

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

Date of decision: 25.07.2016

CWP No.17510 of 1996

S.N.Garg (deceased) through his LRs

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Atul Lakhanpal, Senior Advocate, with
Mr. Arjun Lakhanpal, Advocate, for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

RAJIV NARAIN RAINA, J.

Claim in this petition is for counting of past service rendered in District Board/Zila Parishad towards seniority citing instructions issued by the State of Haryana vide letter dated 09.05.1978.

Few relevant facts may be necessary to note. The petitioner started his career in 1961 as Accountant in District Board, Hisar. In 1963, the District Boards were reconstituted and renamed as Zila Parishads. On 26.11.1973, Zila Parishads in the State of Haryana were abolished and the staff working therein was agreed to be absorbed in other Departments of the Government. This is how the petitioner came to the Excise & Taxation Department as an Accountant on the same pay scale he drew earlier in the Zila Parishad. This was in June, 1975. The petitioner was promoted as Excise Inspector in 1978. In 1990, he was promoted as Assistant Excise & Taxation Officer. He staked claim to past service rendered in District Board/Zila Parishad towards seniority in the Excise & Taxation Department.

His representations in this regard were not addressed by the Department and remained pending, which brought the petitioner to file CWP No.9994 of 1996 for direction to the respondents to re-fix his seniority after counting past service rendered in District Board/Zila Parishad. The petition was disposed of with a direction to decide the petitioner's representation within time specified. The representation was rejected on 07.10.1996. Hence, the present petition was brought.

On notice, the respondents have contested the case by filing written statement.

The only issue to be addressed and determined is; whether the petitioner has a right to claim seniority from past service in District Board/Zila Parishad consequent upon absorption in the Excise & Taxation Department. The rights of the petitioner are not far to search as they are found recited in the appointment letter, which laid down the terms & conditions, which if accepted, allowed the petitioner to join duty as an Accountant in the Government Department. Copy of the appointment letter dated 04.06.1975 has been placed on record as Annex P-2. The appointment is stated to be by transfer. The appointment was subject to approval of Subordinate Services Selection Board, Haryana. His services were governed by the Punjab Excise & Taxation Department Subordinate Officers (Ministerial) Class III Service Rules, 1964 as applicable to Haryana. He was to remain on probation for a period of two years. The post was temporary, but likely to continue and last, but not the lease in clause (5), it was stipulated as follows:

“(5) He will be treated to have been taken into Government Service (Excise & Taxation Department) from the date he reported for duty in

this Department and he will not be given any benefit of his previous service towards seniority.”

If the office order dated 04.06.1975 mentions that the petitioner was appointed by transfer, the use of the expression is not quite in sync with the memo dated 26.11.1973 (Annex P-1), which is the policy decision of the Haryana Government exhaustive on ‘Abolition of Zila Parishads in the State of Haryana and disposal of assets and liabilities thereof’ in the manner explained thereon. Clause (A) of the memo dated 26.11.1973 (Annex P-1) deals with Staff. It provides that the entire staff of the erstwhile Zila Parishads, except the officers/officials appointed on 01.01.1973 or thereafter and those who had attained the age of 55 years or above on 13.06.1973 or till their absorption in Government service, will be absorbed in the various Government Departments on the terms & conditions that follow, which begins with obtaining options from the migrating staff, in case the terms are acceptable to them. Those, who do not opt would be relieved from service and would be entitled to their GPF benefits. Those who opt will be given facility of pension, GPF in accordance with their options. Sub clause (c) in Clause (A) prescribes “officers/officials will be given benefits of the previous service only in the matter of pay and leave”. The relevant sub clauses i.e. (c) & (d) read as under:

- “(c) officers/officials will be given benefits of the previous service only in the matter of pay and leave.
- (d) these officers/officials will be treated to have been taken in Government service from the dates they joint their duties and they will not be given any benefit of their previous service towards seniority.”

The stipulations contained in policy instructions (Annex P-1) and the Office Order offering appointment to the petitioner are to be read harmoniously to examine his rights to previous seniority and whether it was carried forward. The legal effect of which will be that the petitioner has been appointed by “absorption” the word specifically used in the instrument of deployment of staff of erstwhile Zila Parishads after they were disbanded. He cannot claim seniority of past service as it is not conferred by law. The issue is foreclosed against him and in case granted by a Court direction would disturb valuable third party rights in the Departments, where Zila Parishad employees may have been deployed by absorption or call it transfer. The movement of an employee of Zila Parishad on its abolition to Government service may broadly be in the nature of transfer, but it has not to be construed to confer right of seniority by virtue of transfer because the petitioner did not come from Government service to Government service, but from a local body to Government service. The petitioner was not a Government servant while he worked for Zila Parishad protected by rules of service framed under Article 309 of the Constitution and the penalty scheme in Article 311 of the Constitution of India. The contention of the petitioner that he has a vested and accrued right to past seniority is misplaced and deserves to be rejected as unsustainable.

Ms. Shruti Jain Goel for the State has brought to the notice of this Court the Supreme Court dicta in State of Haryana & another Vs. Deepak Sood & others, Civil Appeal No.4446 of 2008 decided on 15.07.2008, which deals with the similar issue on closure of the Octroi Branch in the Municipal Committees in the State of Haryana and employees absorbed in the Education Department. The petitioners therein applied for grant of ACP Grade, which was denied to them. Therefore, they filed writ

petition in the High Court and claimed that they are entitled to the aforesaid benefit for having put in more than 10/20 years of service, which included service in the Octroi wing. Absorption had taken place in the year 2000 and the State contended that they were not entitled to previous service towards ACP Grade, as they had not completed 10 years or 20 years of service, as required by the Scheme. The Division Bench of this Court held that the appointment was on transfer basis and, therefore, they would get all benefits except seniority due to them. In appeal by the aggrieved employees, before the Supreme Court the judgment of this Court was upheld while observing as follows:

“Therefore, in the series of judgments given by this Court the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs.”

This puts paid to the argument raised by the petitioner. The only issue which remains is the case set up by the petitioner of equal treatment with the case of one Jagdish Chander Gupta and some others. This was a case of an appointment in Irrigation Department in joint Punjab in 1956, which was allocated to the State of Haryana after reorganization on

01.11.1966. Mr. Gupta joined the Excise & Taxation Department as a Clerk in April, 1970 at Ambala and requested for benefit of his service on the basis of allocation to the State of Haryana, which right he appeared to possess of past service towards seniority. Officials likely to be affected were heard. Only one representation was received by a Superintendent, which was considered and benefit of past service was allowed to Mr. Gupta by the Government. State has also explained the cases of Sarvshri N.S.Jain, Nand Lal Asija, Veerbhan Bhateja and Risal Singh. Mr. N.S.Jain and Mr. Nand Lal Asija were cases of absorption in Excise & Taxation Department “along with work”, which is not the case of Zila Parishads being abolished or staff absorbed in other Departments. Mr. Jain and Mr. Asija before joining Excise & Taxation Department worked in the Finance Department. The work to which they were employed under the Profession, Trade, Callings and Employment Act, 1956 was transferred lock, stock and barrel to the Excise & Taxation Department from the Finance Department along with staff dealing with that work in the Finance Department. Therefore, benefit of service to the employees transferred was allowed with the approval of Government, as they were absorbed along with the work and their respective duties. On the other hand, Mr. Veer Bhan and Mr. Risal Singh took benefit of past service towards seniority under directions of this Court in CWP No.3399 of 1988 and the State appeal against the order was dismissed on the ground of limitation. Therefore, the order of the learned Single Judge has attained finality.

Accordingly, the petitioner shall remain bound by the terms & conditions of the appointment in the scheme of absorption. This is not to say that the past service is to be excluded for purposes of pension, gratuity etc., which right the petitioner can always pray for consideration, if not already

granted since he has retired from service long ago. No final opinion is expressed on the point which is left open to be considered in accordance with law including limitations and right to sue as against the cause of action.

Consequently, I find no merit in the present petition. The same is dismissed.

[RAJIV NARAIN RAINA]
JUDGE

25.07.2016
Vimal

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*