

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 9746 of 2015

Date of Decision: 15.11.2016

Gurpal Singh

... Petitioner

V/s

Punjab State Power Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. V.K. Shukla, Advocate,
for the petitioner.

Mrs. Geeta Sharma, Advocate,
for respondents No 1 to 4.

KULDIP SINGH, J. (Oral)

The petitioner has invoked the writ jurisdiction under Articles 226 of the Constitution of India for issuance of a writ certiorari/mandamus to the respondents against act of the respondents in not counting the work charge service of the petitioner w.e.f. 01.01.1977 to 24.11.1994 followed by regular service towards pensionary benefits on the basis of an affidavit dated 14.05.2014 (*Annexure P-1*) secured from the petitioner and depriving him of the benefit of work charge service towards pensionary benefits.

Brief facts of this case are that the petitioner joined the respondent department as Work Charge T-Mate on 01.01.1977 in the then regular pay of ₹75/- to ₹ 90/- which was subsequently revised to ₹300/- to ₹430/-. The services of the petitioner were thereafter regularised w.e.f. 25.11.1994 as Assistant Lineman. Subsequently, he retired from service on 31.12.2013 on attaining the age of superannuation. The petitioner claimed the benefit of work charge service w.e.f. 01.01.1977 to 24.11.1994 towards grant of pensionary benefits claiming that the affidavit dated 14.05.2014 (*Annexure P-1*) obtained

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from him for depriving him of the pensionary benefits for the period of work charged service, is illegal.

The respondents in the reply have taken the stand that the petitioner himself submitted an affidavit dated 14.05.2014 whereby he declared that he does not want to avail the benefit of counting of work-charge service rendered prior to his date of regularization and that he did not want to deposit the amount of Employees Provident Fund (EPF). The reference is also been made to the instructions Memo No. 12005/905/Pension/Mobile-loose in this regard

I have heard learned counsel for both the parties.

The affidavit filed by the petitioner on 14.05.2014 i.e. about five months after the date of retirement is reproduced as below: -

“I Gurpal Singh S/o Sh. Gurdev Singh R/o who was working as Assistant Lineman at S/D (Nathu Wala Jadid) and retired from service of PSPCL/PSTCL on 31.12.2013. I in accordance with Instructions issued by Deputy Secretary/P & R Memo No. 3919/dated 25.11.2013 do hereby solemnly affirm and declare as under: -

- 1. That I have completed 19 years 1 month 6 days qualifying service as Assistant Lineman on regular basis.*
- 2. That I want to get pensionary benefits for 19 years 1 month and 6 days service without the benefit of work-charge period and without deposit of EPF.*
- 3. That in future I will not raise demand for pensionary benefits for the work-charge period.*
- 4. That due to non-availability my Service Book for work charge period, I should be released my pensionary benefits without counting work charge service and my pension case for the period of regular service be considered without the service book for work-charge period.*

5. *That in case I am being granted the pensionary benefits for the period of regular service by the department, I shall not file any case/appeal/any other application before any Court for getting pensionary benefits for the period of work-charge service in previously Board now PSPCL/PSTCL.”*

The instructions dated 25.11.2013 mentioned in the said affidavit was followed by instructions Memo dated 14.03.2014 (*Annexure R-1*) and the relevant extract from the same is reproduced as under:-

“In continuation of this office letter No. 3919/5169/Pension Mobile dated 25.11.2013, reconsidering the matter by Administration, the following decision has been taken: -

- 1) *Those employees whose qualifying service is 10 years or more than 10 years and less than 25 years, their case be considered without the work charge service book on this condition that certified/attested affidavit issued by Magistrate, 1st Class, be obtained from them, that they will not claim for gratuity and pension according to Qualifying Rules and will not claim for work charge service period rendered by them and they will not filed any court case.”*

It goes to show that for those employees whose work-charge service book is not there they can file affidavit to get pensionary benefits. In the present case, there could be two situations. First is that the service book regarding work charge service period of the petitioner is available and the question needs to be examined is as to whether an employee can waive the benefit accruing to him on account of work charge service; and secondly that the service book of the work charged period is missing.

After considering the aforementioned instructions and the affidavit in question, I am of the view that most probably since the work charge service book was not available with the respondents, therefore, he was

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required to file an affidavit as he could not get the pensionary benefits unless he file the affidavit in accordance with the instructions mentioned in the affidavit and the subsequent instructions. Therefore, the petitioner was apparently forced to file the said affidavit to enable the department to release the pensionary benefits. The obtaining of said affidavit will not work as estoppel against the petitioner to claim the benefit of work charge service which is bestowed upon him by the operation of law.

As such the writ petition is allowed and it is ordered that the affidavit dated 14.05.2014 (*Annexure P-1*) is ignored and the petitioner is entitled for counting of work charge service followed by regular Service for the purpose of grant of all the pensionary benefits. The pension benefits shall accordingly be calculated and released to the petitioner. He is required to deposit EPF for the work charged period within 2 months from the date of passing of the judgement and within 3 months thereafter the respondents shall pass an order of computing the work-charge service towards pensionary benefits and release the same.

In view of the above, the petition is allowed.

November 15, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

	✓	
<i>Whether speaking / reasoned</i>	<i>Yes</i> / <i>No</i>	✓
<i>Whether Reportable</i>	<i>Yes</i> / <i>No</i>	