

**CWP No. 3792 of 2012 and
CWP No.11987 of 2015**

:1:

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

*** * * * ***

CWP No. 3792 of 2012

Date of decision : January 14, 2016

*** * * * ***

Suresh Chand and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CWP No. 11987 of 2015

*** * * * ***

Subhash Arora

.....Petitioner

Versus

State of Haryana and another

.....Respondents

*** * * * ***

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

*** * * * ***

Present: Mr. Raman B. Garg, Advocate for the petitioners.

Mr. Gaurav Goel, AAG, Haryana.

Mr. Namit Gautam, Advocate for respondents no. 2 & 3.
(in CWP No. 3792 of 2012)

Mr. Pritam Saini, Advocate for respondent no.2
(in CWP No. 11987 of 2015)

*** * * * ***

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

By way of this common judgment, two petitions i.e CWP

No. 3792 of 2012 titled, 'Suresh Chand and others vs. State of Haryana and others' and CWP No.11987 of 2015 titled, 'Subhash Arora vs. State of Haryana and another' shall be disposed of as common question of law arises for consideration in these writ petitions.

For the sake of convenience, facts are being extracted from CWP No.3792 of 2012.

Present petition has been filed seeking a writ of certiorari to quash the impugned order dated 5.10.2010 (Annexure P-3) whereby the petitioners have been denied counting of their past service rendered with Haryana State Minor Irrigation Tubewell Corporation (hereinafter referred to as 'HSMITC') as qualifying service for pension.

The petitioners had served the HSMITC for different periods from the year 1976/1978 till 2002. Thereafter, State of Haryana had decided to close down the HSMITC, therefore, the services of the petitioners were retrenched in the month of July 2002. Consequently, the petitioners were reappointed keeping in view reservation provided by the State Government for the retrenched employees. The State of Haryana issued policy instructions vide office memorandum dated 7.1.2002 (Annexure P-1), thereby provided an opportunity to all the employees to count their previous service rendered with the Board/Corporations/State Government Undertakings in their present Department for the purpose of pension.

Paragraph 7 of the Instructions is reproduced as under:

7. On appointment from non-
pensionable to pensionable organization:-

If pension scheme is not in existence in the previous Organization but the same is in existence in the new Organization, in such case on appointment/absorption of an employee of State Autonomous Body in any Department under Haryana Government, he will have the option to get benefit of qualifying service rendered in the previous organization for the purpose of pension in the new Organization by foregoing employer's share of CPF with interest received from the old Organization which will be paid to the new Organization. This option will be exercised within six months from the date of appointment on regular basis in the new Organization. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive and retain CPF benefits. Options once exercised shall be final.

Pursuant to the above said instructions, the petitioners made separate requests to the respondents for counting of their previous service for the purpose of pension and other retiral benefits,

but no heed was paid to the genuine requests of the petitioners. A copy of joint representation dated 18.11.2009 is annexed with the petition as Annexure P-2. The benefit is being sought on the basis of the judgment passed in CWP No.17343 of 2007, titled 'Jai Parkash vs. The State of Haryana and others' decided on 28.11.2008 (Annexure P-8), wherein the issue involved was whether the petitioner was entitled to treat his services with the Haryana State Minor Irrigation and Tubewells Corporation Limited as continuous service rendered with the Department of Prohibition and Excise Commissioner. Division Bench of this Court allowed the writ petition with the direction that the services of the petitioner rendered with respondent no.4 namely Haryana State Minor Irrigation and Tubewells Corporation Ltd. shall be counted for computation of retiral benefits of pension etc. This judgment was subsequently followed by this Court in CWP Nos. 10535 of 2007 (Baldev Singh vs. State of Haryana and another) and CWP No. 10559 of 2007 (Mange Ram vs. State of Haryana and another) which were allowed vide order dated 5.3.2009 (Annexure P-9) in the same terms as CWP No. 17343 of 2007. The benefit of policy dated 7.1.2002 (Annexure P-1) has also been extended to the petitioners in CWP No. 8021 of 2009 (Sher Singh vs. State of Haryana and others) which was decided on 17.8.2010 (Annexure P-7).

Counsel for the respondent has not been able to dispute that the benefit of the policy instructions dated 7.1.2002 (Annexure P-1) has been extended to all the similarly situated employees in the

aforementioned judgments (Annexures P-7 to P-9).

In the circumstances and in view of all that has been discussed above, writ petitions are allowed in the same terms as CWP No. 17343 of 2007. Impugned order dated 5.10.2010 (Annexure P-3) is set aside. Respondents are directed to count the past service of the petitioners rendered with HSMITC as qualifying service for pension.

January 14, 2016
ritu

(**RITU BAHRI**)
JUDGE