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

**C.M. No. 12533 of 2014 in/and
C.W.P No. 4658 of 2005
Date of decision : 03.02.2016**

Prem Chand ....Petitioner

versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.K. Chawla, Advocate
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana

Mr. Rajiv Sharma, Advocate
for the applicant/respondent No. 5

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RITU BAHRI , J.

C.M. No. 12533 of 2014

Application is allowed as prayed for.

Accordingly, additional reply by way of affidavit on behalf of respondent No. 5 is taken on record.

C.W.P No. 4658 of 2005

Petitioner joined his service as Laboratory Attendant in the Department of Central Revenue Control Laboratory, Government of India on 11.03.1965 and served up to 21.07.1967 and thereafter he joined as L.D.C in the Director, National Building Organisation under the Ministry of Works and

Housing and was promoted as U.D.C and served in this department up to 28.01.1982.

Petitioner then applied for the post of Taxation Inspector under the Haryana Government through proper channel and was selected by Subordinate Services Selection Board, Haryana, Chandigarh as per intimation received by him vide memo dated 05.10.1981 (P-1). Petitioner was then relieved from his earlier department i.e Government of India, Ministry of Works and Housing, New Delhi vide office order dated 28.01.1982 (P-2). Thereafter, Commissioner Excise and Taxation Haryana wrote to the National Building Organisation regarding verification and antecedent of the petitioner and the Organisation replied vide letter dated 16.11.1981 (P-3) that the character and antecedents of petitioner at present working as U.D.C in this Organisation were verified in the year 1965 at the time of his joining government service and there is no need now for verification of character and antecedents of the petitioner.

Petitioner served in the Excise and Taxation Commissioner, Haryana up to 15.07.2003 as his services were placed at the disposal of Transport Department vide order dated 15.07.2003 (P-4) and petitioner retired from service on attaining the age of superannuation under District Transport Office, Narnaul on 31.05.2004 and submitted his pension papers in District Transport Office, Narnaul who further transmitted the same to Excise and Taxation Commissioner, Haryana for further submission to the Accountant General (A&E) Haryana, Chandigarh for issuing pension/gratuity payment orders after sanctioned by respondent No. 2.

Since the retiral benefits of the petitioner were not released to him despite a lapse of about five months, petitioner served a legal notice dated 25.10.2004 to respondent Nos. 2 and 3. Pension papers of the petitioner were returned from the office of the Accountant General (A&E) Haryana, Chandigarh to respondent No. 2 vide reference dated 21.12.2004 as the same had not been countersigned by the office of Excise and Taxation Commissioner, Haryana.

Ultimately, respondent No. 4 has issued provisional pension payment order of Rs.4449/- per month on 10.01.2005 (P-7) on the basis of service of 22 years 04 months and 7 days i.e service rendered in Excise and Taxation Department under Haryana Government and the service rendered by the petitioner under the Government of India has been totally ignored although the petitioner had applied for the post of Taxation Inspector through proper channel.

On notice, written statement has been filed on behalf of respondent Nos. 1 to 4 stating therein that petitioner submitted his pension papers on 23.04.2004 in District Transport Office, Narnaul whereas he should have submitted his pension papers before 24 months of his retirement which was on 31.05.2004, as per instructions dated 03.09.2001 (R-1). Further pension papers were forwarded to the office without being verified by the Section Officer of D.T.O Narnaul and were subsequently returned back. During this period, service book along with pension papers of the petitioner were misplaced due to negligence of postal office. Thereafter, photocopies of pension papers were forwarded to Accountant General (A&E) Haryana, Chandigarh for releasing the provisional pension as well as other pensionary benefits and the same was done by releasing the provisional pension of Rs.4449/- per month vide letter dated 10/24.01.2005 as also other retiral benefits ie. Gratuity of Rs.1,62,969/- and G.P.F of Rs.2,76,763/- vide Accountant General (A&E) letter dated 30.08.2005. Leave Encashment of Rs.1,44,855/- and GIS of Rs.14,771/- were also released vide treasury voucher No. 5/11.06.2004 and 14/25.01.2005 and No Due Certificate was also issued in favour of the petitioner on 07.03.2005 (R-2). However, petitioner was not found eligible to get the past service benefits towards pension as he did not apply through proper channel and thus, his case was rejected vide office memo dated 05.03.2004 in accordance with Rule 3.17 of CSR Vol II. The operative part of this Rule reads as under:-

> *"Note 3.— (a) In respect of temporary employees of the following categories who render service under the Central/State Governments prior to securing posts under the Central/State Governments on their own violation in response to advertisements or circulars, including those by Union/State Public Service Commission and who are eventually confirmed in their new posts, the proportionate pensionary liability in respect of temporary service rendered under the Central/State Governments to the extent such service would have qualified for grant of pension under the rules of the respective*

Government, will be shared by the concerned Governments on a service share basis:-

(1) Those who having been retrenched from the service of Central/ State Governments secured on their own employment under State/Central Government either with or 14 P u n j a b C i v i l S e r v i c e s R u l e s V o l u m e - I I (C h a p t e r - 3) (H a r y a n a S t a t e) without interruption between the date of retrenchments and date of new appointment.

(2) Those who while holding temporary posts under Central/ State Governments apply for posts under State/Central Government through proper channel/with proper permission of the administrative authority concerned.

Explanation.— Where an employee in category (2) is required for administrative reasons for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/ or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement.

The gratuity, if any, received by the Government employee for temporary service under the Central/State Governments will, however, *have to be refunded by him to the Government concerned.*

(b) Those employees who while holding temporary posts under Central/State Governments apply for post under Central/ State Governments direct without permission and resign their previous post to join the new appointment under the Central/State Governments will not be entitled to count their previous service for pension.

Further there are instructions dated 22.08.1988 issued by Finance Department, Government of Haryana and according to which also the petitioner was not found eligible to count his past service rendered under the Central Government. The operative part of which is reproduced below:-

"These orders will be applicable only, where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier including cases where the individual has secured employment directly, on his own volition provided he has applied through proper channel with proper permission of the Administrative authority concerned."

A short written statement has also been filed on behalf of respondent No 5 stating therein that the petitioner worked with Ministry of Works and Housing w.e.f 18.08.1978 to 27.01.1982 and he left his service, as he was selected to the post of Taxation Inspector in Excise and Taxation Department, Government of Haryana. Reference has been made to Rule 26 of the CCS (Pension Rules) wherein it has been stated that when a Government employee resign/leaves without proper permission, his service stands forfeited. Rule 26 (1) and (2) of the CCS Pension Rules reads as under:-

> "*1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.*
>
> *(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.*"

In view of the above said Rule, the petitioner was not held entitled for counting of his past service, as he had not applied through proper channel.

A replication to the written statement filed on behalf of respondent No. 5 was filed by the petitioner stating therein that petitioner was relieved of his duties w.e.f 28.01.1982 (A/N) vide office order dated 28.01.1982 (P-2). Further the Excise and Taxation Commissioner, vide his letter dated 10.11.1981 i.e before his joining the taxation department, Haryana has asked for confirmation regarding verification of character and antecedents of the petitioner, who was at that time working as U.D.C with the respondent-National Building Organisation, Ministry of Works and Housing, Government of India and the latter confirmed this fact vide letter dated 16.11.1981 also confirms this fact that he had applied through proper channel and was relieved of his duties in National Building Organisation on selection of Taxation Inspector in the Excise and Taxation Department of Government of Haryana.

Further, vide order dated 06.01.1971 Annexure P-8, petitioner was made quasi-permanent under the Government of India on the post of LDC w.e.f 22.07.1970. Petitioner was further declared permanent to Grade II of the Central Secretariat Clerical Service in the Cadres of Works and Housing w.e.f 22.10.1971, vide Ministry of Works and Housing order dated 15.03.1973, as per entry recorded at Page 5 of his service Book Vol-I (P-9). Thus, the petitioner was a permanent employee of the Central Government at the time of his appointment as Taxation Inspector on temporary basis under the Government of Haryana

Learned counsel for the petitioner while referring to Rule 3.17 of the Punjab Civil Services Rule argued that as per this Rule, the service rendered by the petitioner from 11.03.1965 to 28.01.1982 under the Central Government has to be reckoned as qualifying service for the purpose of calculating pension, as the petitioner had applied for the post of Taxation Inspector through proper channel.

Learned counsel for the petitioner further submits that Rule 26 (1) of CCS (Pension Rules) are not applicable in the case of the petitioner, as he neither tendered his resignation nor left the service without permission as there is no evidence by way of the resignation letter or its acceptance by the competent authority.

On the other hand, learned State counsel while referring to the written statement filed on behalf of respondent No. 1 to 4 contends that the petitioner was not given the benefit of past service, as he had not applied through proper channel while applying for the post of Taxation Inspector and his case was rightly rejected vide office memo dated 05.03.2004 in accordance with Rule 3.17 of CSR Vol II.

Learned counsel appearing for respondent No. 5 while referring to Rule 26 (1) and (2) of the CCS Pension Rules contends that once the petitioner had resigned without proper permission and thus he is not entitled for counting of his service w.e.f 11.03.1965 to 28.01.1982 as qualifying service for the purpose of calculating pension.

After hearing learned counsel for the parties at length and after perusing the record, the moot point for consideration before this Court that whether the petitioner had applied through proper channel for the post of Taxation Inspector under the Haryana Government.

The present writ petition was admitted on 31.08.2006 and thereafter, this Court vide order dated 27.09.2013 directed State and Government of India to produce the service books of the petitioner. In compliance of the above said order, the learned State counsel produced the duplicate service book of the petitioner on 27.12.2013 but this Court directed respondent No 5 to produce the original service book of the petitioner but now respondent No. 5 has filed additional reply stating there in that no other record of the petitioner is available with the said respondent and placed on record bill register (Annexure R-5/A) which shows that the employee was relieved on 28.01.1982. Petitioner also filed reply to C.M. filed by respondent No. 5 stating there in that (Annexure R-5/A) shows only that the employee was relieved on 28.01.1982 but this is also not clear as to whom it belonged.

A perusal of letter dated 10.11.1981 makes it abundantly clear that the Excise and Taxation Commissioner Haryana wrote the above said letter to the petitioner c/o National Building Organisation 'C' Wing Nirman Bhawan New Delhi with regard to confirmation regarding the verification of the character and antecedent of the petitioner and Section Officer of his earlier department i.e National Building Organisation vide letter dated 16.11.1981 had written back to the Commissioner Excise and Taxation Department, Chandigarh that that the character and antecedents of petitioner at present working as U.D.C in this Organisation were verified in the year 1965 at the time of his joining government service and there is no need now for verification of character and antecedents of the petitioner.

A combined reading of letters dated 10.11.1981, 16.11.1981 and Annexure P-8 and P-9 makes it abundantly clear that the petitioner was regular employee of the Central Government and he was relieved of his duties w.e.f 28.01.1982 (A/N) vide office order dated 28.01.1982 (P-2) and thereafter, he joined as Taxation Inspector and before his joining, the Sectional Officer of his earlier department had confirmed the character and antecedents of the petitioner by saying that there is no need now for verification of character and antecedents of the petitioner, as the same were verified in the year 1965 at the time of his joining government service.

Further there is no resignation letter of the petitioner produced by respondent No. 5 on record.

In the original record produced by the department, there is a letter dated 11/18.12.1981 which was forwarded by the earlier department of the petitioner to the District Excise and Taxation Officer Narnaul, Haryana forwarding the application dated 10.12.1981 with 02 copies of acceptance letter from the petitioner who has been offered the post of Taxation Inspector and it was stated that he was medically examined by the Appropriate Medical Authority New Delhi before joining NBO and was found fit by the said authority.

Thus, for all intents and purposes he was regular employee of the Central government w.e.f 11.03.1965 to 28.01.1982 and a presumption can be drawn that he applied through proper channel and appointed for the post of Taxation Department under the Haryana Government and thus, his service w.e.f 11.03.1965 to 28.01.1982 should have been counted as qualifying service for the purpose of pension. The case of the petitioner thus does not fall under Rule 26 of the CCS (Pension Rules), as he had applied through proper channel. Further, the Commissioner, Excise and Taxation Department is writing letters to his earlier department NOB only shows that the petitioner had applied through proper channel and that is why before his joining, letter was written by the Commissioner, Excise and Taxation Department to NOB with regard to verification of character antecedents of the petitioner.

In view of the discussions made above, the present writ petition is allowed and a direction is given to the respondents to count the service rendered by the petitioner w.e.f 11.03.1965 to 28.01.1982 under the Central Government towards his pensionary benefits and release the payment accordingly @9 % per annum. This exercise shall be done within a period of three months from the date of receipt of certified copy of this order.

03.02.2016 **(RITU BAHRI)**

G Arora **JUDGE**