

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11722-1997 (O&M)
Date of decision: 30.11.2016

Subhash Chander Khullar

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.K.Chopra, Senior Advocate with
Ms.Ekta Arora, Advocate for the petitioner
Mr.R.S.Pathania, DAG Punjab
Mr.K.S.Dadwal, Advocate for the respondent Nos.4, 6 and 7

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner was working as Octroi Clerk in Municipal Council, Hoshiarpur since 14.8.1969. On 22.9.1991, he submitted an application to the Municipal Council, Hoshiarpur for premature retirement stating that the circumstances do not allow him to continue in service. Therefore, he is giving 24 hours notice to be released from service. His said request was accepted vide order Annexure P2 and was duly approved by the Administrator, Municipal Council, Hoshiarpur. When the petitioner retired from service, pension scheme to the Municipal Council employees was not in operation. After it was promulgated, the Municipal Council got deposited the share of CPF for the period the petitioner had not contributed to the CPF. The municipal authority accordingly submitted the case for release of pension to the Government. As no decision was taken by the Government,

the petitioner filed CWP No.18734 of 1996 before this Court, in which, the Municipal Council disclosed that out of 22 years 1 month and 10 days service, the petitioner remained on leave without pay for 11 years 6 months and 2 days. Still his service is more than 10 years, therefore, he is eligible for pension. Therefore, case of the petitioner has been sent to the competent authority for approval. In view of the said stand, the petition was disposed of by a Division Bench of this Court vide order dated 11.4.1997 with a direction to the State of Punjab to do the needful at the earliest preferably within a period of one month from the date of production certified copy of order of the Court. The government vide letter dated 6.6.1997 (Annexure P8) rejected the pension case of the petitioner on the ground that under Rule 8.2 of the Punjab Municipal Pension Rules, 1994, the qualifying service of the petitioner is less than 10 years. Therefore, a sum of Rs.7212/- deposited as CPF was also returned to EO Municipal Council, Hoshiarpur.

From the written statement of the respondents, it comes out that while computing the said service, in addition to the period of absence without leave, another period of 2 years 6 months and 15 days was deducted on the ground that the petitioner had not subscribed to the provident fund for the said period.

Now, the sole question arising for consideration before this Court is as to whether the period during which, the petitioner did not subscribe for the provident fund, is liable to be deducted from the qualifying service for computing the pension?

I have heard learned counsel for the parties and have carefully gone through the file.

At the outset, learned counsel for the petitioner withdraws the

malafides alleged against the various officers/ officials of the respondents.

The matter has been finally settled by this Court and by the instructions of the government. A Division Bench of this Court in Kasturi Lal Khurana and others vs. State of Punjab and others, in CWP No.5661 of 1999 decided on 30.4.2000, in similar circumstances, held that the said service is to be computed for the purpose of retiral benefits and the petitioner therein is directed to deposit the contribution of provident fund or the same may be adjusted from the amount to which the petitioner is entitled. The matter was again discussed and finally decided by another Division Bench of this Court in Harjinder Singh vs. State of Punjab and others, 2003(4) RSJ 458, wherein the same Rule 8.2 was interpreted and the Court took the view that the said period for which the petitioner did not contribute towards CPF is to be computed as qualifying service for the purpose of pension and it was directed that contribution of provident fund be adjusted out of the amount to which the petitioner is entitled.

In order to implement the said judgment, the Director of Local Government, Punjab, Chandigarh issued instructions dated 14.10.2004, which reads as under:-

“Hon'ble Punjab & Haryana High Court in CWP No.1996 of 2001 titled as Harjinder Singh vs. State decided on 18.8.03 has held that in view of the provisions contained in sub clause (i) of section 2 of Punjab Municipal Employees Pension and General Provident Fund Rules 1994, the service during which an employee has been paid out of the Munciiipal Fund shall be considered as “qualifying service for reckoning the pensionary claim of the retiring employee. Similar provisions of qualifying service are contained in clause 2(k) of Punjab Municipal Corporation Employees Pension and General Provident Fund Rules 1994; and in clause 2(i) of Punjab Improvement Trust Employees and General Provident Fund Rules 1994. It has also been held in the judgment ibid that the pension

contribution for non-contributory period shall be recoverable from the amount which has become payable to the retiring employees.

2. *SLP(Civil) filed against the judgment dated 18.08.03 of Hon'ble High Court was dismissed by the Hon'ble Supreme Court on 2.08.04.*

3. *Government has now decided to implement the aforesaid judgment of Hon'ble High Court dated 18.08.03 in to.*

4. *Meticulous compliance of this order may be ensured."*

As per instructions itself, SLP against the judgment in the case of Harjinder Singh (supra), was dismissed.

The above noted authoritative pronouncement of the Court followed by the instructions of the government, makes it clear that the said period of the petitioner during which he did not contribute towards CPF is to be computed as qualifying service for the purpose of pension. The amount of CPF returned by the State, which is now stated to be lying with the Municipal Council, Hoshiarpur, is directed to be again submitted to the Government and the State is directed to release the pension to the petitioner. The arrears shall carry interest @ 9% per annum from the date which the case of the petitioner in incorrectly rejected on 6.6.1997 (Annexure P8).

Petition is accordingly allowed.

30.11.2016

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes