

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

CWP No. 13983 of 2013(O&M)

Date of Decision: 16.12.2016

SUBHASH CHANDER GUPTA

... Petitioner

V/s.

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS

...Respondents

/CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Kshitija Mittal, Advocate,
for Mr. Pardeep Solath, Advocate,
for the petitioner.

Mr. Vivek Sharma, Advocate,
for respondent No. 1.

Mr. G.S. Bal, Senior Advocate,
with Ms. Manju Sharma, Advocate,
for respondent No. 2 and 3.

KULDIP SINGH, J. (Oral)

The petitioner has preferred the present writ petition under Articles 226/227 of the Constitution of India for issuance of writ of mandamus issuing directions to the respondent No. 1 to consider the service rendered by the petitioner from 25.09.1975 to 21.07.1982 with respondent No. 2 and 3 for for the purpose of pension, gratuity and other pensionary benefits.

The petitioner in the present case claims that he had served as Assistant Chargeman/RS (Electrical) in the Northern Railways at Ghaziabad with effect from 25.09.1975 to 21.07.1982 on regular basis. It is also claimed in the petition that in response to advertisement 45/81 dated 23.11.1981, the petitioner applied for the post of Assistant Engineer/Electrical (Trainee) in

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Punjab State Electricity Board, now succeeded by Punjab State Power Corporation Limited. The application was forwarded by Divisional Railway Manager, Northern Railway, New Delhi vide his letter No. 7238-426/P-7 dated 12/81 addressed to the Secretary, Punjab State Electricity Board (now PSPCL, Patiala). It is stated that the service rendered in the Railway is not counted for grant of pension under Rule 3.17 (a) Volume II of the Punjab Civil Services Rules. It is further disclosed that when his claim was not acceded to, the petitioner filed a Civil Suit No. 174 dated 15.06.1985 contending that his services from 25.09.1975 to 21.07.1982 as Assistant Chargeman/RS (Electrical) in the Railway department is to be counted towards qualifying service for grant of pension and gratuity and other benefits under rule 3.17 (a), Volume II of the Punjab Civil Services. The said suit was dismissed by learned Senior Sub Judge, Patiala on 03.06.1988. It also comes out that in the said suit Punjab State Electricity Board was the only party whereas Northern railway was not a party. The petitioner preferred an appeal before the learned Additional District Judge, Patiala and on 27.07.1988. Vide judgement and decree dated 15.10.1988 of the learned Additional District Judge, Patiala the appeal was allowed and the suit was decreed against PSEB. The declaration was granted and the petitioner was held entitled to have his service be counted w.e.f. 25.09.1975 to 21.07.1982 rendered by him as Assistant Chargeman/RS (Electrical) in the Railway towards the pensionary benefits and gratuity and connected benefits. The matter did not end there. It comes out that petitioner had also filed an execution application dated 06.02.2006 for the implementation of the said judgement and decree dated 15.10.1988. The said

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execution application was dismissed on 20.02.2007 by the learned Civil Judge (Senior Division), Patiala.

It appears that no appeal against the said judgement was also filed. The petitioner further filed an application for initiation of contempt proceedings against the respondents which included Punjab State Electricity Board and Railway department. The application was filed on 26.03.2007 and was ultimately dismissed on 28.01.2013. It appears that no appeal against the said order of learned Civil Judge (Senior Division), Patiala was also filed. The matter rested there. Now, the present petition has been filed in the year 2013 claiming the same relief.

So far as the Northern Railways is concerned, in the reply the stand has been taken that the petitioner has earlier left the services of the respondents by submitting a resignation vide letter dated 10.07.1982 giving one month's notice and the same was accepted with effect from 10.08.1982. The resignation was submitted on the ground that his father is a patient of Peptic Ulcer and was under treatment in Rajendra Hospital, Patiala. Therefore, he is resigning from service. It was not stated that an application was moved for appointment to some post in Punjab State Electricity Board through proper channel. The letter relied upon by the petitioner was denied. It is stated that the said letter is not on record and is forged and fabricated one. It is stated that as per Rule 28 and 29 of the pension manual of the Railways in case of resignation, the past service is not to be counted for grant of pensionary benefits.

It is further stated that the petitioner had filed a Civil Writ Petition No. 2111 of 1985 before the Delhi High Court seeking direction to the

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respondents to accept his resignation and make the payment of dues. In the said writ petition, it was never pleaded that the petitioner had applied through proper channel as claimed in the present petition in this Court. The said petition was ultimately transferred to the Principal Bench of Central Administrative Tribunal, New Delhi and the same was decided vide order dated 25.04.1986 (*Annexure R-2/4*). The Tribunal vide order dated 25.04.1986 held that since the petitioner has resigned from the post his claim for grant of gratuity is not sustainable. However, the security, insurance, provident fund was ordered to be paid to him. The Railway has relied upon letter dated 16.02.2015 (*Annexure R-2/7*) in which the Railway has denied the liability on the ground that the petitioner has resigned from the service.

Respondent No. 1-PSPCL in the written statement has taken the stand that the matter has already been decided by learned Additional Judge, Patiala. It was further stated that that number of letters issued to respondents 2 and 3 show that the PSPCL was complying with the judgement passed by the court. ₹84,368.09 was demanded from respondent No. 2 & 3 towards their proportionate liability but no response was received from the respondents. It was stated as per judgement and decree dated 15.10.1988 of the Court of Additional District Judge, Patiala, the respondent No. 1 has issued an office order dated 207/BEG dated 08.03.1990 to count the service of the petitioner as Assistant Chargeman in the Indian Railway from 25.09.1975 to 31.07.1982. The execution application had already been dismissed and the petitioner has not challenged the same.

I have heard learned counsel for the parties.

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The perusal of the pleadings and the document show that it is a case of misuse of process of Court. The valuable time of this Court has been wasted by filing such frivolous writ petition before this Court. It comes out that the petitioner, in a clever move, without joining the Northern Railway, instituted a Civil Suit before learned Civil Judge (Senior Division), Patiala on 15.06.1985 claiming the benefit of service during which he has worked in the Indian Railways. The Civil Suit was dismissed and the appeal filed against the said judgment and decree was allowed by the Additional District Judge, Patiala and claim of the petitioner was allowed against the PSEB only. It appears that in pursuance of the said decree, PSEB has passed the orders. However, the difficulty arose when the Indian Railways was asked to pay its share which they refused. The execution application filed by the petitioner had also been dismissed against that also no appeal was filed. The Contempt petition filed by the petitioner was also dismissed against that also no appeal was filed. In the contempt petition, the Indian Railway was specifically made a party. Now, the said judgement and decree and orders have become final. Not only this, the petitioner also approached the High Court of Delhi by filing CWP No. 2111 of 1985, in which in the pleadings there was no mention that the petitioner had applied through proper channel for the post in PSEB now succeeded by PSPCL and the matter was ultimately decided by the Principal Bench of Central Administrative Tribunal, New Delhi in which it was held that no pensionary benefits or grant of allowance be released to the government servant of the Railways who resigned from service.

Since, the petitioner resigned from the post, therefore, his claim for gratuity is not sustainable. However other payment of security, provident

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fund was ordered to be released. Therefore, the controversy claimed in the present case has already been finally adjudicated. So far as the forwarding of letter to the Punjab State Electricity Board by the railway is concerned, the same is specifically denied by the Railway stating that no such letter was issued and was a forged one. This letter was never claimed before the Central Administrative Tribunal, New Delhi nor its authenticity was proved. The petitioner has already availed the remedy of Civil Suit and the remedy before the CAT, New Delhi. Therefore, for the same relief the present petition is nothing but misuse of process of court.

In view of the foregoing discussion, the present petition is dismissed with cost @ ₹ 25,000/- to be paid to the Indian Railways.

December 16, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

Whether speaking / reasoned :	✓ Yes / No
Whether Reportable :	✓ Yes / No