In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 3041 of 2005
Date of Decision: 13.1.2016.

Karnail Singh (deceased) through LRs ....Petitioner

Versus

State of Punjab and another ....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. J.P.Rana, Advocate
for the petitioner.

Mr. Neeraj Yadav, AAG, Punjab.

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SABINA, J.

Petitioner (since deceased) has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of mandamus directing the respondents to release revised pension and other retiral benefits to him on the basis of last pay drawn by him from Bhakra Beas Management Board ('*BBMB*' for short).

Case of the petitioner (since deceased), in brief, is that he had joined as Clerk in the office of Executive Engineer on adhoc basis on 19.1.1965. Petitioner (since deceased) eventually retired while serving with the BBMB on 31.5.2004. Thus, the petitioner (since deceased) had worked in different fields associated with BBMB during his service period. Revision petitions were filed in this Court by the similarly situated employees seeking revised pension on the basis of last pay drawn while working with the

Board. CWP No. 6768 of 1996 was allowed vide order dated 10.12.1996 (Annexure P-2). The said order was upheld by the Apex Court vide order dated 6.11.1998 (Annexure P-3).

Respondents, in their written statement, admitted the service period of the petitioner (since deceased) but it was averred that petitioner had not worked with the BBMB from 8.12.1981 to 30.9.1985. Therefore, the claim of the petitioner for revised pensionary benefits was not covered as per the notification dated 26.11.2001 on the basis of which the decisions Annexures P-2 and P-3 were passed.

I have heard the learned counsel for the petitioner and the learned State counsel and have gone through the record available on the file carefully.

Instructions dated 26.11.2001 have been placed on record as Annexure R-1. Service period of the petitioner (since deceased) is not in dispute. Admittedly, petitioner (since deceased) had joined BBMB on adhoc basis with effect from 19.1.1965 and his services were regularized on 3.8.1965. Petitioner retired from BBMB on 31.5.2004. Admittedly, during his service period, petitioner had worked with Punjab Government from 8.12.1981 to 30.9.1985.

Annexure R-1 is the instructions dated 26.11.2001. The concluding para of the said instructions reads as under:-

> *"In the circumstances as one, in order to implement the decision of Punjab and Haryana High Court in Civil Writ Petition No. 6768/1996- Nirmal Singh Vs. Punjab Govt. it has been decided that those employees of Punjab Govt. who were working in BBMB prior to the date of*

reorganisation i.e. 1.11.1996 and who were allocated to Punjab Govt. and later on retired from service while working in BBMB, their pensionary benefits be given on the last pay drawn in BBMB provided that after 1.11.1996 they had not been reverted back to Punjab State at any time due to promotion or any other reason."

Annexure P-2 is the copy of the decision given by this Court in CWP No. 6768 of 1996 and the same reads as under:-

"The argument advanced by the learned Additional Advocate General, Punjab, and the counsel representing the Board is that the entire amount drawn as emoluments by the petitioner while on foreign service shall not count for Pension and Gratuity, thereby the petitioner should have his Pension and Gratuity computed on the basis of basic pay and not actual pay which takes in foreign allowance as well.

Rule 10.21 of Chapter X of Punjab Civil Services Rules, Volume-I, Part-I, deals with deputation allowance. Clause-5 of that Rule reads:

"The deputation of an employee to the Union Territory of Chandigarh or transfer of an employee to foreign service under the Bhakra Beas Management Board or the Beas Construction Board shall be treated as service in the interest of the State of Punjab and no deputation allowance shall be admissible."

From this provision, it is beyond doubt that if an employee *of the Punjab Government is sent on deputation to the Union Territory of Chandigarh or on foreign service to the Board, such an officer should not be treated as on deputation or on foreign service, because the said deputation or foreign service is in the interest of State of Punjab. On combined reading of Rule 6.19-C and its Note, referred to earlier, and Rule 10.21(5), we come to the conclusion that employees of the Punjab Government may be sent on deputation or on foreign service to other Governments, Public Sector Undertakings or Organisations, but in case deputation is to the Union Territory of Chandigarh or foreign service to Bhakra Beas Management Board or Beas Construction Board, such employees' case will not fall under rule 6.19-C. They will be holding the posts under the Union Territory of Chandigarh or Board as if they are on posts in the State of Punjab. The emoluments drawn by them from their respective employer will be their salary. No part of the salary paid by the Union Territory or Board will be allowance or foreign allowance. The said salary should be the basis for computation for pensionary benefits. In the above view, when it is admitted that last drawn pay of the petitioner was Rs. 4,875/-, the retiral benefits due to him should be computed on that basis. Respondents were clearly in error in computing his pensionary benefits, on the wrong understanding that his basic pay was Rs. 3800/- per month.*

Respondents are directed to re-compute the retiral benefits due to the petitioner, i.e. Pension, Graduity etc., on the basis of his last drawn pay of Rs. 4,875/- per month. The amount so calculated should be disbursed to the petitioner within two months from the date of receipt of copy of this judgment. We make it clear that amounts already paid should be given credit to.

Writ petition is ordered in the above terms. We make no orders as to costs."

Annexure P-3 is the copy of the decision passed by the Apex Court. The said order reads as under:-

"We have heard the learned counsel for the parties.

In the light of the stautory scheme of Section 79(4) of Punjab Re-organisation Act, 1966 (hereinafter referred to as 'the Act') and in the light of the Punjab Civil Service Rules (hereinafter referred to as 'the Punjab Rules') especially Rule 2.21, Rule 10.2(A), Rule 8.19-C which is to be read with Rule 2.44 of the Punjab Rules it becomes clear that those erstwhile employees of the State of Punjab who had on the appointed date i.e. 1.11.1966 stood statutorily transferred to the Bhakra Beas Management Board (hereinafter referred to as 'the Board') and who ultimately retired from the Board while serving in the Board will be governed by the impugned orders of the High Court and will have to be paid pension according to the last pay drawn by them at the time of retirement from the Board. We make it clear that we confirm the *decision of the High Court only to the aforesaid extent that as all the contesting respondents fall within this category of cases the special leave petitions are dismissed.*

We make it clear that the learned counsel for the petitioners has made a clear statement that on 1.11.96 all the respondents were statutorily transferred to the Board and have retired from the Board. The decision of the High Court in their favour is being confirmed on that basis. The pension of the respondents as per the Scheme of the Act will have to be paid by the State of Punjab and not by the Board which is merely a disbursing agency."

From the perusal of the instructions and the decisions reproduced above, it is evident that an employee who was working with the Board prior to 1.11.1996 and had retired from the Board will have to be paid pensionary benefits on the last pay drawn by him from BBMB. Merely because the petitioner (since deceased) had worked with the State for some period would not disentitle him for grant of pensionary benefits on the last pay drawn by him from BBMB as the petitioner (since deceased) had retired from service while he was working with BBMB. Petitioner (since deceased) had joined BBMB prior to 1.11.1996. Thus, the case of the petitioner (since deceased) is duly covered by the instructions Annexure R-1. The plea taken by the respondents that the case of the petitioner (since deceased) was not covered by the instructions Annexure R-1, is without any basis and is misconceived.

Accordingly, this petition is allowed. Respondents are directed to refix the pension and other retiral benefits of deceased petitioner Karnail Singh on the basis of last pay drawn by him in

BBMB. Respondents are directed to release the arrears on account of revision of pension and other retiral benefits to the legal representatives of deceased petitioner Karnail Singh within a period of four months from the receipt of the certified copy of this order, failing which the legal representatives of deceased petitioner Karnail Singh would be entitled to receive the same along with interest at the rate of 9% per annum from the date of passing of this order till realization.

(SABINA)
JUDGE

January 13, 2016
Gurpreet