

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

**RSA No.3371 of 2012 (O&M)
Date of decision: 07.07.2015**

Neelam Puri and others

...Appellants

versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Varun Issar, Advocate,
for the appellants.

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

RITU BAHRI, J.

Plaintiff-appellants have come up in regular second appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Civil Judge (Junior Division), Ambala and the Additional District Judge, Ambala, whereby their suit for declaration and mandatory injunction for has been dismissed.

Vinod Kumar Puri, husband of plaintiff-appellant No.1 joined the service on 08.07.1969 as fitter under Haryana State Electricity Board on work charge basis. His services were regularized w.e.f. 03.11.1988 and thereafter, he retired on 28.02.2005 on attaining the age of superannuation. He was granted pension vide order No.3681 dated 26.09.2005, issued vide memo No.CH/26/CS-Pension/UH BVN Ltd./P-3821 dated 28.09.2005.

Amount of Rs.3079/- was sanctioned as pension along with dearness allowance. Vide order dated 26.09.2005, amount of Rs.1,16,536/- was sanctioned on account of death-cum-retirement gratuity (DCRG). However, the husband of plaintiff No.1 expired on 24.09.2005 before receipt of PPO, GPO and other retiral benefits. Grievance of the petitioners-appellants is that the service rendered by deceased-Vinod Kumar Puri on work charge basis from 08.07.1969 to 29.02.1988 (18 years & 7 months) has not been taken into consideration while calculating retiral benefits and those benefits were calculated only on the basis of regular service rendered by him from 03.11.1988 to 28.02.2005, which has caused prejudice to the plaintiffs.

Upon notice, the defendants-appellants filed written statement and took preliminary objections with regard to maintainability of the suit, suppression of material facts and suit being barred by Section 41 (h) of Specific Relief Act. It was admitted that as per Haryana State notification dated 04.02.1992, adopted on 06.08.1993, an option was given to each employee to opt within a period of three months from the date of regularization or from the date of issuance of said circular, whichever is later, as to whether he/she intends to count the period of work charge service rendered by him/her towards the pensionary benefits. It was stated that Vinod Puri, husband of plaintiff No.1, did not exercise his option, therefore, it was presumed that he intended to be continued to the member of employees provident fund. Vide circular dated 09.08.1994 further period of three months was given to the employees, who could not avail this opportunity earlier. Both the aforesaid circulars were in the knowledge of Vinod Puri, but he had not given his option at the relevant time, therefore, the period rendered on work charge basis could not be counted towards pensionary

benefits.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to decree for declaration, as prayed for? OPP
2. If issue No.1 is decided in favour of plaintiff, whether he is entitled to relief of mandatory injunction as prayed for? OPP
3. Whether suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has suppressed true and material facts? OPD
5. Relief.

Both the Courts below dismissed the suit on the ground that an amendment was in the service rules, which was adopted by the HSEB on 23.06.1993. However, husband of plaintiff No.1 did not give his option in time.

The stand of the defendants-respondent was that vide Ex.D3 to Ex.D5, certain amendments were made in the service rules regarding pensionary benefits scheme of the defendant-department. Those circulars were pasted on the notice board of the office of the Electricity Board. Husband of plaintiff No.1 did not exercise his option and hence, he was not entitled to count his work charge period for the purpose of retiral benefits.

The following substantial question of law arises for consideration by this Court:-

“Whether the plaintiffs-appellants are entitled to count the service rendered by Vinod Kumar Puri on work charge basis w.e.f. 08.07.1969 to 29.02.1988 towards regular service for the

purpose of retiral benefits.”

Circular dated 06.08.1993 came up for consideration before a Division Bench of this Court in **Dharampal Vs. Superintending Engineer and another**, CWP No.1150 of 2005 (decided on 21.11.2006), whereby an employee was required to give option for the retiral benefits within a period of three months and he was also required to deposit employees contributory fund with interest. In that case, the Division Bench had followed the judgment of Full Bench of this Court in **Kesar Chand Vs. State of Punjab**, 1988 (2) PLR 223, wherein it was held that the work charge service rendered by an employee followed by regularisation is entitled to be considered as a qualifying service for the purpose of pension. As per Rule 3.17A, which has now been incorporated in the Punjab Civil Service Rules, Volume II, Part-I (as applicable to Haryana) pursuant to the judgment of Full Bench in **Kesar Singh's** case (supra), all service interrupted or continuous followed by confirmation has to be treated as qualifying service for the purpose of calculation of pension and the period of breaks is to be omitted while working out aggregate service. The Division Bench, after examining the circular dated 06.08.1993, held that as per Clause 4, there was a specific requirement that those instructions were to be got noted from all the employees and they should have acknowledged the receipt of the letter. This condition of the circular dated 06.08.1993 was violated as the said circular had not been got noticed by the petitioner. In the absence of acknowledgement of the circular by an employee, the benefit of work charge service could not be deprived at the time of calculation of pension. Similar view has been taken in a judgment passed by this Court in **Dilawar Singh Vs. Haryana Power General Corporation Limited**, 2006 (3) SCT 412 and **Ram Kumar Vs. Uttar**

Haryana Bijli Vitran Nigam Limited, 2006 (3) SCT 628. The condition that an employee was to return employees contribution has also been considered by Division Bench by making reference to earlier judgments passed in **Harjinder Singh Vs. State of Punjab**, 2003 (4) SCT 1 and **Kasturi Lal Khurana Vs. State of Punjab**, 2003 (4) 462. It was held that at the time of re-calculation by adding the work charge period, the employer's provident fund would be adjusted before making this payment. Ultimately, the writ petition was allowed and the petitioner was held entitled to computation of the work charged service as qualifying service. A direction was given to the respondents to compute the arrears after adjusting the employer's contribution in the provident fund drawn by the petitioner within a period of two months.

No judgment to the contrary has been cited by learned counsel appearing for the respondents.

In view of the judgment passed by Division Bench of this Court in **Dharam Pal's** case (supra), the plaintiffs-appellants are held entitled to computation of work charge service, rendered by Vinod Kumar Puri, as qualifying service. The provident fund drawn by deceased-Vinod Kumar Puri shall be adjusted and set off from the arrears, which may become payable after the aforesaid calculation and computation. The defendants-respondents are directed to complete the above said exercise within a period of two months from the date of receipt of certified copy of this order. The appellants shall be entitled to interest on the arrears after setting off employer's contribution from provident fund @ 9% per annum from the date the arrears were payable till the date of payment. However, the arrears resulting from re-calculation of pay/pension after adding the aforesaid period

of work charged service shall be confined only to three years and two months preceding the date of filing of the suit i.e. 16.04.2008.

Allowed accordingly.

(RITU BAHRI)
JUDGE

07.07.2015
ajp