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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17716 of 2009 (O/M)
Date of decision : 14.3.2017

Smittar Singh Gill

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.S. Toor, Advocate, for the petitioner.

Mr. R.S. Pathania, Deputy Advocate General, Punjab.

Mr. Ajay Kumar Gupta, Advocate, for respondents No. 2 to 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 ?

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KULDIP SINGH J. (ORAL)

The petitioner, Smittar Singh Gill, was appointed as a Sectional Officer on 14.4.1959 in Bhakra Dam administration at Nangal. Thereafter, he was promoted as a Sub Divisional officer on 23.4.1972 in Bhakra Management Organization at Nangal. On the re-organization of the States of Punjab and Haryana, the Bhakra Beas Management Board (in short 'the BBMB') was constituted and the employees from the States of Punjab and Haryana were transferred/allocated to BBMB. The petitioner belonged to the Stated of Punjab. On 25.12.1989, the petitioner proceeded on 55 days' earned leave to Canada till 17.2.1990. Thereafter, he did not return back from leave and sought extension of leave, which was declined. It also comes out that when he did not return from leave, the BBMB, vide order dated 26.7.1990 (Annexure-P-4), repatriated him to his parent department

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i.e. State of Punjab, with effect from 25.12.1989 the date from which he proceed on earned leave. The petitioner ultimately sent a notice on 15.2.1991 to State of Punjab to allow him voluntary retirement from service, which was not replied. Rather, a notice was issued by the State of Punjab as to why an inquiry should not be initiated against him for deliberately avoiding the service. Thereafter, the petitioner filed CWP No. 13249 of 1995, titled as Smittar Singh Gill Versus State of Punjab and others, before this Court, giving therein his Canada address, against the Irrigation Department, State of Punjab, claiming that the petitioner is deemed to have retired with effect from 14.5.1991 (Annexure-P-3). Further prayer was made for release of retiral benefits. The said writ petition was allowed on 19.12.1996 (Annexure-P-3), in which this Court held that he is deemed to have retired with effect from 15.5.1991 and is entitled to the payment of retiral benefits in accordance with rules. In the present writ petition, filed in the year 2009, the petitioner claims :-

- (i) that his salary should be re-fixed as per the last drawn salary in the BBMB ;
- (ii) that he should be granted higher pay scale on completion of 16 years of service after considering his adhoc service and consequently, he should be paid all the dues, admissible to him ;
- (iii) that the order dated 26.7.1990 (Annexure-P-4), repatriating him to parent department (State of Punjab) should be set aside.

The State of Punjab (respondent No. 1) in the written statement has taken the stand that the petitioner was repatriated by the BBMB authorities to the State of Punjab, vide order dated 26.7.1990 (Annexure-P-4) with effect from 25.12.1989. The petitioner sent a notice for voluntary

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retirement on 15.2.1991. The decision of this Court in CWP No. 13249 of 1995 (Annexure-P-3) was not denied. It was stated that now after 20 years, the petitioner has filed the present writ petition, claiming the pensionary benefits and the BBMB scales. It was further stated that the salary in for the period from 18.2.1990 to 14.5.1991 has been paid by the State of Punjab. The petitioner is now a retired employee of the State of Punjab.

The BBMB (respondents No. 2 to 4) in the written statement taken the plea that the time scale benefit of 9/16 years' service is to be granted only to the regular employees and not to the adhoc employees and that too by the order of the principal employer i.e. State of Punjab.

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

Admittedly, the petitioner, who was serving in the BBMB, proceeded on Ex-India leave to Canada for 55 days from 25.12.1989 till 17.2.1990. Thereafter, he did not return and his plea for extension of leave was declined. The address given in the previous writ petition (CWP No. 13249 of 1995/Annexure-P-3) and the present writ petition shows that the petitioner is now permanently settled in Canada. In this way, first of all, he left the BBMB and the State of Punjab in lurch by abandoning them. He was repatriated to the parent department (State of Punjab) on 26.7.1990 (Annexure-P-4). It also comes out that thereafter the petitioner has been corresponding with the State of Punjab for voluntary retirement and the previous writ petition (Annexure-P-3) was filed against the State of Punjab in the year 1995. Thereafter, after 19 years of the passing of the said order, the present writ petition is barred by delay and laches for challenging the order of repatriation dated 26.7.1990 (Annexure-P-4). Therefore, the plea

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for quashing the order dated 26.7.1990 (Annexure-P-4), repatriating the petitioner to his parent department (State of Punjab) is dismissed.

Now, coming to the pay fixation, undisputedly, the petitioner was repatriated to his parent department (State of Punjab), vide order dated 26.7.1990 (Annexure-P-4), which has been upheld. Thereafter, the petitioner is deemed to have worked in the State of Punjab, therefore, he is entitled to the pay scale in the parent department (State of Punjab) and his pay is to be fixed by the State of Punjab according to the pay scales applicable to the State of Punjab employees and not as per the pay scales of the BBMB employees. By the order of this Court passed in CWP No. 13249 of 1995 (Annexure-P-3), the petitioner stood retired from service with effect from 15.5.1991 and for the purpose of calculating the retiral benefits, his last drawn pay as on 15.5.1991 is to be considered, which is under the State of Punjab. The State of Punjab has already calculated the salary of the petitioner as on the date of his retirement and as per the scale applicable to the State of Punjab employees and the same has been released to the petitioner. Therefore, the petitioner cannot claim that his pay should be fixed as allowed to him before his proceeding on leave in the BBMB. Therefore, the prayer for fixing the salary drawn in the BBMB before proceeding on leave also stands dismissed.

Next comes, as to whether the petitioner is entitled to higher pay scale on completion of 16 years of service ? The petitioner claims that his adhoc service is to be counted. From the written statement, it is not clear that the State has taken conscious decision as to whether the petitioner is to be given higher pay scale on completion of 16 years of service. It being so, the present writ petition is allowed only to the extent that the State

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of Punjab shall take a decision within two months from the date of receipt of certified copy of this order as to whether the petitioner is entitled to higher pay scale on completion of 16 years of service. His adhoc service may be counted as per the service rules applicable to the petitioner and a speaking order in this regard shall be passed. If it is found in the speaking order that the petitioner is entitled to the higher pay scale on completion of 16 years of service, needless to say that his pay shall be re-fixed accordingly. The pensionary benefits shall also be re-fixed.

The present writ petition is accordingly allowed partly.

(KULDIP SINGH)
JUDGE

14.3.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No