

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM No.1245-C of 2014 in/&
RSA No.2490 of 2003 (O&M)
Date of decision: 03.05.2017

Haryana State Electricity Board & anr.

.... Appellants

vs.

Mangat Ram

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Padamkant Dwivedi, Advocate
for the non-applicants/appellants.

Mr. Ashwani Talwar, Advocate
for the applicant/respondent.

Rajiv Narain Raina, J.(Oral)

CM No.1245-C of 2014

This is an application for early actual date of hearing of the appeal.

For the reasons mentioned in the application, the same is allowed and the main case is taken up on Board for hearing and disposal by consent.

RSA No.2490 of 2003

The erstwhile Haryana State Electricity Board is in appeal against the judgments, the first allowing the suit while the other dismissing the first appeal. The plaintiff who is the respondent in appeal claimed benefit of past services with the Board spent on work charged basis from

1963 to 1967 to be taken into account for clubbing the two periods [the other to follow] to qualify for pension and other benefits which if granted, would lead to enhancement in quantum of retirement benefits, including pension. The work charged service followed by regular service is countable towards pension in view of Full Bench in *Kesar Chand Vs. State of Haryana, 1988(5) SLR 27.*

The appellant management depends for success of appeal on document Ex.P2 which is a writing given by the workman himself that he would have no objection if his services were treated on regular basis w.e.f. 28.01.1972. This re-employment was hardly disputed by the workman before the Labour Court and then it could be treated as contract as thereof employment continuity. The management then used the period from 05.07.1970 to 7/8.11.1971 as period of willful absence without sanction of leave to show the conduct of the plaintiff-respondent.

The brief facts are that initially the plaintiff was appointed in work-charged capacity in the year 1963 and posted in Kalka Sub Division, [which was then part of the State of Punjab] under Operation Division Solan, in the composite erstwhile Punjab State Electricity Board. He was appointed as regular driver on 09.01.1967 after re-organization of the States of Punjab and Haryana on 01.11.1966. Haryana State Electricity Board was carved out from Punjab State Electricity Board on 02.05.1967. The services of the plaintiff-respondent were allocated to HSEB on option and he was transferred from Saproon Division Solan to XEN, TLCC Division, BBMB (Beas), Amabla City vide order dated 01.01.1969. The plaintiff being a

native of Himachal Pradesh, he made a request that he be posted to Operation Sub Division Kalka being the nearest to for posting near his native place in Himachal Pradesh as, if allowed, he would be able to take care of his aged and ailing mother. The period of absence spoken off earlier was said to have been caused due to illness of his mother according to the plaintiff, whose condition had deteriorated in the month of July, 1970 which kept him away from duties. In the beginning the plaintiff had taken casual leave for four days to go to his village in Himachal Pradesh and from there applied for extension of leave. During that period, HSEB called him back and asked him to submit his explanation for the absence without leave. He submitted that because of unforeseen circumstances he had to apply for the extension of leave. The plaintiff was not allowed to join his duty again. The plaintiff sent his resignation letter to the Executive Engineer, TLSC Beas Project, Ambala mentioning therein that he had no intention to resign from the service but he had been forced to do so due to the situation created by XEN, TLSC, Ambala City, who had refused to allow him duty.

On 28.01.1972, the plaintiff was appointed as a driver on temporary basis for a period not exceeding six months keeping in view his representation made to the Secretary and Chief Engineer of HSEB as well as BBMB (Beas) authorities. He was a menial worker, who could not afford to lose this offer and therefore, accepted the same, so thought the first court. The material fact is that his resignation was not accepted in writing and therefore, the employer-employee relationship of past service continued.

The substantial issue which arose for consideration in the suit

was whether the plaintiff is entitled to all service benefits by reckoning his service rendered as work-charged driver from 1963 to 08.01.1967 followed by regular employment as driver w.e.f. 09.01.1967 as claimed.

This issue is no long res integra in view of Full Bench decision in *Kesar Chand (supra)*. The Full Bench held that after the service of a work-charge employee had been regularized, he becomes a public servant. To deprive him of the right to pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of Sub Rule (ii) of Rule 3.17 of the Punjab Civil Service Rules were struck down being violative of Article 14 of the Constitution of India.

The trial court allowed the suit. Since cause of action was of recurring nature, the suit was held not time barred even though filed on 12.08.1998, but relief was judiciously restricted to the financial benefits for three years and two months prior to the filing of the suit with interest @ 9% per annum on the amount to be worked out by the defendants-appellants in the manner stated in the judgment.

Aggrieved by the decision of the trial court, the Board approached the Court of the learned Addl. District Judge, Panchkula in first appeal under Section 96 of the CPC.

Learned Addl. District Judge, Panchkula held that the trial court was right in holding that there was recurring cause of action in favour of the plaintiff-respondent and agreed with the conclusion and the restriction placed on the award. Arrears of salary restricted to 38 months prior to the filing of the suit as due and payable to the plaintiff-respondent

by decree be paid to him along with interest @ 9% per annum.

On the issue of resignation and re-employment, the learned Addl. District Judge, Panchkula has correctly reasoned in para. 10 of his judgment as follows:

“10. the submissions of the appellants that plaintiff had given in writing that he would not claim any benefit of his previous service, is of no avail to them. As held above the service of the plaintiff is deemed to have continued from 1963 onwards. His services were never terminated by holding any enquiry nor his resignation was accepted. The plaintiff was a poor man and he was in dire need of job. In that difficulty situation that he agreed to give in writing that he would forgo his previous service if he is allowed to re-join his duties. It was only after obtaining the said statement from the plaintiff that he was allowed to rejoin his duties by the department. The said action of the department cannot be justified by any account. The employer cannot be permitted to take benefit of the compulsions and financial difficulties of its employee to extract such undertakings and statements. For all the above reasons, the said undertaking given by the plaintiff to forgo the benefit of his previous service, will be of no avail.”

On these facts and premises, the first appeal was dismissed by the learned Additional District Judge, Panchkula after correctly appreciating the law points involved in the case and on the same premises while concurring with the opinion recorded by both the learned Courts, the present

regular second appeal is found without any substance or substantial question of law and is hereby ordered to stand dismissed as the decree in appeal does not suffer from any error of law or fact.

03.05.2017
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(RAJIV NARAIN RAINA)
JUDGE

1. Whether speaking/non-speaking?	Yes
2. Whether reportable?	No