

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 17838 of 2011

Date of Decision : February 12, 2016

Suresh Kumar Khanna Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. K. S. Jetley, Advocate
for the petitioner.

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DEEPAK SIBAL, J. :

Through order dated 08.11.1982, the petitioner was selected and recommended for appointment as Excise Inspector in the Excise and Taxation Department, Haryana. However, since no appointment order was issued, he approached this Court through a writ petition, which was dismissed. Aggrieved by dismissal of his petition, the petitioner preferred Special Leave Petition being **SLP No. 12476 of 1988** before the Apex Court, which after conversion into a Civil Appeal, on 19.07.1990, was allowed.

In compliance with the aforesaid orders of the Apex Court, the petitioner was offered appointment, but when for no justifiable reason and without any fault on his part, he was kept out of service from the date of his selection till the date of his actual appointment claiming the benefit of seniority and other benefits for the afore-referred period, he approached this Court through **C. W. P. No. 9532 of 2004 – Suresh Kumar Khanna vs. State of Haryana and others**, which was allowed on **26.03.2009**. In the light of the orders passed in the aforesaid writ petition, the respondents granted to the petitioner, w.e.f. 27.12.1984, the benefit of seniority, as also pay fixation (though notionally). However, the aforesaid break period between 27.12.1984 till the date of actual appointment i.e. 14.11.1992 was not counted towards pension on the ground that for the aforesaid period, the Government had not paid any salary to the petitioner and thus, as per Rule 3.12 of the Punjab Civil Services Rules, Vol. 2, as applicable to the State of Haryana, that period could not be counted towards pension. Laying a challenge to such rejection, the present petition has been filed.

The only question to be determined is whether the period from 27.12.1984 i.e. the date when the petitioner was selected on merits as an Excise Inspector and for no fault on his part, was denied appointment till 14.11.1992, when he was actually appointed, is to be counted towards calculation of pension.

Once the respondents have themselves passed orders to count

the aforesaid period towards seniority, have fixed the pay of the petitioner w.e.f. 27.12.1984 (though notionally) and have also granted him the benefit of increments for the aforesaid period. Thus, the period in question has been considered by the respondents as regular service.

The petitioner had been selected in the year 1982 and was denied appointment for no rhyme or reason while his juniors were appointed in the year 1984. The denial by the respondent to offer appointment to the petitioner in spite of the fact that he had the requisite merit and was duly selected was adversely commented upon by the Apex Court in the order dated 19.07.1990 referred to earlier, which is reproduced below :-

“It is not in dispute that the appellant was selected by the respondent No. 1 – Board and his name was recommended to the department for appointment as far back as May 4, 1982. This fact was also intimated to the appellant. Thereafter successive representations were made by the appellant but in vain. The appellant has never been intimated that the list has elapsed. Nor he was informed that his turn for appointment could not come for want of posts. He has been completely kept in darkness. With such pitiable condition he approached the High Court for relief under Article 226. Unfortunately the High Court has dismissed the Writ petition in limine.

Counter affidavit has been filed on behalf of Board but not by the State. Mr. Mahabir Singh learned counsel for the State asked for some more time to file counter. We do not think that at this stage we should grant his request.

We have considered the matter and also heard counsel on both sides. We are of the opinion that there is a great injustice done to the appellant by not appointing him, although he has been selected and recommended for appointment with an intimation to him. Not merely that he has not been intimated why he could not appointed. His case is that appointments were made by pick and choose method. We have no reason to disbelieve this in the absence of denial. In the circumstances, we are left with no alternative but to issue a direction to the respondents to appoint the appellant forthwith in the post for which he was selected. The appellant is entitled to his costs. So ordered. [Emphasis supplied]

In view of the above, benefit for the period in question cannot be denied for the purpose of granting benefits towards calculation of pension.

The aforesaid view of mine finds support from a Division Bench judgment of this Court in **Prem Paul and others vs. The Managing Director, Uttar Haryana Bijli Vitran Nigam and others** –

2008 (4) S.C.T. 247, wherein it has been held as under :-

“This Court in CWP No. 6439 of 2006 - T.C. Gupta v. The State of Haryana and others, decided on 7.2.2008, has examined the identical questions raised and held that even if the petitioner is not to be granted arrears on account of grant of 2nd ACP Scales, but retiral benefits are to be fixed after grant of benefit of notional pay scale with effect from 1.1.1996. Even if the petitioners are not to be granted any arrears on account of the notional fixation of pay, but on account of deemed notional fixation of pay as on the date of retirement, the petitioners are entitled to the revised pensionary benefits. [Emphasis supplied]”

Thus, there is no reason in fact or in law to deny to the petitioner the benefit of service between 27.11.1984 till 14.11.1992 towards grant of pensionary benefits. Accordingly, the writ petition is allowed and the respondents are directed to count the period from 27.11.1984 till 14.11.1992 towards the petitioner's pensionary benefits. The needful be done within three months from the date of receipt of a certified copy of this order.

(DEEPAK SIBAL)
JUDGE

February 12, 2016

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