IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25914 of 2013 (O&M)
Date of decision : July 28, 2016

Harbans Lal **..... Petitioner**

Versus

State of Haryana and others **..... Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ravinder Malik, Advocate for the petitioner.

Mr. Gagandeep Singh Wasu, Addl. A.G., Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J. (ORAL)

The petitioner was appointed as Errection Fitter on 27.10.1970 by Beas-Satluj Link authorities on Beas-Satluj Link Project (in short 'the Beas Project'), Sunder Nagar (H.P.). On the ground of reduction of strength, he was discharged on 30.03.1984. At that time, his basic pay was ₹600 plus other allowances. He was getting total salary of ₹1,174/- per month. Thereafter, the petitioner was appointed to the post of Fitter on the work-charge basis by the then Superintending Engineer, Hisar Drainage Circle, Hisar on 12.07.1984. He joined as such on 17.07.1984 in Mechanical Drainage, Sub Division, Narwana and after working approximately for a period of more than nine years, his services were regularized as per police

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of the State Government on 01.04.1993. His pay drawn at the time of working in the Beas Project was also protected. Ultimately, the petitioner retired from service on 30.11.2009. The petitioner represented the respondents for counting his service rendered in the Beas Project from 27.10.1970 to 30.03.1984 towards qualifying service for the purpose of grant of retiral benefits. However the same was not allowed.

The short prayer of the petitioner is that his services rendered in the Beas Project should be counted towards qualifying service for the purpose of grant of retiral benefits.

The respondent in its reply has taken the stand that letter dated 27.07.1984 (Annexure P-3), protecting the pay of the petitioner being a retrenched employee, is erroneous. He was not an employee of Haryana share/quota, working on deputation/transfer in Sunder Nagar. There is no policy of the State Government under which the discharged employees of the Beas Project are absorbed/adjusted. He was not a permanent employee nor his services were regularized in the Beas Project. The petitioner had also not applied through proper channel when he was serving in the said project. In fact, his pay was wrongly protected and his pay is liable to be re-fixed and on that account, recovery should be effected. However, since the petitioner has already retired and this fact has come into notice after his retirement, therefore, no action for recovery has been taken.

I have heard learned counsel for the parties and also carefully gone through the case file.

It is not denied that the petitioner previously worked on the Beas Project from 20.10.1970 to 30.03.1984, which was a joint project of

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the States of Punjab, Haryana and Himachal Pradesh. It is also not denied that the petitioner was discharged from the said project on account of reduction of strength and that he was again appointed on work-charge basis on 12.07.1984 by the Superintending Engineer, Hisar Drainage Circle, Hisar and he joined as such on 17.07.1984 and his services were regularized on 01.04.1993.

Now, the question would arise as to whether the service rendered by the petitioner on the Beas Project should be counted as qualifying service for the grant of pensionary benefits?

The respondents have taken the plea that letter dated 27.07.1984, protecting the pay of the petitioner as drawn at the time of discharge from the Beas Project was erroneously written.

However, the said letter was not withdrawn till the retirement of the petitioner. Now, the plea of issuing the said letter is erroneous, cannot be allowed to be raised. The appointment letter dated 12.07.1984 (Annexure P-2) issued by the Superintending Engineer, Hisar Drainage Circle, Hisar, is reproduced as under:

> *"Sub: Offer of appointment for the post of Fitter Workcharge.*
> *You are hereby offered the post of Fitter on work charge basis in the scale of Rs.400-600 plus usual allowances as sanctioned by the Haryana Govt. from time to time* ***being retrenched from B.S.L. Project Sunder Nagar****.*
> *Your service can be terminated without assigning any reason within 24 hours notice."*

It goes to show that he was appointed on account of being retrenched employee of the Beas Project, on which the Haryana State is

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beneficiary. It is not claimed that the said letter was illegally issued or the appointment of the petitioner itself was illegal and without any Policy of the State. It appears that there were some instructions/Policy of the State on account of which the retrenched employee of the Beas Project was appointed in the State of Haryana. Further, the letter dated 27.07.1984 (Annexure P-3) issued by the Executive Engineer, Mechanical Drainage Division, Jind, shows that the pay of the petitioner being the retrenched employee of the Beas Project was protected. The relevant extract of the said letter is reproduced as under:

> *Ref: Your letter No.1025/14-E dated 17.7.84*
>
> *The pay of Rs.600/- per month is hereby protected to Sh. Harbans Lal Fitter* ***being retrenched employee of the Beas Project on the basis of the discharge certificate of workmen*** *as recommended."*

It goes to show that the petitioner was appointed being a retrenched employee of the Beas Project and his last pay drawn in the said project was protected. He was appointed on the new post within 3½ months of his discharge of Beas Project. Therefore, the said gap is to be ignored. Once, he was re-employed being a retrenched employee, his service rendered in Beas Project is to be counted towards the qualifying service for the grant of pensionary benefits.

As such, the present petition is allowed and the respondents are directed to count the service of the petitioner from 27.10.1974 to 30.03.1984 rendered in the Beas Project as qualifying service for the purpose of grant of pensionary benefits and accordingly, calculate the pension and other benefits and release the same to the petitioner within a

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period of three months from the date of receipt of the copy of this order along with interest @ 6% per annum.

(KULDIP SINGH)
JUDGE

July 28, 2016
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Whether speaking / reasoned Yes
Whether Reportable: Yes

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