

**101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.25683 of 2014 (O&M)
Date of decision : October 25, 2016**

Ghan Shyam Dass Sharma

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.L. Sharma, Advocate for the petitioner.

Mr. Gaurav Goel, AAG, Haryana.

Mr. Amit Jhanji, Advocate for respondent No.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 ?

KULDIP SINGH J. (ORAL)

The petitioner was appointed through Employment Exchange with respondent No.4 and he worked there from 17.07.1974 to 31.01.1975. Thereafter, he was retrenched. Later on, he was absorbed in Beas Construction Board on 17/18.02.1975 and worked there till 31.10.1981. According to the petitioner, later on, he applied for the post of Clerk/Steno Typist in the Irrigation Department, Haryana through proper channel. He was selected there as Clerk/Steno Typist. He retired from service on 30.04.2010. It is stated that the Beas Construction Board (for short 'BCB') is merged with Bhakhra Management Board (for short 'BMB') on 31.08.1981. Petitioner claims that his previous service rendered by him from 17.07.1974 to 31.10.1981 should be counted for the purpose of pensionary benefits. Further prayer has been made for refixation of the pay.

In terms of the order dated 21.10.2013 passed by this Court in earlier writ petition bearing CWP No.23059 of 2013, the respondents passed a speaking order dated 11.09.2014 (Annexure P-11), vide which they refused to count the past service of the petitioner rendered by him in BMB and BCB i.e. from 17.07.1974 to 31.10.1981 towards the qualifying service for grant of pensionary benefits.

In the written statement, the respondents have not denied that the petitioner was appointed in BMB on 17.07.1974 and retrenched on 31.01.1975 and was absorbed in BCB on 17/18.02.1975 as Clerk on adhoc basis and worked there till 31.10.1981. His regular appointment in the State of Haryana is also not denied. It was stated that the claim of the petitioner was considered and rejected by the Superintending Engineer, Procurement Circle, Irrigation Department, Haryana, vide letter dated 17.08.1982 as the claim of the petitioner is not covered under Rule 4.4(b) of Civil Services Rules, Volume-I, Part-I. Subsequently, his request was also rejected by the Financial Commissioner and Secretary to Government, Haryana, Irrigation Department, Chandigarh by passing a speaking order dated 08.02.2012 (Annexure P-11/B). The respondents maintained that since the case of the petitioner is not covered under Rule 4.4.(b) of the Rules *ibid*, therefore, his previous service cannot be counted as he had resigned from the previous employment.

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

In the speaking order dated 08.02.2012 (Annexure P-11/B), the only contention is that the petitioner did not apply through proper channel.

However, letter dated 24.10.1980 (Annexure P-2) shows that the application for the post of Steno-Typist was forwarded to the Secretary, Subordinate Service Selection Board, Haryana, Chandigarh, by the Superintending Engineer, BSL Admn. & Accounts Circle, Sundernagar Township. It was further stated that the department had no objection to spare the event of his selection. The application along with the certificates was enclosed with the said letter. It was further stipulated in the said letter that no lien of the official would be kept in this department and he will have to resign from the present post.

The office order (Annexure P-3) shows that on account of new selection of the petitioner, he resigned from the post of Steno-Typist to join the new post of Steno-Typist in the Irrigation Department, Haryana, on account of his selection through Subordinate Services Selection Board, Haryana. It goes to show that the petitioner applied through proper channel and on account of the condition imposed in the forwarding letter (Annexure P-2), he has to resign from the post of Steno-Typist to join the new assignment of Steno-Typist. Therefore, it is not a case of abandoned or resigning the job but resigning with the permission of the department to join the new assignment in the Irrigation Department, Haryana. Thus, Rule 4.4. (b) of the Rules *ibid* is not attracted in the present case.

Consequently, the impugned orders dated 11.09.2014 (Annexure P-11) and 08.02.2012 (Annexure P-11/B) are hereby quashed. The respondents are directed to count the previous service of the petitioner rendered by him in BMB and BCB for the purpose of grant of gratuity and other retiral benefits. The respondents are also directed to refix the pay of

the petitioner on the basis of last pay drawn by him in BCB.

As such, the present petition is allowed.

The arrears shall be limited to last 38 months prior to the date of filing of the writ petition only. However, no interest will be paid.

(KULDIP SINGH)
JUDGE

October 25, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No