

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Letters Patent Appeal No. 1455 of 2015(O&M)
Date of Decision: October 05, 2015

Bhakra Beas Management Board and others

---Appellants

Versus

Raj Kumar & others

---Respondents

CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Amit Jhanji, Advocate, for the appellant.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes*
2. *To be referred to the Reporter or not? Yes*
3. *Whether the judgment should be reported in the Digest? Yes*

Mahavir S. Chauhan, J.

Civil Miscellaneous No. 3114-LPA of 2015:

Heard.

02. In view of the submissions made in the application, same is accepted and filing of certified copies of documents, Annexures A1 to A3 is exempted.

Civil Miscellaneous No. 3115-LPA of 2015:

03. Heard.

04. In view of the submissions made at the bar and contents of the application, which are supported by affidavit, the application is accepted

and delay of twenty one days in filing the appeal is condoned.

Letters Patent Appeal No. 1455 of 2015

05. Order dated 28.07 2015 of the learned Single Judge allowing Civil Writ Petition No. 4852 of 2011 quashing order dated August 08, 2008 rejecting respondent's claim for counting service rendered by him as a work-charge employee towards pensionary benefits, is under challenge in this intra-court appeal brought by Bhakra Beas Management Board ('BBMB', for short) and its officers.

06. Case of respondent No.1 before the learned Single Judge was that he joined the service of Punjab Government on 30.08.1965, as Time Clerk in 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 on reaching the age of superannuation. While computing pensionary benefits service rendered by the respondent from 30.08.1965 to 30.06.1969 was not taken into account which prompted him to make a representation dated 28.07.2008 (Annexure P5). The representation dated 28.07.2008 (Annexure P5) however came to be rejected vide order dated 08.08.2008 (Annexure P6) by Superintendent, Workshop Division, Nangal Township Division. Respondent then

approached Chairman, BBMB vide his representation dated 20.09.2010 (Annexure P7) but without success.

07. In the counter submitted by the appellants respondent's plea was countered saying that he was entitled to the pensionary benefits only for the regular service rendered by him in the BBMB and no such benefit could be claimed by him for the service rendered by him with Beas Construction Board for, his appointed in the BBMB was a fresh appointment and his claim for protection of his pay scale taking into account his service with Beas Construction Board was turned down by the Industrial Tribunal-cum-Labour Court, Chandigarh vide Award dated 07.08.2008. According to the appellants, case of the respondent is covered by the ratio of **Jaswant Singh and others versus Union of India, AIR 1980 Supreme Court 115.**

08. Respondent's writ petition, as aforesaid, has, however, been accepted by the learned Single Judge vide order dated 28.07.2015 in terms of order dated 01.12.2014 passed by a Division Bench of this Court in CWP No. 15666 of 1988, ***Sohan Singh through LRs versus State of Punjab and others.***

09. The appellants though did not appear before the learned Single Judge at the time of hearing of the Civil Writ Petition but it is urged before us that in **Jaswant Singh and others versus Union of India** (supra) it has been held by the Hon'ble Supreme Court that employees erstwhile Beas Control Board and Beas Construction Board, after cessation of those Boards, became employees of Central Government and respondent's appointment with the BBMB being fresh appointment, service rendered by him with Beas Construction Board cannot be taken into account for

computation of his pensionary benefits.

10. The controversy, in fact, has already been decided by a Division Bench of this Court, of which one of us (Satish Kumar Mittal, J) was a member, in the case of **Sohan Singh through LRs versus State of Punjab** (supra) in the following terms:

“From the above table, it is further clear that the petitioner actually served the respondent-Board from 12.3.1985 to 31.7.1992 i.e. about 7 ½ years. Now, the question arises whether the service rendered by the petitioner prior to joining the Board is to be counted towards qualifying service for the grant of pension?”

It is virtually the admitted position between the parties that prior to re-organization of the erstwhile State of Punjab, Bhakra Dam was under Punjab Government. On the re-organization of the State of Punjab, Beas Construction Board which had been constituted by the Central Government for execution, construction and completion of the components of the Beas Project and the Bhakra Dam, as per the provisions of the Punjab Reorganization Act, 1966 (hereinafter referred to as "the 1966 Act") were transferred to the Bhakra Beas Management Board i.e. the respondent- Board which was another statutory body created by the Central Government in exercise of powers conferred upon it under Section 79 of the 1966 Act. Section 80 (1) of the 1966 Act provides that when all the completed components of the Beas project are transferred to the respondent-Board, they shall cease to exist having being merged into the respondent-Board. At this stage, it would be useful to refer to the following averments made in the written statement filed by the respondent-Board, which are reproduced below:

"The Beas Construction Board was constituted by the Central Govt. in exercise of the Punjab Re-organisation Act, 1966 (Act-31 of 1966) (here-in-after referred to as Act of 1966) for execution, construction and completion of the components of the Beas Project. The completed components of Beas Project were transferred by the Central Govt. to the Bhakra Beas Management Board another statutory body constituted by the Central Govt. In exercise of the Powers conferred upon it under Section 79(1) of the Act. It was provided in Section 80(1) in the Act of 1966 when all the completed components of

Beas Project are transferred to the Bhakra Beas Management Board, the Beas Construction Board referred to above shall cease to exist."

Thus, it is clear that Bhakra Dam project which was earlier under the Government of Punjab and the Beas Construction Board which was earlier under the Central Government, on the reorganisation of the erstwhile State of Punjab, through the provisions of the 1966 Act merged into the respondent-board. This change was necessitated on the formation of successor States cut out from the erstwhile State of Punjab, Haryana, Himachal Pradesh etc. as the above project was catering to all of them. Thus, both the projects in which the petitioner served ultimately got merged into the respondent-Board. The above facts have been completely ignored by the respondent-Board while considering the case of the petitioner for counting the service rendered by him earlier in the Bhakra Dam Project and then later under the Beas Construction Board under the Central Government before joining the respondent-Board.

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 sub-section (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 sub-section (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:

"Thæe 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 view of the above, the present writ petition is allowed with a direction to the respondent-Board to count the service of the petitioner rendered under the Government of Punjab in Bhakra Dam and under the Beas Construction Board towards qualifying service towards pension and accordingly grant pension to him. It is further directed that the arrears payable to the petitioner be paid within two months from the date of receipt of a certified copy of this order and in case the same is not done then from that date, till the date of actual payment, the petitioner shall be entitled to 6% simple interest on the amount due."

Learned counsel for the appellants has not been able to

persuade us to take a different view.

12. Consequently, no fault can be found with the order of learned Single Judge allowing respondent's writ petition.

13. The appeal, therefore, fails and is dismissed *in limine*.

Civil Miscellaneous No. 3116-LPA of 2015:

14. Appeal of the appellants having been dismissed, this application seeking stay of operation of the impugned order, is rendered infructuous and is, accordingly, disposed of.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIRS. CHAUHAN]
JUDGE

October 05, 2015
adhikari