no.2 responded that there was no documentary evidence of the service rendered by him with respondents no.3 and 4 from 04.10.1971 to 30.07.1974. He approached respondents no.3 and 4 by means of a legal notice asking him to supply the requisite documents to respondents no.1 and 2. Ultimately, he filed the Original Application No. 607/PB/2013 for the release of the superannuity benefits from respondents no.1 to 4. The said application was dismissed by learned Tribunal. Hence this petition.

3. The claim of the petitioner was contested by the respondents no.1 and 2 before the Tribunal on the grounds *inter alia* that petitioner has joined the services of the Ministry of Urban Development on 31.07.1974 without disclosing the fact that he had earlier worked with the Department of Animal Husbandry in the State of Punjab from 07.10.1971 to 30.07.1974. He even did not provide the letter of relieving from the Government of Punjab at the time of joining the services of respondents no.1 and 2. So, he is not entitled for the benefit of service rendered with the Department of Animal Husbandry in the State of Punjab. It was also pleaded that he is not entitled for gratuity, as he has resigned from service.

4. Respondents no.3 and 4 had pleaded before the learned Tribunal that petitioner joined as a Laboratory Assistant on 29.03.1972 and not on 04.10.1971 as contended by him. He resigned w.e.f 29.07.1974. It is also pleaded that

case of the petitioner itself relates to the year 1972, whereas he has filed the Original Application in the year 2013 i.e. after more than 40 years.

5. We have heard Mr. Sanjeev Sharma, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

6. Initiating the arguments, learned counsel for the petitioner contended that the petitioner joined the services of respondents no.3 and 4 on 04.10.1971 and served till 30.07.1974. He had applied through proper channel and was selected as a clerk at Central Civil Secretariat on 31.07.1974 and served with the Central Government till 06.07.1981. In this manner, he has served for about three months less than ten years. Thereafter, he joined the services of respondent no.6 and retired on 30.09.2008. He contended that respondents have themselves admitted that the service record of the petitioner was incomplete. So, they cannot take the benefit of their own wrong and the joining of the services by the petitioner with respondents no.3 and 4 shall be taken from 04.10.1971. He contended that as per the information received by the petitioner under the provisions of Right to Information Act, the contribution of the petitioner towards G.P.F started from November 1973. The petitioner was on probation for two years. The deduction towards G.P.F starts only on completion of the probation period, which establishes

that petitioner had joined the services of respondent no.3 and in October 1971. The total service rendered by the petitioner with respondents no.1 to 4 works out to be three months less than ten years.

7. He further contended that as the qualifying service of the petitioner with respondents no.1 to 4 is three months less than ten years, so he will be entitled to the pensionary benefits under Rule 49 of the Central Civil Services (Pension) Rules, 1972 (hereinafter called the Pension Rules).

8. He further contended that the resignation of the petitioner from the earlier service was only a technical resignation enabling him to take up the new assignment, which will not be considered as a break in his service and the previous service rendered by him shall be counted. To support his contentions he has relied upon cases **Dr. N.T.Singh Vs. Central Administrative Tribunal, Chandigarh and others 2008(3) S.C.T 278, State of Punjab Vs. Ram Pal, P.T.I 2001(1) S.C.T 430, Hans Raj Vs. State of Punjab through the Secretary to Government, Department of Agriculture and others 2004(2) Recent Services Judgments 144, Rajinder Singh Vs. The State of Punjab and others 2000(4) Recent Services Judgments 620 and Sukhdev Singh and others Vs. State of Punjab and others 2005(2) S.C.T 564.**

9. He further contended that as per Rule 49(1) and 50 of the Pension Rules, the petitioner shall be entitled to gratuity

as admittedly he has rendered more than five years qualifying service with respondents no.1 and 2. Even, that claim of the petitioner has been denied.

10. He further contended that the learned Tribunal has non-suited the petitioner simply on the ground of delay. In-fact, cause of action has accrued to the petitioner when he retired from the services of respondent no.6 and thereafter, he had been making representation and invoking the provisions of the Right to Information Act. Thus, he pleaded that the impugned order passed by the learned Tribunal is illegal.

11. We have duly considered the aforesaid contentions.

12. The petitioner has prayed for a direction to the respondents to release the pensionary benefits for the service rendered w.e.f. 04.10.21971 to 30.07.1974 in the Department of Animal Husbandry in the State of Punjab and in continuity thereto upto 06.07.1981 with respondents no.1 and 2 as per the provisions of the Pension Rules. He has also sought the interest on the arrears of the pensionary benefits.

13. The petitioner has not placed on record any documentary evidence i.e. the appointment letter etc. to show that he has joined the services of the Department of Animal Husbandry in the State of Punjab on 04.10.1971. Learned counsel for the petitioner has pleaded only to draw inference from the fact that the G.P.F account number was allotted to the petitioner in the month of October 1973, which is allotted

after completion of the probation period of two years. So his joining the service will fall in October 1971. But, the impugned order passed by the learned Tribunal shows that an affidavit was filed by Dr. Inderjit Singh, Deputy Director, Animal Husbandry along with the relevant page of the pay bill register showing the joining of the petitioner as Laboratory Assistant on 29.03.1972(F/N). Copy of the short reply by way of affidavit of Dr. Harinderjit Singh Sandha, Director Animal Husbandry, Punjab filed before the learned Tribunal is also available at page no.114 of the paper book. Wherein, it has been categorically mentioned that the petitioner has joined as Laboratory Assistant on 29.03.1972 and not on 04.10.1971 as contended by him.

14. There is also no material on record to show that the petitioner had tendered the technical resignation with respondents no.3 and 4 to take up his new assignment with respondents no.1 and 2. Rather, in the written statement filed by respondents no.1 and 2 before the learned Tribunal, it has been pleaded that the petitioner had joined the services with Ministry of Urban Development on 31.07.1974 without disclosing the fact that he had earlier worked with the department of Animal husbandry in the State of Punjab. The petitioner has also not placed on record the copy of order passed by respondents no.3 and 4 accepting his technical resignation and permitting him to join the new assignment

with respondents no.1 and 2. So, the plea raised by learned counsel for the petitioner that the petitioner has tendered the technical resignation is also not substantiated. So, the service rendered by him with respondents no.3 and 4 cannot be counted in continuity with the service rendered by him with respondents no.1 and 2.

15. Cases relied upon by learned counsel for the petitioner are quite distinguishable of the facts. In **Dr. N.T. Singh's case (Supra)**, the services of the petitioner were transferred to the Punjab Agricultural University and thereafter, he was send on deputation to Indian Council for Agricultural Research. So, that was not a case of relinquishing the earlier service. Again in case **State of Punjab Vs. Ram Pal, P.T.I (Supra)**, it was found that that was a case of transfer and the plaintiff was held entitled to the benefit of his previous service. In **Hans Raj's case (Supra)**, the petitioner an Agriculture Inspector was sent on deputation with the State Bank of Patiala by the approval of the Government. In **Rajinder Singh's case (Supra)**, the point in dispute was as to whether the temporary service previously rendered with the Central Government can be counted towards pensionary benefits or not. In **Sukhdev Singh's case (Supra)**, it was laid down that where the selection and appointment of a Government Servant is made subject to resignation from the other post, he is entitled for the benefit of the previous service.

But, in the instant case, there is no material to show that any such condition was imposed by respondents no.1 and 2 at the time of his appointment as a clerk with the Central Civil Secretariat. So, all the above noted cases are of no help to the petitioner.

16. It is the admitted case of the petitioner himself that the service rendered by him with respondents no.1 to 4 was three months less than ten years. Moreover, his case was not a case of retirement. Rather, he has left the job to take up the new assignment. So, the provisions of Rule 49 of the Pension Rules shall not be applicable and he will not be entitled to any pensionary benefit under Rule 49 of the Pension Rules.

17. The gratuity is also payable only on retirement of a government servant, which is evident from Rule 49 and 50 of the Pension Rules referred by learned counsel for the petitioner. In case of resignation, the gratuity cannot be claimed. It is not the case of the petitioner that he has retired from the service of respondents no.1 and 2 after rendering more than five years of service. Rather, he has resigned w.e.f. 06.07.1981 from the post of Lower Division Clerk. So, he will also not be entitled to the gratuity.

18. Moreover, the petitioner is claiming the pensionary benefits for his services with respondents no.1 to 4 for the period 1971 to 1981. The Original Application has been filed by him in May 2013 i.e. after the delay of 32 years, while he

could have lodged his claim soon after he left the service with respondents no.1 and 2. So, there is long unexplained delay in raising the claim.

19. Thus, keeping in view our aforesaid discussion, we do not find any illegality in the impugned order dated 19.12.2014 passed by the learned Tribunal.

20. Resultantly, the present writ petition has no merits and is hereby dismissed.

**(M.JEYAPPAUL)
(JUDGE)**

**(DARSHAN SINGH)
JUDGE)**

October 08, 2015

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