IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 12.05.2016

CWP No.79 of 2014 (O&M)

Balwant Singh ...Petitioner

Vs.

State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.S.Rana, Advocate, for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

Mr. Sumit Gupta, Advocate, for respondents No.4 & 5.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner has been denied counting of period of service prior to the second spell as work-charged employee towards qualifying service for pension. Accordingly, his pension and its adjunct components have been calculated counting only the second limb of the work-charged service followed by regular service. The respondent – Department has disregarded the first spell of work-charged service, which was from 15.12.1955 to 26.12.1963, as per the photocopy of the discharge certificate submitted by the petitioner. This long spell of work was broken by three days before the second spell of the first spell of re-employment was continued on re-engagement till 1984. The petitioner's services were regularized on 20.01.1995.

2. The only question to be determined is as to what has to be made of the first and second parts of the first spell of work charged service and whether the period is to be counted towards the total length of service.

3. If relief has to be granted to the petitioner, two declarations would be necessary. Firstly, that three days' break between the first part and the second part of the first spell should be treated as notional break and therefore liable to be ignored. Secondly, the break of six months between the first part of the work-charged service with the second part in the first spell is followed by re-induction in service without any disqualification with respect to past service in the same line of work is also ignorable for pension. This period represents the day 20.04.1984 when the first spell ran out and 16.10.1984 when the second spell started.

4. If the petitioner abandoned service for six months or had not reported for duty that would have been a different matter. If there is no fault on his part for such long break in service and the fact that the petitioner was given a break with payment of retrenchment compensation even then the past service I am inclined to think cannot be washed out altogether. At best, the period of six months can be written off the total length of qualifying service for pension in case the State insists and succeeds on its plea that the break was substantial and caused due to lack of work and therefore, does not deserve to be counted for purposes of clubbing it with the period qualifying for pension then I am further inclined to think that the period of six months is too miniscule in an expanse of decades of service sufficient to engage the attention of this Court in writ jurisdiction to especially deal with one way or the other to deny the period spent in the service of the State delinking the period before the second spell of the first spell of service whatever be its character. Otherwise the gap can be construed as exploitative in nature to rule it out of consideration.

It would be far more realistic an approach and much safer to treat the period of six months as subtracted from the first and the second spells of service to bring the desired relief of enhanced pension. But the period of six months will still be treated as qualifying service for pension being virtually notional when juxtaposed with the duration of total service running over many years. The impact would only be monetarily minor and therefore can at best be excluded for purposes of pension.

5. Mr. Rana relies on a decision of the Supreme Court involving the Punjab State Electricity Board itself in the matter of work-charged service and pension after according permanency of employment. He refers to Punjab State Electricity Board & another Vs. Narata Singh & another, (2010) 4 SCC 317, where the Supreme Court have inter alia applied the law of the Full Bench of this Court in Kesar Chand Vs. State of Punjab, 1998 (5) SLR 27 and culled out its ratio to mean that any rule which excludes the counting of work-charged service of an employee whose services have been regularized subsequently, must be held to be bad in law. He would also rely on the Division Bench decision of this Court in Raja Ram Malik & anothers Vs. Haryana Vidyut Prasaran Nigam Ltd., 2008 (2) RSJ 607: 2008 (2) SCT 381 to strengthen his argument that where daily-wage and work-charged service is spent before regularisation then both periods would count towards qualifying service for pension when worked under the same employer.

6. The argument of Mr. Vaibhav Sharma, learned DAG, Punjab to the effect that payment of retrenchment compensation is conclusive of the fact that employment had come to an end with discharge of liability to pay money under Section 25-F of the Industrial Disputes Act, 1947 is I think too narrow and pedantic a view which does not appeal to common sense and is not the correct view to be given to the expression 'retrenchment compensation' in the

Act. Retrenchment compensation is not paid to put an end to service, but to tide over financial hardship resulting from retrenchment so that an employee can look for another job in the meantime to sustain his family. More so when actions under Section 25F of the Act are subservient to rights of workmen under Sections 25G and 25 H of the Act which guarantee return to employment when work becomes available and another person is employed without offering employment to the victim of Section 25F of the Act or the principle of last come, first go. I would, therefore, like to reject the argument as one without any substantive merit raised to defeat a just claim and reduce quantum of pension. The petitioner is held entitled to counting of both periods of service [first two spells before the second spell] towards pension except the period excluded by this order entailing no more than about six months to balance the equities between the parties. However, that period would not be treated as *dies non* but only as a bridge crossed for legal purposes to bring home higher pension.

7. Thus, for the foregoing reasons, the present petition is allowed. The impugned order dated 18.11.2013 (Annex P-7) is quashed as illegal and arbitrary and destructive of the rights protected to some extent by Article 300A of our Constitution and the inherent concept of reasonableness keeping in view the dominant purpose of pension linked to service of whatever kind before and after regularisation. The pension is directed to be re-fixed accordingly and the amounts be recalculated and paid to the petitioner. However, the claim for interest on arrears is turned down, as the rights and liabilities of parties have been declared today after the issue was debated at the bar. It may however be mentioned that the financial liability towards pension as enhanced falls on the shoulders of the respondent State of Punjab and not on the Bhakra Beas Management Board, as was pointed out by Mr. Sumit Gupta representing

respondents No.4 & 5. It is so ordered. The exercise would be completed within a period of two months and arrears of pension be paid to the petitioner within the next month and thereafter redrawn enhanced monthly pension be paid in accordance with law.

12.05.2016 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**