

CWP No. 57 of 2012 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 57 of 2012 (O/M)
Date of decision : 17.8.2016

Balbir Singh

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vijay Lath, Advocate, for the petitioner.

Mr. Parupkar Singh Ghuman, Additional A.G. Punjab.

Mr. Amit Jhanji, Advocate, for respondents No. 2 to 4.

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

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:-

KULDIP SINGH J.

Balbir Singh (petitioner) seeks the issuance of a writ of mandamus, directing the respondents to count his work charge service, rendered by him with effect from 19.7.1962 to 26.4.1983 towards pensionary benefits and grant of consequential arrears alongwith interest.

On 19.7.1962, the petitioner was appointed as a Turner in Bhakra Dam Project (in short 'BDP') in Nangal Workshop Division. He worked there upto 21.9.1967. After the completion of the project, his services were retrenched, vide discharge certificate (Annexure-P-1). On the completion of BDP, the petitioner was appointed in another project by respondent No. 1, namely, Beas Satluj Link Project (in short 'BSLP') after

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four days, where the petitioner joined on 26.9.1967 and worked there as a Turner upto 29.1.1982. He was retrenched, vide discharge certificate (Annexure-P-2). The projects, namely, BDP and BSLP were merged into Bhakra Beas Management Board-respondent No. 2 herein (in short 'BBMB') under the Punjab Re-organization Act, 1966 (in short 'the Act of 1966'), in terms of Section 80 (6) of the Act of 1966. Part-VIII of the Act of 1966 deals with Bhakra-Nangal and Beas Projects (in short 'BNBP'). Thereafter, the petitioner was appointed as Chargeman Special Grade-II in work charge capacity in BBMB, Nangal Township, vide letter dated 26.4.1983 (Annexure-P-4). In the discharge certificate from BSLP (Annexure-P-2), the petitioner was wrongly mentioned to have voluntarily resigned from service with effect from 29.1.1982. The petitioner had approached the Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh, which, vide award dated 4.9.2008 (Annexure-P-5), held that the petitioner was retrenched from the said project. The petitioner attained the age of superannuation on 31.8.1999 and was retired from the service of BBMB. The petitioner approached this Court in the year 2012 i.e. after more than 12 years of his retirement, seeking the present relief. The petitioner also claims that under Rule 4.23 of Chapter-IV, Section-V, Volume-2 of the Punjab Civil Services Rules, interruption between two spells of service rendered under the State Government shall be treated automatically condoned, except when the interruption is caused by resignation, termination or dismissal from service etc.

Respondents No. 2 to 4, in the written statement, took the stand that the writ petition is hopelessly time barred. The petitioner retired from service on 31.8.1999 and received the pensionary benefits from BBMB.

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Now, after more than 12 years, he is disputing the pensionary benefits. The period of service by the petitioner in BDP in Nangal Workshop is not denied, but it is stated that he had voluntarily tendered his resignation. Thereafter, he was appointed in BSLP at Sunder Nagar on 26.9.1967 and worked there till 19.7.1982 as a Turner and thereafter on completion of the project and after receiving the retrenchment compensation, he had resigned from the service. The services of the petitioner with the BBMB, as alleged by him, is not denied. It is stated that Rule 4.23 of Chapter-IV, Section-V, Volume-2 of the Punjab Civil Services Rules does not cover the case of the petitioner since he had resigned from the said post and he had received the retrenchment compensation. It is further stated that as per Rule 3.17-A (1) of the Punjab Civil Services Rules, all the services rendered on establishment, interrupted or continuous, shall be counted as qualifying service, which preceding the resignation, except where such resignation is allowed to be withdrawn in public interest by the appointing authority. It goes to show that where the resignation has been submitted with proper permission to take another appointment whether temporary or permanent under the Government, the services preceding the resignation shall be counted for computation of pensionary benefits. It was further stated that the writ petition i.e. CWP No. 17807 of 1996, titled as Ram Kishan and others Versus PSEB, was filed in this Court, claiming the benefit of work charge service rendered by them in BCB for the purpose of pension and pensionary benefits, wherein the Division Bench of this Court, vide judgment dated 23.4.1999 (Annexure-R-1), held that the employees who have received the retrenchment compensation when their work charge service came to an end are not entitled to get the work charge service

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counted towards pension and pensionary benefits. The SLPs No. 7002-7003 of 2000, filed against the said judgment was dismissed as withdrawn, vide order dated 4.6.2001 (Annexure-R-2), passed by the Hon'ble Supreme Court of India, on the statement of the learned counsel for the petitioners that the LPA is pending before the High Court. Therefore, it was stated that the work charge service of the petitioner in BDP and BSLP is not to be counted for grant of pensionary benefits.

I have heard the learned counsel for the petitioner, the learned State counsel, the learned counsel for respondents No. 2 to 4 and have also carefully gone through the file.

The services claimed by the petitioner is as under :-

<u>Sr.No.</u>	<u>Project</u>	<u>From</u>	<u>To</u>
1.	BDP	19.7.1962	21.9.1967
2.	BSLP	26.9.1967	29.1.1982
3.	BBMB	26.4.1983	31.8.1999

The discharge certificate (Annexure-P-1) from BDP shows that the petitioner resigned from the said project on alternative appointment in BSL Project. The discharge certificate from BSLP (Annexure-P-2) shows that the reason for discharge was voluntary resignation with effect from 29.1.1982.

The petitioner has himself relied upon the judgment of the Central Industrial Tribunal-cum-Labour Court-I, Chandigarh, which shows that since the retrenchment compensation was paid to the petitioner, therefore, he is deemed to have been retrenched from the said service.

Now, the petitioner claims that his service period in BDP and BSLP should be counted for the grant of pensionary benefits as these two

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projects merged into BBMB on account of Punjab Re-Organization Act, 1966 (Act No. 31 of 1966). The date of first discharge from BDP is 21.9.1967 and the reason for resignation is appointment in BSLP.

The learned counsel for the petitioner has relied upon Section 78 of Act of 1966, which provides that all the rights and liabilities of existing State of Punjab in relation to Bhakra Nangal Project and Beas Project shall, on the appointed day, be the rights and liabilities of the successor States in such proportion, as may be fixed. The Beas Project was defined in Sub-section (4) of Section 78 of Act of 1966, wherein BSLP and BDP were covered in the definition of Beas Project. It goes to show that on coming into force of the Punjab Re-organization Act, 1966, all the rights and liabilities of the said project which were part of the Beas Project were given to the successor States. However, the fact remains that the petitioner was retrenched from Bhakra Dam Project on completion of the work and thereafter he was also retrenched from Beas Satluj Link Project on the completion of the said project and that the retrenchment compensation was duly paid by BSLP, which was accepted by him way back on 29.1.1982. The retrenchment was not disputed by the petitioner at any stage. After about 1 year and 3 months retrenchment from BSLP, the petitioner was appointed fresh in BBMB, Nangal Township and till his retirement in the year 1999, he did not claim that his previous work charge service in BDP should also be counted for the purpose of seniority and other benefits. After the superannuation in the year 1999, the petitioner remained mum for nearly more than 12 years.

Now, the question would arise as to when a worker is retrenched on completion of work and receives retrenchment compensation,

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whether his service is to be counted for the grant of pensionary benefits with whom he is employed after a gap of more than one year on fresh appointment ?

The Division Bench of this Court in Ram Kishan's case (supra) held that in the said case, the work charge service cannot be counted towards regular service. The Division Bench of this Court in a case relating to the work charge employee of Bhakra Dam Project, Beas Satluj Link Project and Bhakra Beas Management Board, titled as Sohan Singh through LRs Versus State of Punjab and others, (arising out of CWP No. 15666 of 1998, decided on 1.12.2014), while relying upon the Full Bench judgment of this Court in Kesar Chand Versus State of Punjab and others, 1988 (5) SLR 27, held that the work charge service is to be counted for the grant of pensionary benefits. It also comes out that in Bhakra Beas Management Board and others Versus Kewal Krishan, an application (RA No. 52 of 2014 in LPA No. 1809 of 2013) was filed for review/recall of the order dated 23.10.2013, whereby Letters Patent Appeal arising against the order dated 29.7.2013 of the learned Single Judge, which was dismissed by a Division Bench of this Court on 22.8.2014, holding that the question of law raised hereinabove is kept open to be gone into in appropriate cases. The petitioner has also relied upon the Division Bench judgment of this Court in Bhakra Beas Management Board and others Versus Raj Kumar and others, 2016 (1) SCT 255. Further reliance has also been placed on the Division Bench judgment of this Court in Sohan Singh through LRs Versus State of Punjab and others, (arising out of CWP No. 15666 of 1998, decided on 1.12.2014), wherein reliance was placed on the authority of the Apex Court in Jaswant Singh and others Versus Union of India and others, AIR 1980

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Supreme Court 115.

On the other hand, the learned counsel for respondents No. 2 to 4 has produced the authority of the Apex Court in Jaswant Singh's case (supra) and has argued that the said authority is mis-interpreted. The perusal of the said authority i.e. Jaswant Singh's case (supra) shows that in the said case, several writ petitions were filed. There were certain group of petitioners, who were working as Engineers, Overseers, teachers, Sub Divisional Clerks, Clerks, Accounts Clerks, Time Keepers etc. and there was other set of petitioners, who were work charge employees and some of them were retrenched. The cases of two categories were separately discussed. All of them were employees of Bhakra Beas Satluj Project and other projects, covered under the Beas Project. While treating the effect of the Punjab Re-organization Act, 1966, the case of the work charge employees was considered. It was also informed that as per the provisions of Section 80(6) of the Act of 1966, the complete component was transferred to BBMB on May 15, 1976, and the Board was re-named as Bhakra Beas Management Board. About the work charge employees of Beas Project, it was observed by the Apex Court as under :-

“45. There were in all about 36000 workcharged employees working on the Beas Project. Out of them, about 26000 have already accepted retrenchment compensation under the settlement arrived between the workmen and the management in the conciliation proceedings held by the Regional Labour Commissioner (Central), New Delhi, under Section 12 of the Industrial Disputes Act, 1947. All the 12 unions of which the work-charged employees are members were parties to the said conciliation proceedings. By reason of Section 18 (3) (d) of the Industrial Disputes Act, a settlement arrived at in the course of a conciliation proceeding is binding on all persons who were

employed in the establishment to which the dispute relates, whether they were employed on the date of the dispute or subsequently. In Ramnagar Cane and Sugar Co. Ltd. V. Jatin Chakravorty and Ors. MANU/SC/0304/1960 : (1961) ILLJ 244 SC, it was held by this Court that it is not even necessary, in order to bind the workmen to the settlement arrived at before the conciliator, to show that they belonged to the union which took part in the conciliation proceedings, since the policy underlying Section 18 of the Act is to give an extended operation to such Settlements. In the instant case, all the 12 unions which represented the workmen on the work-charged establishment were parties to the conciliation proceedings. The settlement will therefore bind all the work-charged employees.”

In view of the fact that the work charge employees had entered into a settlement effected between them and the management in the conciliation proceedings, it was held that they are not entitled to any rights apart from those flowing from the aforesaid settlement.

In this way, since the petitioner had accepted the retrenchment compensation at the time of retirement from Beas Satluj Link Project, therefore, now he cannot complain that he was wrongly retrenched and that his services in Beas Satluj Project Link should be counted in BBMB where he was appointed after a gap of one year and three months. Moreover, there is an inordinate delay of more than 12 years in filing the present writ petition.

In view of the authority of the Hon'ble Supreme Court of India in Jaswant Singh's case (supra), I am of the view that the case of the petitioner is squarely covered by the said authority and since the petitioner had accepted the retrenchment compensation, which he had already received way back in the year 1982, the petitioner is not entitled to any other benefit.

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Consequently, the services rendered by the petitioner in Bhakra Dam Project and Beas Satluj Link Project cannot be counted for the purpose of computing the length of service and consequently fixing the pension. Accordingly, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

17.8.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes