HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA No.1805 of 2016 (O&M)
Date of Decision: 05.10.2016

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Haryana State Agricultural Marketing Board & Anr. ... Appellants

VS.

Prem Parkash Gupta & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA

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1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***Yes***
3. Whether Reporters of local papers may be allowed to see the judgment? ***Yes***
4. To be referred to the Reporters or not? ***No***
5. Whether the judgment should be reported in the Digest? ***No***

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Present: Mr. Sandeep Moudgil, Advocate for the appellant

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SURYA KANT, J. (Oral)
CM-3698-LPA-2016

For the reasons mentioned in the application, the same is allowed and the delay of 180 days in filing the appeal is condoned.

CM stands disposed of.

LPA-1805-2016 (O&M)

(1) This order shall dispose of LPAs No.1804 to 1806 of 2016 as all the appeals are directed against the common order dated 14.01.2016 of the learned Single Judge. LPA No.1805 of 2016 is treated as the lead case for the purpose of extracting facts and legal issue(s).

(2) Learned Single Judge has accepted the claim of private respondents for the counting of their service rendered in the Haryana State Minor Irrigation & Tubewell Corporation Ltd. (HSMITC), towards pension and other retiral benefits after retirement on superannuation from the appellant-Board.

(3) The question which fell for consideration of learned Single Judge and re-agitated before us, is whether the respondent's claim falls within the four-corners of the Government Memorandum dated 07.01.2002 (P8)?

(4) A brief reference to the facts thus may be made. The first respondent joined HSMITC – a Government owned company in the year 1978 and served there upto 2002 when he was retrenched as the State Government decided to wind up its Company which was running into losses. All the surplus employees of HSMITC were adjusted/absorbed in different Govt. Departments/Boards/Corporations run by the State Government. Pursuant to such process the first respondent was appointed/absorbed in the appellant-Board on 06.07.2002 where he was already serving on deputation as Junior Engineer. The first respondent retired from service on attaining the age of superannuation on 31.07.2011.

(5) Even before his retirement, the first respondent sought the benefit of past service rendered by him in HSMITC towards 'qualifying service' for the purpose of pension and other retiral benefits. The appellant's claim was turned down, prompting him to approach this Court. Learned Single Judge has vide order under appeal accepted his claim.

(6) It is undeniable and was so admitted before the learned Single Judge also that the issue *re:* claim of past service of respondent towards 'qualifying service' for pension and other retiral benefits has to be determined in accordance with the Government memorandum/circular dated 07.01.2002 (P8). The afore-mentioned circular, in no uncertain terms, provides that on appointment from non-pensionable to pensionable organization, the employee will have the option to get the benefit of 'qualifying service' rendered in the previous organization for the purpose of 'pension' in the new Organization by

foregoing the employer's share in CPF with interest received from the previous Organisation which will be paid to the new Organisation. In this regard, it will be profitable to reproduce para-7 of the Office Memorandum which reads as under:-

> *"7. **On appointment from non-pensionable to Pensionable Organization**: If pension scheme is not in existence in the previous Organization but the same is in existence in the new Organization, in such case on appointment/absorption of an employee of State Autonomous Body in any Department under Haryana Government, he will have the option to get benefit of qualifying service rendered in the previous Organization for the purpose of pension in the new Organization by foregoing employer's share of CPF with interest received from the old Organization which will be paid to the new Organization. This option will be exercised within six months from the date of appointment on regular basis in the new Organization. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive and retain CPF benefits. Option once exercised shall be final."*

(7) Learned Single Judge has placed reliance on the above-reproduced clause as well as the past precedents of this Court in identical circumstances where the claim was accepted.

(8) The only plea raised before us is that learned Single Judge has overlooked clause 9 of the Government Circular dated 07.01.2002 whereunder

the employee concerned was required to exercise option within a stipulated period. Before adverting to the contention, we may extract clause 9 of the Circular which reads as follows:-

> *"**9. Option for employees who are at present in service**:*
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> *In order to get the benefit for the qualifying service rendered in an Autonomous/Statutory Body, subject to fulfilment of the criteria contained above, the employee should make request to that effect within a period of six months from the date of issue of this office memorandum. As a onetime facility for the employees at present in service, they may be permitted to exercise their option within a period of six months from the date of the issue of this office memorandum either to get pensionary benefits in respect of the past qualifying service rendered by them in pensionable or non-pensionable organization failing which it will be presumed that they are not interested in availing the benefit of past service rendered for the purposes of pensionary benefits…"*

(9) Having referred to clause 9 (relevant extracts only), we do not find any substance in the appellant's contention. The period of six months within which an employee was required to exercise option was with reference to those employees only who were in the service of pensionable establishment as on 07.01.2002 when the circular came into force and they were obligated to exercise option within six months "from the date of issue of this office memorandum".

(10) The first respondent admittedly joined the appellant-Board on 06.07.2002 and was not in its service on the date of issue of memorandum. It is also an admitted fact that the HSMITC was a non-pensionable establishment where also he had no occasion to exercise such option.

(11) There is no other circular issued by State Government or the Board obliging the employees to exercise option within a specified period. In this view of the matter, Clause 9 cannot be invoked to defeat the legitimate claim of first respondent.

(12) Learned counsel then referred to a Division Bench judgment of this Court dated 04.02.2014 rendered in a batch of appeals, with lead case in ***LPA No.570 of 2012 (Jai Narain Kaushik & Ors. vs. State of Haryana & Anr.).*** There the benefit of “past service” on appointment of surplus employees of HSMITC in different Government organizations was declined. The cited decision, in our considered opinion, does not throw any light on the issue raised in the instant cases, the benefit of past service, if claimed towards seniority or pay fixation, has to be ordinarily rejected, in the case of a fresh appointment in a new establishment. However, the benefit of such service towards ‘pension’ or other ‘retiral benefits’ having been expressly conferred under the Government Memorandum which is binding on both the past and present organizations, the claim of the respondent has rightly been accepted.

(13) For the foregoing reasons, the appeals are devoid of any merit and are accordingly dismissed.

(Surya Kant)
Judge

05.10.2016
vishal shonkar

(Sudip Ahluwalia)
Judge