

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

**CWP No. 25052 of 2012 (O&M)
Date of decision : 28.01.2016**

Surinder Singh and others

...Petitioners

versus

State of Haryana and others

..Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjiv Gupta, Advocate
for the petitioners.

Mr. Gaurav Goel, A.A.G. Haryana

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

Petitioners have approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari/mandamus for setting aside order dated 16.11.2012 (P-17) and further prayer is for issuance of direction to the respondents to grant the benefit of entire length of service rendered by the petitioners in HSMITC for the purpose of grant of ACP i.e benefit of pay scale of Rs.7500-13000.

Petitioners were appointed as Junior Engineers in the Haryana State Minor Irrigation Tubewell Corporation (for short

'HSMITC') on regular basis between the period from 1975 to 1979 and they were sent on deputation in Rural Development and Panchayat Department, Haryana Chandigarh in the year 1996 and were absorbed in that department itself, vide Annexure P-1 and at the time of absorption, the terms and conditions in the appointment letter envisaged that they shall be governed by the terms and conditions set forth. Copy of the order of deputation of petitioners is 01.02.1996 (P-2) and copy of absorption of the petitioners is dated 05.02.2001 (P-3). The pay protection and other monetary benefits were granted to the petitioners but as far as seniority is concerned, it was held that they will be given seniority from the date they joined the Rural Development and Panchayat Department, vide office order dated 20.01.2003 (P-4). Thereafter, Government of Haryana issued notification dated 07.08.1992 wherein it was stipulated that persons who completed 8/18 years of service would be granted additional increments. This was followed by notifications for grant of HSS/ACP relief's on completion of 10/20 years of service. Some of the persons of HSMITC were granted the benefit of previous service, but the same was withdrawn and CWP Nos. 1739, 1740 and 3855 of 1995 were filed by the petitioners praying that the respondents be restrained from withdrawing the said benefit and quashing of the said decision. Vide judgment dated 31.05.1995, this

Court allowed the case in favour of the petitioners. In compliance of the above mentioned judgment, respondent No. 3 vide letter dated 16.04.1996 granted the additional increment incorporating the service rendered in HSMITC. Petitioners were also granted the advance increments for promotional scale w.e.f the date of their entitlement by counting their service rendered in HSMITC and their pay was accordingly fixed. They were also extended the benefit of 1st ACP after computing length of service rendered in HSMITC and even petitioners were extended the benefit of 18 years of service.

But the relief of ACP scale was not granted to some employees including Deepak Sood and others, who were petitioners in CWP No. 10570 of 2001 and COCP No. 547 of 2002. Another CWP No. 12952 of 2003 was filed for grant of benefit of ACP scale, which was disposed of vide order dated 03.03.2005 in favour of the petitioners by giving direction to the respondents to implement orders passed by the respondent themselves on 08.11.2002 etc granting ACP benefit within a period of two months. But the respondents filed C.M. No. 20329 f 2005 in CWP No. 12952 of 2002 seeking review of the above order dated 03.03.2005 but the application was dismissed on 03.02.2006.

The respondents then challenged the orders by filing Civil Appeal No. 4446 of 2008 before Hon'ble the Supreme Court. In the

meantime, this Court vide order dated 11.07.2006 in COCP No. 910 of 2005 filed by some of the employees directed the respondents to ensure compliance of order dated 03.03.2005 and accordingly, Deepak Sood and others were granted the 2nd ACP scale during pendency of the contempt petition.

Thereafter, an anomaly occurred in the pay scales and Haryana Government Finance Department vide their memo dated 05.09.2007 granted the new pay scale of Rs.7500-13000 from date of issuance of this memo, which was not given to the petitioners and they filed a detailed representation to respondent No. 3.

Now the impugned order dated 16.11.2012 has been passed rejecting the claim of the petitioners

On notice, a written statement has been filed on behalf of respondent No. 2 stating therein that petitioner Surinder Singh and 8 others have joined the Rural Development and Panchayat Department, Haryana Chandigarh as Junior Engineers on deputation basis from HSMITC w.e.f 13.02.1996 and they were appointed as Junior Engineers afresh on temporary basis by way of transfer vide order dated 05.02.2001 in the pay scale of Rs.5500-9000 vide letter dated 06.09.2001 with retrospective effect i.e. 13.02.1996 as per the terms and conditions of the appointments in which it was stated that their seniority will be

determined from the date they joined the department and no benefit of past service towards seniority will be given and they are only entitled to pay protection drawn by them in HSMITC. These terms and conditions have been accepted by the petitioners.

Petitioners filed CWP No. 14133 of 2010 for quashing order dated 19.03.2010 and letter dated 17.10.2010 vide which the benefit accrued to the petitioners and others are sought to be withdrawn. Further they are seeking direction to the respondents to grant the benefit of entire length of service rendered by them in HSMITC as granted in Deepak Sood's case. This Court disposed of the writ petition on 19.04.2012 filed by the petitioners by giving direction to respondent No. 1 to consider the claim of the petitioners in the light of Supreme Court judgment in Civil Appeal No. 4446 of 2008 i.e ***State of Haryana v. Deepak Sood and others, decided on 15.07.2008 and Haryana State Minor Irrigation Tube Well Corporation and others v. G.S. Uppal and others, 2008 (3) SCT 506***, within a period of two months and further respondents were directed to convey the decision to the petitioners.

In compliance of the order, Chief Secy to Government of Haryana vide letter dated Nil received in the department on 21.09.2012 directed to decide the claim of the petitioners and the matter was

referred to Finance Department for advice and the Finance Department vide their U.O No. dated 22.11.2012 held that the matter of the petitioners was examined and it was decided that the claim of the petitioners is not covered by the judgments mentioned in CWP No. 14133 of 2010 as the benefit was extended to all the employees initially appointed in Boards/Corporations/Municipal Committees and were declared surplus and subsequently appointed on transfer basis in other departments and the benefit of pay protection has been given. Petitioners in the present case were never declared surplus and they on their own came on deputation in the Rural Development and Panchayat Department, Haryana Chandigarh and later on as per their request, they were appointed in Rural Development and Panchayat Department, Haryana Chandigarh on transfer basis afresh.

The judgment of **Uppal's** case also relates to claiming the benefit of revised pay scales/pay parity at par with Engineers of the Irrigation Department which was not initially allowed to them on the ground that the Corporation was running into loss.

In the present case, the petitioners were never declared surplus and they came on their own on deputation basis and further in their appointment letter, it was clearly mentioned that they will not be entitled to the benefit of past service except pay protection.

Reference at this stage can be made to a Division Bench judgment titled as ***Harinder Kumar, J.E and others vs. State of Haryana and others, passed in CWP No. 1739 of 1995, decided on 31.05.1995*** whereby petitioners were seeking direction to the respondents restraining them from effecting recovery of increments granted to them after they had completed 8/18 years of service. This Court held that respondents are held liable to take into account the service rendered by the petitioners in HSMITC as their services were not terminated rather they along with their services were transferred to Public Health Department where they were absorbed. Reference has been made to case of ***G. Govinda Rajulu v. The Andhra Pradesh State Construction Corporation Ltd, AIR 1987 SC 1801, which has been followed by this Court in Haryana Taneries Employees Union (Regd.) Jind, Haryana vs. State of Haryana and another, 1998 (1) SLR 284*** and this Court directed the respondents to take retrenched employees either as Class IV employees or other managerial staff in the Government Corporations or Boards according to the qualifications of each of the employees and their fitness. The retrenched employees were also held entitled for counting of their service rendered by them in the Haryana Tanneries Ltd in case they are appointed in pensionable jobs for the purpose of pension and other retiral benefits.

This judgment is directly applicable to the facts of the present case, as the petitioners in this case as well were initially appointed as Junior Engineers in HSMITC on regular basis between the period from 1975 to 1979 and they were sent on deputation in Rural Development and Panchayat Department, Haryana Chandigarh in the year 1996 and were absorbed in that department itself, vide Annexure P-1. The claim of the petitioners has been rejected by the respondents on the ground that the benefit of the judgment of Deepak Sood's case is to be extended only to those employees who were appointed in Boards/Corporations/Municipal Committees and were declared surplus by the department.

For all intents and purposes, the benefit of ACP scales cannot be denied to the petitioners only on the ground that they were not declared surplus as the HSMITC was running into losses even in the year 1990 and had transferred its employees as they were declared surplus, as per the judgment of ***Harinder Kumar's case (supra)*** and the present petitioners were also transferred in the year 1996 and hence they are covered by the judgment of this Court mentioned above and judgment of Hon'ble the Supreme Court in Deepak Sood's case (*supra*).

In view of the above, the present writ petition is allowed

and order dated 16.11.2012 (P-17) is hereby quashed and the respondents are directed to count the entire length of service rendered by the petitioners in HSMITC for the purpose of grant of ACP i.e benefit of pay scale of Rs.7500-13000, in accordance with law, within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

28.01.2016

G Arora