

CWP Nos.22868 and 26453 of 2014 and
CWP Nos.10342,10397, 1801,1874, 25108 of 2015

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In the High Court of Punjab and Haryana at Chandigarh

1. CWP-22868-2014
Date of Decision:26.02.2016

Muni Lal Sharma

...Petitioner

Versus

Bhakra Beas Management Board and others

...Respondents

2. CWP-26453-2014
Date of Decision:26.02.2016

Krishan Singh and others

...Petitioners

Versus

Bhakra Beas Management Board and others

...Respondents

3. CWP-10342-2015(O&M)
Date of Decision:26.02.2016

Bihari Lal and others

...Petitioners

Versus

Bhakra Beas Management Board and others

...Respondents

4. CWP-10397-2015
Date of Decision:26.02.2016

Parma Nand and another

...Petitioners

Versus

Bhakra Beas Management Board and others

...Respondents

5. CWP-1801-2015
Date of Decision:26.02.2016

Man Bahadur

...Petitioner

Versus

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Bhakra Beas Management Board and others

...Respondents

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CWP-1874-2015

Date of Decision:26.02.2016

Roshan Lal Gupta and another

...Petitioners

Versus

Bhakra Beas Management Board and others

...Respondents

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CWP-25108-2015

Date of Decision:26.02.2016

Narinder Singh and another

...Petitioners

Versus

Bhakra Beas Management Board and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. H.S. Saini, Advocate
for the petitioner(s) (in CWP Nos-22868,
26453-2014, 10342, 10397, 1801, 1874 of 2015)

Mr. Vikas Chatrath, Advocate
for the petitioners (in CWP No.25108 of 2015)

Mr. Sudhanshu Makkar, Advocate
for the respondents (in CWP Nos.26453 and
25108 of 2015)

Mr. Sumit Gupta, Advocate
for the respondents (in CWP Nos.1801,
1874 and 10342 of 2015)

Mr. Amit Jhanji, Advocate
for the respondents (in CWP No.22868 of 2014)

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and CWP No.10397 of 2015)

SABINA, J.

Vide this order above mentioned seven petitions would be disposed of as the controversy involved in all the cases is the same.

Petitioners have filed these petitions praying that their services rendered on work charge basis with Beas Construction Board('BCB' for short)/Beas Satluj Link Project be counted towards pensionary benefits.

Learned counsel for the petitioner(s) have submitted that petitioners were initially appointed in BCB on work charge basis and on completion of the project, they were discharged/retrenched. After few days, petitioners were re-appointed/absorbed on work charge basis by Bhakra Beas Management Board('BBMB' for short). Now the petitioners stood retired and their services rendered on work charge basis with BCB were liable to be counted towards pensionary benefits. Learned counsel for the petitioner(s) have submitted that controversy involved in the present cases has already been decided by this Court in **Bhakra Beas Management Board and others** Vs. **Raj Kumar and others** 2016(1) Service Cases Today 255.

Learned counsel for the respondents, on the other hand, have opposed the petitions and have submitted that, in

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fact, petitioners were given a fresh appointment when they joined the BBMB and consequently, the services rendered by them on work charge basis with BCB were not liable to be counted towards pensionary benefits.

In the present case, admittedly, petitioners had worked on work charge basis with BCB and on completion of the project, they were discharged/retrenched. After few days, they were appointed by BBMB. The question that requires consideration is as to whether the services of the petitioners, rendered on work charge basis with BCB, were liable to be counted towards pensionary benefits.

The controversy involved in the present cases are no longer res integra. The present cases are covered by the decision given by this Court in **Bhakra Beas Management's case (supra)**. The relevant paragraphs of the said judgment read as under:-

“7. In the counter submitted by the appellants respondent's plea was countered saying that he was entitled to the pensionary benefits only for the regular service rendered by him in the BBMB and no such benefit could be claimed by him for the service rendered by him with Beas Construction Board for, his appointed in the BBMB was a fresh appointment and his claim for

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protection of his pay scale taking into account his service with Beas Construction Board was turned down by the Industrial Tribunal-cumLabour Court, Chandigarh vide Award dated 07.08.2008. According to the appellants, case of the respondent is covered by the ratio of Jaswant Singh and others versus Union of India, AIR 1980 Supreme Court 115.

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10. The controversy, in fact, has already been decided by a Division Bench of this Court, of which one of us (Satish Kumar Mittal, J) was a member, in the case of Sohan Singh through LRs versus State of Punjab (supra) in the following terms:

“From the above table, it is further clear that the petitioner actually served the respondent-Board from 12.3.1985 to 31.7.1992 i.e. about 7 ½ years. Now, the question arises whether the service rendered by the petitioner prior to joining the Board is to be counted towards qualifying service for the grant of pension?

It is virtually the admitted position between the parties that prior

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to re-organization of the erstwhile State of Punjab, Bhakra Dam was under Punjab Government. On the re-organization of the State of Punjab, Beas Construction Board which had been constituted by the Central Government for execution, construction and completion of the components of the Beas Project and the Bhakra Dam, as per the provisions of the Punjab Reorganization Act, 1966 (hereinafter referred to as "the 1966 Act") were transferred to the Bhakra Beas Management Board i.e. the respondent-Board which was another statutory body created by the Central Government in exercise of powers conferred upon it under Section 79 of the 1966 Act. Section 80 (1) of the 1966 Act provides that when all the completed components of the Beas project are transferred to the respondent-Board, they shall cease to exist having being merged into the respondent-Board. At this stage, it would be useful to refer to the following averments made in the written statement filed by the respondent-Board, which are reproduced below:

"The Beas Construction Board was constituted by the Central Govt. in exercise of the Punjab Re-organisation

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Act, 1966 (Act-31 of 1966) (here-in-after referred to as Act of 1966) for execution, construction and completion of the components of the Beas Project. The completed components of Beas Project were transferred by the Central Govt. to the Bhakra Beas Management Board another statutory body constituted by the Central Govt. In exercise of the Powers conferred upon it under Section 79(1) of the Act. It was provided in Section 80(1) in the Act of 1966 when all the completed components of Beas Project are transferred to the Bhakra Beas Management Board, the Beas Construction Board referred to above shall cease to exist."

Thus, it is clear that Bhakra Dam project which was earlier under the Government of Punjab and the Beas Construction Board which was earlier under the Central Government, on the reorganisation of the erstwhile State of Punjab, through the provisions of the 1966 Act merged into the respondent-board. This change was necessitated on the formation of successor States cut out from the erstwhile State of Punjab, Haryana, Himachal Pradesh etc. as the above project was catering to all of them. Thus, both the projects in which

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the petitioner served ultimately got merged into the respondent-Board. The above facts have been completely ignored by the respondent-Board while considering the case of the petitioner for counting the service rendered by him earlier in the Bhakra Dam Project and then later under the Beas Construction Board under the Central Government before joining the respondent-Board.

So far as the service rendered by the petitioner while executing the Beas Satluj link under the Beas Construction Board is concerned, the same can be viewed from yet another angle. For this, reference to the instructions dated 4.7.1991 issued by the Board would be relevant. The relevant extract of the same is reproduced for ready reference:

"Subject: Grant of benefit of past service rendered by ExCGEs of B.C.B. Inducted into BBMB for the purposes of pension, Gratuity, Leave and Proficiency Step-up (S) According to the existing instructions/orders the past service rendered by the Ex-Central Government Employees of B.C.B. Inducted in B.B.M.B on fresh appointment is not counted in the B.B.M.B for the purposes of grant of

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proficiency step-up(s), Entitlement of Casual/Earned Leave and grant of retirement benefits such as Pension, Gratuity, etc.

In partial modification of the instructions contained in Board's letter No.8170-32/88208/BP/10/1-rr dated 26.3.84, 234/3- 1200/82/10/Irr dated 28.4.84, 9921- 60/B-1200/23/I-Irr Dated 31.3.86 & 15022-164/B-2/468/86/R&A dated 2.5.89 and in pursuance of the decision taken by the Board vide Item No.142.05 of its 142nd meeting held on 11.4.1991 at Chandigarh, I am directed to convey approval of the Board to the effect that the service rendered by Ex-Central Government Employees in B.C.B. inducted into B.B.M.B on fresh appointment shall be counted in the B.B.M.B for the purpose of:- (i) grant of Proficiency step-up(s) (ii) for determining the entitlement of Casual/earned leave for service in BBMB without any claim of carrying forward the Earned Leave earned for service in BCB; (iii) grant of retirement benefits of Pension & Gratuity."

Sub-section 1 and sub-section 2 of Section 80 of the 1966 Act which is also relevant provides as under:

"80. Construction of Beas

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Project.-(1) Notwithstanding anything contained in this Act or in any other law, the construction (including the completion of any work already commenced) of the Beas Project shall, on and from the appointed day, be undertaken by the Central Government on behalf of the successor States and the States of Rajasthan: Provided that the Governments of the successor States and the State of Rajasthan shall at all times provide the necessary funds to the Central Government for the expenditure on the Project (including the expenses of the Board referred to in subsection (2)) and such amounts shall be apportioned among the successor States and the State of Rajasthan in such proportion as may be fixed by the Central Government after consultation with the Governments of the said States.

(2) For the discharge of its functions under sub-section (1), the Central Government may-

(a) by notification in the Official Gazette and in consultation with the Governments of the successor States and the State of Rajasthan, constitute a Board to be called the Beas Construction Board with such members as it may deem fit and assign

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to the Board such functions as it may consider necessary; and

(b) issue such directions to the State Governments of Haryana, Punjab and Rajasthan and the Administrator of the Union Territory of Himachal Pradesh or any other authority, and the State Governments, Administrator or other authority shall comply with such directions."

From the above, it is clear that as per the above instructions dated 4.7.1991 read with Section 80 of the 1966 Act, the petitioner's service from 17.2.1965 to 30.4.1984 was under the Central Government and that being so, it was required to be counted towards qualifying service towards pension. In this regard, reference can usefully be made to the judgment of the Apex Court in Jaswant Singh and others v. Union of India and others; AIR 1980 Supreme Court 115 wherein it has been held that the employees of the Beas Construction Board would be employees of the Central Government for all intents and purposes. Relevant observations from Jaswant Singh's case (supra) are extracted below:

"These provisions leave no doubt that the petitioners, though appointed under orders issued by or on behalf of

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the Beas Control Board or the Beas Construction Board are employees of the Central Government."

Learned counsel for the respondent-Board has argued that instructions dated 4.7.1991 would not apply to the case in hand as the same would apply only to Ex-Central Government Employees joining the Beas Construction Board. He further stated that once the petitioner had accepted the retrenchment compensation from the Beas Construction Board, he was not entitled to have his service in the Beas Construction Board counted towards qualifying service for the grant of pension from the respondent- Board. To support his proposition, learned counsel relies upon a Division Bench judgment of this Court rendered in Sukhdev Raj v. Bhakra Beas Management Board; 1994(4) RSJ 352 and the judgment of the Apex Court rendered in Jaswant Singh and others v. Union of India and others; AIR 1980 Supreme Court 115.

The submissions made on behalf of the learned counsel for the respondent-Board are to be considered only to be rejected. The argument that instructions dated 4.7.1991 would only

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apply in the case of Ex-Central Government Employee joining the Beas Construction Board is fallacious. A perusal of the instructions show that the benefit under the instructions is to be given to employees of the Beas Construction Board who join the respondent-Board. Viewed from another angle, the employees of the Beas Construction Board have been held to be employees of the Central Government in Jaswant Singh's case (supra). That being so, there is no reason not to include the service of the petitioner rendered by him in the Beas Construction Board towards qualifying service for benefit of pension. Irrespective of the above, once the service rendered in the Beas Constructions Board is to be counted for Ex-Central Government Employees, there is no reason in law or in fact not to count such service for Ex-employees of the Government of Punjab as such action would be in gross violation of Article 14 of the Constitution of India being arbitrary and discriminatory. Thus, viewed from any angle, the argument sought to be raised by the learned counsel for the respondent-Board does not warrant acceptance.

The reliance of the learned

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counsel for the respondent Board on Sukhdev Raj's case (supra) is misplaced. In that case, the issue so raised was culled out in para-1 of the judgment which is reproduced below:

"Petitioners Sarvshri Sukhdev Raj, Avtar Singh, Parkash Chand, Banta Singh, Sohan Singh, Balwant Singh, Sohan Lal and Nikku, who are employees of Bhakra Beas Management Board (for short, the Board), Irrigation Wing, have sought a mandate to the respondents to regularize their services after they had put in more than five years' service, in this petition under Article 226/227 of the Constitution of India."

From the above, it is clear that the issue raised in the above cited case was regarding the claim of regularisation of services and was thus entirely different from the facts of the present case.

Reliance of the respondent-Board on Jaswant Singh's case (supra) is equally misplaced. In that case, the primary issue before the Apex Court was whether on the cessation of the Beas Construction Board its employees would automatically be absorbed in the respondent Board which had taken over the Beas Construction Board. The answer to this question was negatived

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by the Apex Court on several counts which we may go into as the issue in the present case is entirely different.

In view of the above, the present writ petition is allowed with a direction to the respondent-Board to count the service of the petitioner rendered under the Government of Punjab in Bhakra Dam and under the Beas Construction Board towards qualifying service towards pension and accordingly grant pension to him. It is further directed that the arrears payable to the petitioner be paid within two months from the date of receipt of a certified copy of this order and in case the same is not done then from that date, till the date of actual payment, the petitioner shall be entitled to 6% simple interest on the amount due.”

In view of the above decision given by this Court, these petitions are allowed. The Respondent-Board is directed to count the services of the petitioners rendered under BCB on work charge basis towards pensionary benefits and accordingly release the benefits to them. It is further directed that the arrears payable to the petitioners be paid within three months from the receipt of the certified copy of this order and in case, the needful is not done, then the petitioners would be entitled to receive interest @ 6% per annum from the date of

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the passing of this order till realization. So far as the relief claimed by the petitioners for grant of time bound promotional scale after 23 years of qualifying service is concerned, petitioners would be at liberty to submit individual representations before the respondents for the necessary relief.

February 26, 2016
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(SABINA)
JUDGE